Approved _____
Date

MINUTES OF THE House COMMITTEE ON Agriculture and Livestock.

The meeting was called to order by the Chairman, Bill Fuller at
Chairperson

9:00 a.m./p.m. on February 1, 1984 in room 423-S of the Capitol.

All members were present except:

Representative Eckert who was excused. Representatives Shelor and Solbach were not in attendance.

Committee staff present:

Raney Gilliland, Legislative Research Department
Norman Furse, Revisor of Statutes Office
Kathleen Moss, Committee Secretary

Conferees appearing before the committee:

Rep. Richard Harper
John Blythe, Kansas Farm Bureau
Gary Rowley, Wabaunsee County Farm Bureau
Dee Likes, Kansas Livestock Association
Mason Flora, Wabaunsee County Farm Bureau
Tom Tunnell, Kansas Feed and Grain Dealers Association
Bob Scraper, Mid-America Testing Service at Hiawatha

The meeting was called to order by the Chairman, Bill Fuller who announced that the material which had been placed at their desks was testimony of Anita Niles given in advance of hearing on the bill she had sponsored; and testimony of Dave Galliart of the Federal Grain Inspection Service and accompanying article. He also announced that the Friday meeting would be devoted to reviewing bill requests.

Attention was directed to HB 2299, relating to moisture testers for grain. The Chairman noted the bill had been tabled last session and removed from the table the previous week.

Rep. Richard Harper, sponsor of HB 2299, was recognized to explain the proposal. He told the committee that moisture testers had been the subject of discussion for a number of years with warehouse operators, farmers and others. He stated that after the 1983 hearings it appeared that the process might be too expensive. He distributed copies of a proposed balloon amendment which he said would allow for the regular checking and inspection of moisture testers, similar to checking scales in grocery stores throughout the state. (See Attachment 1.) If the device should be found out of compliance, it would be tagged and would have to be brought into compliance. No fees would be assessed to the grain dealer. Upon questioning, Rep. Harper stated the person doing the testing would presumably be someone from Weights and Measures. The question of sunsetting the bill arose, and Rep. Harper stated he would accept the wishes of the committee.

John Blythe, Kansas Farm Bureau, appeared in support of grain moisture devices. This would put the moisture testers in the same category as large or small scales throughout the state. He said this legislation would be a service to the farmer, the producer and the elevator operator.

Gary Rowley of the Wabaunsee County Farm Bureau testified in support of HB 2299, explaining various ways of testing and the cost. He distributed a work sheet for reference. (See Attachment 2.)

Dee Likes, Kansas Livestock Association, appeared in opposition to HB 2299, explaining there is no no need for this type of legislation. He distributed copies of his prepared statement. (See Attachment 3.) Upon questioning, Mr. Likes said they would be in favor of testing if they had the ability to keep the testers accurate.

Mason Flora, Wabaunsee County Farm Bureau, was recognized. He spoke in support of HB 2299, explaining they have been trying to get this type of legislation for 25 years. He said he did not know whether it would be to the advantage of the elevator or the farmer, but felt the important thing was to get the testing done.

Tom Tunnell, Kansas Feed and Grain Dealers Association, representing over 1,000 grain elevators across the state, appeared to express concern about the bill. He concurred with the position of the Kansas Livestock Association, and explained that while his association does not have a firm position of support or opposition, he has concern about how the legislation would affect his members. He questioned the effect on farmers and elevators if during harvest a tester was declared out of calibration. He said that if such inspection is to be made they would prefer to have it done by a technician trained for this type of work. He told the committee that if the bill is passed they would like to see it amended. (See Attachment 4.)

Bob Scraper, Mid-America Testing Service at Hiawatha, told the committee he recognizes problems on both sides; that he has done testing both as a farmer and as an operator and does not feel this kind of program is the answer to the problem. He explained that other states with such a program charge fees to fund it. He declined to say whether an inaccurate tester would be an advantage to the farmer or the operator.

The Chairman stated that he would like to have John O'Neill or someone from Weights and Measures appear before the committee to answer questions.

The meeting was adjourned at 10:00 A.M. The next meeting will be Thursday, February 2, 1984, 9:00 A.M., Room 423-S.

Session of 1983

# HOUSE BILL No. 2299

By Representative Harper

2-9

AN ACT concerning weights and measures; providing for registration ~~and certification~~ of moisture measuring devices and prescribing fees therefor; prescribing certain duties for the state sealer; and prescribing unlawful acts and providing penalties therefor.

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

Section 1. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) ~~e~~Moisture measuring device means any instrument which is used by any person for the purpose of ascertaining the moisture content in grains offered for sale, processing or storage;

(b) person means any individual, partnership, corporation, cooperative association or association of individuals;

(c) grain means wheat, corn, oats, barley, rye, soybeans and grain sorghums;

(d) state sealer means the state sealer of weights and measures of the division of weights and measures of the state board of agriculture.

Sec. 2. No person shall operate any moisture measuring device for any commercial purpose without first registering the same ~~for inspection by~~ with the state sealer ~~and obtaining annually from the state sealer a certificate attesting to the accuracy of such device. Upon receipt thereof the certificate shall be affixed to the moisture measuring device~~.

Sec. 3. (a) Within 60 days of the effective date of this act, each and every person owning or operating a moisture measuring device for commercial purposes shall register that device with the state sealer upon forms provided therefor by the sealer.

Att. 1

Attachment No. 1

~~Such registration shall be accompanied by an inspection fee of $25 for each moisture measuring device to be inspected.~~ Upon receipt of the registration form ~~and the inspection fee~~, the state sealer ~~shall~~ may periodically inspect or cause to be inspected every moisture measuring device so registered for the purpose of ascertaining its accuracy.

~~(b) Whenever the results of the inspection or reinspection demonstrate the accuracy of any such device, the state sealer shall issue a certificate attesting to the accuracy of that device. The certificate shall be valid for one year.~~

~~(c)~~ (b) Whenever the results of the inspection demonstrate the inaccuracy of such device, the state sealer shall tag that device to show clearly that such device is not in compliance with the specifications or tolerances established by rules and regulations adopted by the state sealer pursuant to section 4. The owner or operator thereof shall have 30 days within which to have repairs made to the device and to notify the state sealer of such repairs. Upon such notification the state sealer shall ~~reinspect~~ authorize the removal of the noncompliance tag from such device ~~upon payment of a reinspection fee of $25~~.

Sec. 4. The state sealer shall adopt rules and regulations for the purpose of administering and insuring compliance with the provisions of this act. Such rules and regulations shall include specifications and tolerances for the operation of moisture measuring devices.

~~Sec. 5. The state sealer shall remit all moneys received pursuant to this act to the state treasurer at least monthly. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and shall credit that amount to the moisture measuring device fee fund which is hereby created. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state sealer.~~

Sec. ~~6.~~ 5. Any person who violates any of the provisions of this act or fails to comply with its requirements or any rule and regulation adopted thereunder, shall be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed

$500. Each day that any such violation or failure to comply takes place shall constitute a separate offense.

Sec. ~~7.~~ 6. This act shall take effect and be in force from and after its publication in the statute book.

Attachment No. 2

# House Agriculture Committee

## H.B. 2299 – Grain Moisture Testers

## February 1, 1984

by

## Gary Rowley – President, Wabaunsee Co. Farm Bureau

During the month of September 1983, two Wabaunsee County farmers took samples of grain to different elevators to check its moisture content.

Corn Samples of Gary Rowley

| Sample number | Kansas weights Measures | Petersons Laboratory Hutchinson | Farm Tester #1 | Farm Tester #2 | Alta Vista Coop | Alma Coop | Council Grove Western Grain #1 | Council Grove Western Grain #2 | Tri-County Feedlot | Eskridge Coop |
|---|---|---|---|---|---|---|---|---|---|---|
| #1 | 16.3 | 15.33 | 16.75 | 16.61 | 17.8 | 17.6 | 16.5 | 16.48 | | |
| #2 | | | 17.0 | | 19.4 | | | | 17.0 | |
| #3 | | | 16.8 | 16.5 | 18.4 | | | | | |
| #4 | | | 17.8 | | 18.9 | | | | | 17.7 |
| #5 | | | 14.4 | | 15.1 | | | | 14.4 | 14.7 |

Milo samples of Glen Auld

| | Eskridge Coop | Pauline Coop |
|---|---|---|
| Sample #1 | 15.4 | 15.1 |
| Sample #2 | 15.9 | 15.7 |

The Eskridge Coop and Pauline Coop are using a Burrows Digital #700 moisture tester that is serviced and checked by Mid-States Testing Service, located at Wichita.

Western Grain at Council Grove have their moisture meter checked & serviced by Mid-States Testing Service.

Atch. 2

Attachment No. 3

Kansas Livestock Association

2044 Fillmore • Topeka, Kansas 66604 • Telephone: 913/232-9358
Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

Statement of the

KANSAS LIVESTOCK ASSOCIATION

to the

House Agriculture & Livestock Committee
Rep. Bill Fuller, Chairman

Relative to

HB 2299
Regulation and Calibration of Grain Moisture Testers

Presented by

Dee Likes
Executive Secretary
Feedlot Division

February 1, 1984

Mr. Chairman and members of the committee, my name is Dee Likes representing the Kansas Livestock Association. As the committee is aware, our association represents a broad spectrum of livestock producers involved in literally all segments of the industry from producers to feeders. Obviously, a large percentage of our membership is also involved in the selling and the purchase of a significant amount of grain.

Proposals to regulate and require the calibration of moisture testers have been considered by the Agriculture Committees of the legislature for a number of years. To my knowledge, none of these proposals have ever been recommended favorably for passage by any committee of the legislature. Likewise, the membership of our association has consistently - year after year - established policy in opposition to state regulation and testing of moisture measuring devices.

Since this is a rather old issue let me simply give a brief list of why such a proposal should not be enacted:

1) The "state-of-the-art" in calibration of these devices is not sophisticated or accurate enough to insure that such a procedure will give any greater reliability to moisture tester accuracy.

From a practical standpoint, moisture meter readings will be varied by numerous factors and there may simply be too many variables to conclude that calibration or random sampling of the moisture meter accuracy will really provide anything worthwhile to Kansas grain producers. The method of operation is at least as important - or more

Atch. 3

so - than the calibration. Examples of errors include inaccurate weighing; contamination of the sample by sweat; trash in the sample; mistaken readings; temperature variability; different samples from the same load give different results.

Frankly, a procedural checklist to remind the moisture tester operator of correct methods of operation would do as much as anything to improve the moisture determination process.

During the last legislative session, this committee heard testimony from Keith Behnke, an associate professor of Grain Science at Kansas State University. Professor Behnke also indicated to the committee that there were problems with the "state-of-the-art" and that random errors would probably never be eliminated. I spoke with Professor Behnke by telephone yesterday and he indicated no change in his attitude about the ability to accurately calibrate moisture measuring devices. In fact, his specific quote was, "There's nothing precise about it".

Some problems include: a) even reference meters become unreliable; b) the "oven method" presents a logistical nightmare in its operation, i.e. no matter which way grain samples travel - from Topeka to the "country" moisture tester to be sampled or from the "country" moisture tester to Topeka - how do you insure you have the same sample with absolutely no moisture changes that you started with? (There will be significant differences in grain that has been cleaned vs. grain that has come directly from a combine.) c) If we calibrate a moisture measuring device for wheat, is that accuracy still good for corn or milo or soybeans?

2) Competition will be a more efficient regulator than a state agency. In other words, many producers take the time to check several grain elevators to determine what moisture readings their grain will receive. Any grain buyer who has a moisture measuring device that significantly discriminates against grain sellers will quickly find his truck scales empty.

3) The reallocation of resources by the Kansas State Board of Agriculture and its Division of Weights and Measures could slow down the far more useful activity of monitoring the accuracy of large scales, small scales and weighing devices and anhydrous ammonia. KLA and several other agricultural associations worked long and hard to convince the legislature and the governor to adequately fund this program and we are reluctant to see any lessening of its effectiveness. Additionally, this bill would require either additional funding to the department or a realignment of already tight fiscal resources.

In conclusion, let me point out that grain buyers have just as big a stake, possibly even a larger stake, with an accurate moisture test because they have to make sure that other grain is protected from going out of condition. During KLA's policy making process, our members have said that if a grain dealer is going to be dishonest, having the state check his moisture tester certainly won't be much of a deterrent...in fact, grain producers would probably be less suspicious and less careful if they think the state is guaranteeing the accuracy.

Mr. Chairman and members of the committee, even without all the overwhelming evidence against the accuracy and reliability of the very calibrating and testing process this bill seeks to impose, I want to leave you with what I believe is the final strike against this proposal: The latest survey evidence conclusively shows that there is no significant problem with producers receiving less than a fair shake from grain buyers!

I've already referred to Professor Behnke and the problems he pointed out with the calibration process. I hope the committee will recall that Professor Behnke con-

ducted a survey of 50 grain elevators across Kansas and collected 500 grain samples. That initial survey indicated that any problem in Kansas was relatively minor. He compared the moisture readings given by the elevators' moisture meters with the oven method test conducted at the university. Those tests indicated that the overall average error for all samples was less than -.66% in moisture content. "That means," explained Professor Behnke, "that on the whole, the moisture meters tested were 'off' by only a little more than 1/2 of one percent." And, he noted, "All of the moisture meters checked appeared to be slightly biased towards negative values. That means they read a bit less than the actual moisture level. In other words, the farmers who sold grain could have received more than they would have had the meters read closer to the oven moisture values because of the discount policies of the various elevators."

In simple terms, that simply means the moisture testers that were found to be slightly inaccurate were actually in favor of the farmer!

For the committee's information I have attached a copy of the Kansas State University Extension news release dated June 24, 1983 which verifies these statements. Included in that news release was an indication that Professor Behnke planned to conduct an additional survey during the 1983 harvest. As I've already mentioned, yesterday I visited with Dr. Behnke by telephone and he indicated they had recently surveyed 43 elevators, collecting 10 samples from each and had therefore sampled an additional 430 grain samples for moisture tester accuracy. In that survey Professor Behnke found even less variability - less error - and it was still in the farmers' favor! On the average, those 430 grain samples were low by approximately .40%.

I believe that our grain elevator and feedlot industry in Kansas is comprised of honest business people who only desire to give good service at a fair price. They want their moisture testers to be as accurate as possible but they don't believe that state regulation will benefit anyone. Until the membership of the Kansas Livestock Association can be convinced that reliable and practical methods can be developed to check these moisture measuring devices to insure that they are in fact completely accurate at the time of calibration and they will stay in calibration...we frankly fail to see the need for this type of legislation.

KANSAS STATE UNIVERSITY

# EXTENSION NEWS & FEATURES

Department of Extension Information
Umberger Hall 129
Manhattan, Kan. 66506
913-532-5804

MAILED: June 24, 1983

Find Kansas Grain Moisture Meters
A Smidgen in Farmer's Favor

MANHATTAN--The accuracy of moisture meters, those electronic devices used to determine moisture content in grain at harvest and during storage, has been under fire. The meter's readings are critical to farmers selling grain because as little as 1 percent point more or less moisutre in the grain can mean a big difference in the price for which the grain is sold.

But, despite this concern over the meters' accuracy, Agricultural Experiment Station scientists at Kansas State University say their research has shown the problem in Kansas is relatively minor, at least in the normal moisture ranges for wheat.

Last year, KSU researchers collected a total of 500 grain samples from 50 grain elevators across the state. They compared the moisture readings given by the elevator's moisture meters with the air oven moisture determinations made at KSU. Those tests indicated that the overall average error for all samples was less than minus 66 hundredths of a percent moisture.

"That means," explained Keith Behnke, KSU associate professor of grain science and industry, "that on the whole, the moisture meters tested were 'off' by only a little more than one half of one percent." And, he noted, "all of the moisture meters checked appeared to be slightly biased toward negative values. That means that they read a bit less than the actual moisture level. In other words, the farmers who sold grain could have received more than they would have had the meters read closer to the oven moisture values because of the discount policies at the various elevators.

-more-

Kansas, unlike other big grain states, doesn't have a law requiring compulsory calibration of moisture meters each year. Based on his study, Behnke wonders if it would be wise for Kansas to implement such a law and how such a law or regulation would be implemented.

"Our survey shows that the meters weren't off all that much and they were biased in the farmers' favor. Right now there are a lot of questions about how accurate the technology for testing the meters is," Behnke said.

Behnke plans to conduct an additional study on the meters this year. He and his students plan to survey 100 elevators across Kansas during wheat harvest and obtain at least 10 samples from each elevator. "This will give us as many as 1,000 samples from across the state," Behnke said. "This in addition to the research we did last year should give us a good idea of exactly what is happening and if there is a problem."

-30-

Marcia Longberg
Research Assistant, Grain Science
Kansas State University

Grain Science
A, C, E, F, M, N

attachment No. 4

The Kansas State Grain Inspection Department is designated by the Federal Grain Inspection Service as an official agency to perform functions under the United States Grain Standards Act. The Kansas State Grain Inspection Department is mandated, under the U. S. Grain Standards Act, to check test their moisture meters against the Federal Grain Inspection Service's master meter every six months. The Federal Grain Inspection Service monitors the Grain Inspection Department's moisture meters, for accuracy, on a continual basis. If they become out of tolerance, the Grain Inspection Department must adjust them or take them out of service.

Due to the strict requirements and procedures under which the Kansas State Grain Inspection Department operates, they should be exempt from the provisions in H.B. 2299. This could be accompolished by inserting "except the Kansas State Grain Inspection Department" as follows:

0036 Sec. 2. No person, except the Kansas
State Grain Inspection Department, shall
operate any moisture measuring de-
0037 vice for any commercial purpose without
first registering the
0038 same for inspection by the state sealer
and obtaining annually
0039 from the state sealer a certificate
attesting to the accuracy of such
0040 device. Upon receipt thereof the
certificate shall be affixed to the
0041 moisture measuring device.

Att. 4