

Approved: 1-27-94
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson David Corbin at 10:00 a.m. on January 24, 1994 in Room 423-S of the Capitol.

All members were present except: Quorum was present

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Revisor of Statutes
Lila McClafin, Committee Secretary

Conferees appearing before the committee:

Jamie Clover Adams, Kansas Fertilizer & Chemical Association and The Kansas Grain and Feed Association
Joe Lieber, Kansas Coop Council
Bill Fuller, Kansas Farm Bureau Association
Vernon McKinzie, Kansas Pest Control Association
Bill Craven, Sierra Club and Kansas Natural Resources Council
Lynn Hellebust, Common Cause of Kansas
Dee Likes, Kansas Livestock Association

Others attending: See attached list

Senator Tillotson moved the minutes of the January 19, 1994 meeting be adopted. Senator Downey seconded the motion. The motion carried.

The Chairperson opened the hearing on SB 475 - concerning agriculture; relating to the State Board of Agriculture and the Secretary of the State Board of Agriculture. The Chairperson stated he was the sponsor of the bill. He called on Jamie Clover Adams.

Jamie Clover Adams, representing Kansas Fertilizer and Chemical Association and Kansas Grain and Feed Association testified as a proponent of the bill. Their organizations believe the Board has done an excellent job of carrying out the intent of the law and urged the Committee to ensure that the programs currently under the Board's jurisdiction remain there. She said the organizations, she represents, think it is time to resolve this issue (Attachment 1). She responded to questions.

Joe Lieber, Kansas Coop Council, testified in favor of the bill. His written testimony would be submitted at a later date.

Bill Fuller, Kansas Farm Bureau Association, testified they are opposed at this time to the legislature approving a bill to restructure the Board of Agriculture. At their annual meeting they considered the issue and their Kansas Farm Bureau Policy is included in his statement (Attachment 2)

Responding to a question concerning the court appeal Kenneth Wilke stated the request to expedite the appeal process was denied.

Vernon McKinzie, Kansas Pest Control Association, testified in support of SB 475. He stated if the courts determine that a change is necessary, they believe SB 475 is a fair and workable plan that they could support (Attachment 3).

Bill Craven, Kansas Natural Resource Council and Kansas Sierra Club, testified as an opponent to the bill. He said the organizations he represent favor HB 2294. He thought the proposal in SB 475 probably was constitutional, but it was unwieldy and runs counter to a system that would be much more efficient (Attachment 4).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE, Room 423-S Statehouse, at 10:00 a.m. on January 24, 1994.

Lynn Hellebust, Common Cause of Kansas, introduced their Executive Director Debra Lee. He testified in opposition to the bill. They would support a system that called for the Secretary to be appointed by the Governor and confirmed by the Senate (Attachment 5).

Dee Likes, Kansas Livestock Association, testified in opposition to the proposal. He stated at their annual meeting they voted to reaffirm their position in support of the current structure, and they did not discuss an alternative plan. They believe the appeals process should be exhausted before any significant legislative action is taken (Attachment 6).

Ivan Wyatt, President, Kansas Farmers Union, was unable to be in attendance, but he submitted written testimony opposing the proposal. His organization supports the concept of a Secretary of Agriculture appointed by the Governor to be confirmed by the Senate (Attachment 7).

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for January 25, 1994.

GUEST LIST

COMMITTEE: Senate Agriculture

DATE: 1-24-94

| NAME | ADDRESS | ORGANIZATION |
|--------------------|-----------------------------|------------------------|
| Bill Craven | 701 Jackson #220 Topeka, KS | Ks Nat Res. Council |
| Melissa Wangemann | 2nd Floor, Capitol | Sec. of State |
| Vernon McKinnis | Emporia, KS | Ks. Pest Control Assn. |
| Glean Garwood | Topeka, KS | Ks. Pest Control Assn. |
| Bill Henry | Topeka | P. Moins. |
| John Petrusan | Topeka | Beckh Anwalt |
| TOM TUNNELL | TOPEKA KS | KS GRAIN & FEED ASSN |
| BILL R. FULLER | Manhattan | Kansas Farm Bureau |
| Mike Jensen | Manhattan | Ks. Pork Prod. |
| Jamie Clower Adams | Topeka KECA / KGFA | |
| Marty Kanier | Manhattan | KAA |
| Joe Luber | Topeka | Ks. Co-op Council |
| Dee Luber | Topeka | Ks Livestock Assn. |
| Matt Trull | Topeka | AP |
| J. Vin McBride | Topeka | OK 2000 |
| Bob Gottschalk | Hutchinson | Ks. ST. Fair |
| George Wingert | | Gov Office |
| Greg Kressek | Topeka | Ks Dept. of Ag |
| Kenneth M. Wilke | Topeka | " " " |
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STATEMENT OF
KANSAS GRAIN AND FEED ASSOCIATION
AND
KANSAS FERTILIZER AND CHEMICAL ASSOCIATION
TO THE SENATE AGRICULTURE COMMITTEE
SENATOR DAVID CORBIN, CHAIR
REGARDING S.B. 475
JANUARY 24, 1994

Mr. Chairman and Members of the Committee, I am Jamie Clover Adams, Director of Legislative and Regulatory Affairs for the Kansas Grain and Feed Association (KGFA) and the Kansas Fertilizer and Chemical Association (KFCA). The two associations have distinct memberships and association programs and activities, but share staff. KFCA's 600 member firms provide production inputs and services to producers. KGFA's 1200 member companies are involved in the transportation, warehousing and merchandising of grain, as well as feed manufacturing. We appreciate the opportunity to speak in support of the intent S.B. 475, to return permanent leadership to the Board of Agriculture while retaining the balance and reasonableness embodied by the former board.

The Kansas State Board of Agriculture, through the over 70 laws it enforces is the major regulatory agency that oversees the operation of our businesses. To list some examples, they check the accuracy of our large truck scales,

*Senate Agr. Co.
1-24-94
Attachment 1*

certify that the fertilizer, feed and seed we sell meets guaranteed analysis, assures our anhydrous ammonia equipment is safe, verifies our fertilizer and soon pesticide containment dikes and loadout pads meet state regulations and it audits our records to ensure the pesticides we sell and/or custom apply is done in accordance with the law. Obviously, we have a vested interest in the return of permanent leadership to the Board of Agriculture.

We have found the Board to be a tough but fair regulator. They have done an excellent job of carrying out the intent of the law and should continue to do so. We urge the Committee to ensure that those programs currently under the Board's jurisdiction remain so. We also urge the Committee to ensure that the culture of reasonableness, practicality and fairness remains.

We believe that this issue needs to be resolved. Food production will face tremendous challenges and opportunities in the very near future and needs the Board's leadership to prosper and thrive. NAFTA implementation is moving ahead and all of Kansas agriculture needs a strong advocate in this process. Environmental challenges abound and will continue to grow. The deadline for Worker Protection Standard (WPS) compliance is quickly approaching, pesticide containment will be required in the very near future and the watershed management approach to water quality is in vogue. Food safety will challenge Kansas agriculture, as well as

resource constraints for those in food production and in the regulatory agencies.

We encourage the Committee to include specific language in the bill to ensure participation on the Board by people with practical experience in food production. Individuals with this type of experience are valuable because of the knowledge they bring. They also will head off a situation like the one that currently exists at the U.S. EPA -- those determining policy and writing regulations have no understanding of food production. A board made-up of these types of individuals will also continue to foster cooperation between the Board and the regulated community. Experience has shown that command-and-control does not solve problems, cooperation does.

We urge the Committee to move forward and return leadership to the Board of Agriculture so we can all turn our sights on the challenges and opportunities ahead. I would be glad to respond to any questions you may have.

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PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON AGRICULTURE

RE: S.B. 475 - Creating a new procedure to appoint a State Board of Agriculture and select a secretary.

January 24, 1994
Topeka, Kansas

Presented by:
Bill Fuller, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Chairman Corbin and members of the Committee:

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau. We certainly appreciate this opportunity to testify on S.B. 475 today. Few issues are of more importance to Kansas agriculture, the Kansas economy and the citizens of Kansas than maintaining a strong and effective Department of Agriculture.

The members of the 105 County Farm Bureau's across the entire state have extensively studied, debated and made recommendations concerning the future structure and mission of the Kansas Department of Agriculture. The 426 Voting Delegates representing the 105 County Farm Bureaus at the 75th Annual Meeting of KFB in Wichita on November 20, 1993 adopted this policy:

KANSAS FARM BUREAU POLICY

STATE BOARD OF AGRICULTURE

AG-21

If the decision of the Federal District Court in the matter of the State Board of Agriculture is reversed, we believe the Kansas

*Senate Ag Co.
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attachment 2*

Legislature should move quickly to re-establish state jurisdiction.

We strongly believe Kansas farmers should take a progressive and pro-active approach in shaping the destiny of this agricultural agency and the State Board of Agriculture.

We support continuation of the current duties and responsibilities of divisions within the Board of Agriculture, and we strongly disagree with any erosion of its current authority.

While reinstatement of the present system is our preference, we believe consideration of a broadened delegate body for the Annual Meeting of the State Board of Agriculture and election of the Board has merit. We also ask the Legislature to examine a carefully crafted procedure for election of members of the State Board of Agriculture from geographical districts in Kansas. The elected Board should continue to select, and the Kansas Senate should continue to confirm the Secretary of the State Board of Agriculture.

S.B. 475 is the first of several bills expected to be considered during the 1994 Session of the Kansas Legislature. While Farm Bureau membership is not opposed to beginning the dialogue, we are opposed at this time to the legislature approving a bill to restructure. We believe ample time must be allowed for the decision of the Federal District Court to be appealed. Regardless of the outcome of that appeal, KFB members and their policy recognize the desirability to broaden the delegate base to Annual Meetings of the Kansas Department of Agriculture. This expansion will allow more representation by citizens affected by programs and regulations the legislature has added to the responsibilities of the Board of Agriculture over the years, including the regulation of gasoline pumps, small scales, grass seed, etc.

A comparison of S.B. 475 and adopted KFB Policy reveals some

areas of compatibility and some differences of opinion. First, S.B. 475 establishes a State Board of Agriculture **appointed** by the Governor. KFB Policy calls for a State Board of Agriculture to be **elected** from geographical districts. KFB Policy agrees on the establishment of a Board but disagrees on how the Board is selected. Second, S.B. 475 calls for the Secretary be appointed by the Board. KFB Policy agrees.

We encourage the committee to continue the debate on this important issue. We ask that no restructuring plan be approved until the appeal of the decision of the Court has been fully exhausted. Even if the appeal process had been completed prior to this hearing, we would ask S.B. 475 not be approved without amendments especially to provide for an elected Board. At the appropriate time, KFB is committed to supporting and assisting with a plan to expand representation of the delegate base and enhance a Department of Agriculture that effectively serves all Kansans. Thank you!

STATEMENT TO
Senate Agriculture Committee

January 1994

SB 475

by
Vernon McKinzie

KANSAS PEST CONTROL ASSOCIATION GOVERNMENT AFFAIRS CHAIR

Thank you for allowing me to appear to comment on Senate Bill 475. My name is Vernon McKinzie, I am a Board Certified Entomologist and operate pest control businesses in Emporia, Manhattan and Parsons. I am chair of the Kansas Pest Control Association Government Affairs Committee, and I appear before you in that capacity today. The Kansas Pest Control Association consists of over 150 member companies who are responsible for performing over a million service calls annually to businesses and homes in Kansas.

I presented comments to your committee during the Interim and am encouraged to recognize two of our major concerns were addressed in SB 475. We appreciate your protecting the classified employees in the agency with specific language found in Section 9, because many of the staff persons now working for the Board are technical experts in selected fields of science and removal of the entire staff could create havoc. We are also pleased to see the statement in SB 475 which guarantees the existing structure and responsibilities of the present Board will be retained in the new structure.

We believe it would be unwise to transfer pesticide regulations to another agency, when there are highly qualified personnel already experienced in the arena of pesticide regulation on board in the existing staff.

As our Association sees SB 475, we believe it to be as workable a plan as has been presented for discussion and evaluation. We were, however, pleased with the current system, and could work with the current structure without any changes.

We believe the proposal of selecting the Board members as set forth in SB 475 would be both fair and workable, if it is determined by the courts that a change is in fact necessary.

Thank you again. If there are any questions, I will be pleased to respond.

Senate Ag Co
1-24-94
Attachment 2

Kansas Natural Resource Council

Testimony of William Craven
Legislative Coordinator,
Kansas Natural Resource Council
and
Kansas Sierra Club

S.B. 475

Senate Agriculture Committee
January 24, 1994

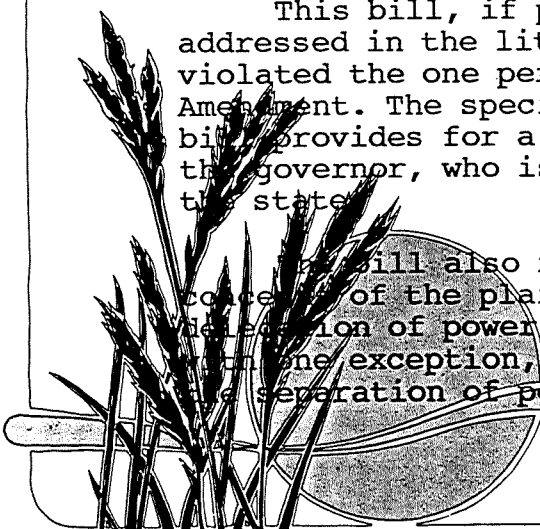
Thank you, Mr. Chairman, for providing an opportunity for the Kansas Natural Resource Council and the Kansas Sierra Club to testify on this important matter. Together, these two groups have about 4,000 members who are concerned about environmental issues, and in particular, about how agriculture affects the environment. As you and the committee are aware, KNRC was a successful plaintiff in the litigation involving the former Board of Agriculture, and ever since that litigation was filed, and especially since the trial court's final order, a legislative resolution reconfiguring that department has proven elusive.

The reason I asked to testify as an opponent to this bill is because both KNRC and the Sierra Club favor H.B. 2294 as the solution to this problem. That bill provides for the creation of a Department of Agriculture headed by a secretary appointed by the governor and confirmed by the senate.

Having said that, I want to acknowledge the work the chairman has done on this issue. I participated in several hearings on this question, and I know that at times he has been frustrated by the lack of progress. I recognize this bill is a genuine and good faith attempt to address the trial court's order.

This bill, if passed, does solve the central problem addressed in the litigation, namely that the former system violated the one person, one vote standard of the 14th Amendment. The specific reason for that statement is that the bill provides for a Board of Agriculture to be appointed by the governor, who is, in fact, elected by all the people of the state.

This bill also resolves most of the state constitutional concerns of the plaintiffs. Under this proposal, there is no delegation of power to private trade associations. Second, with one exception, there doesn't seem to be a problem with the separation of powers doctrine. There are the requirements



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Attachment 4

that the Board members and the Secretary be confirmed by the Senate, and that is a customary and honored tradition. Less clear is the requirement that the Secretary be a member of the cabinet. The traditional view is that if any Secretary of any department is to be a member of the cabinet, then that person should be appointed by the governor. That problem can be solved by requiring the governor to name the secretary. Without further research, I am not going to stand here and say that the bill is unconstitutional on this point, however. The flipside of the argument is that since the Board members are appointed by the governor, the Board's selection of a Secretary is thus within the executive branch and therefore not a violation of the separation of powers doctrine.

Mr. Chairman, this may come as a surprise to you and the members of the committee, but I believe this proposal is probably constitutional. If this bill becomes law during the 1994 session, it would also have the effect of mooting the appeal of the ongoing Board of Ag litigation, which I believe is a wise legislative decision, the protests of the Attorney General notwithstanding.

Having said that, I want to reiterate my concerns about this bill, and suggest some modifications. First, on page 1, line 41, shouldn't that provision take out "two years remaining" and substitute "remainder?" How are we to know that an unexpired term will be precisely two years?

Second, the requirement that Board members be either Democrats or Republicans (set forth on page 1, line 23) is clearly objectionable. If that remains in the bill, I can practically guarantee that a court will find it objectionable. There is no reason whatsoever that service on the Board can be--or should be--conditioned on membership in a political party.

My third objection is that the terms of office set forth in the bill for Board members mean that the second governor elected with this statute in place (assuming a four-year term for whomever replaces Governor Finney) will have little influence in agricultural policy. The flaw of the system is very similar to what prompted the litigation in the first place. That flaw, of course, is that the governor, the chief of the executive branch, may not be able to control an executive branch agency. Again, the way to solve this problem is to allow the Governor to name the secretary, while at the same time, retaining the board in largely the fashion set forth. What is proposed is unwieldy and runs counter to a system that would be much more efficient.

Mr. Chairman, I again want to thank you for this opportunity to testify, and I will be pleased to respond to any questions of the committee.

Testimony to the Committee on Agriculture
Kansas State Senate

January 24, 1994

by

Lynn Hellebust
Chairman, Common Cause of Kansas

Mr. Chairman and members of the Senate Agriculture Committee, my name is Lynn Hellebust and I am chairman of Common Cause in Kansas. I want to thank you for the opportunity to speak with you about S.B. No. 475, which provides for an appointed state board of agriculture and secretary of agriculture.

Common Cause is a nonprofit, nonpartisan citizens' lobbying organization that works to make our government more open, accountable and accessible to ordinary men and women. We have about 2,100 members in Kansas and our state board includes members from Dodge City to Overland Park and from Marysville to Wichita.

As you know Common Cause of Kansas, along with the Kansas Natural Resource Council, challenged the constitutionality of the manner in which the Kansas State Board of Agriculture was elected. This bill and some others have been introduced because the trial court decided in our favor.

Our position was, and is, that the Legislature should act to replace the Kansas State Board of Agriculture and the present court-ordered receivership with a Department of Agriculture headed by a secretary, appointed by the governor and confirmed by the Senate.

We favor a secretary appointed by the governor because such appointment ensures that the secretary's policies would be consistent with those of the governor and would not be at cross purposes with those of the rest of the executive branch.

We also recommend that if the Legislature chooses to replace the former board in some fashion, the new body should be advisory only, be appointed by the governor, have equal representation from each congressional district, and broadly reflect the interests of all Kansans.

In particular, we feel that the overlapping terms provided for the board in S.B. No. 475 unwisely insulate the agricultural department from the governor. And we believe this arrangement is inconsistent with modern notions of governmental organization, which place executive authority in the hands of a single elected executive.

Again, thank you for the opportunity to speak to you. I'd be happy to answer any questions you might have.

*Senate Ag. Co.
1-24-94
Attachment 5
5-1*



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**Statement
of the
Kansas Livestock Association
to the
Senate Agriculture Committee
Senator David Corbin, Chairman
with respect to
Senate Bill 475
Appointment of the State Board of Agriculture by the Governor**

**presented by
Dee Likes
Executive Vice President
Kansas Livestock Association**

January 24, 1994

The Kansas Livestock Association has consistently supported the current statutory structure of the Kansas State Board of Agriculture. Our membership has consistently voted to defend this structure. For 122 years, the Board of Agriculture has operated in a stable, consistent and prudent manner. During that time only ten secretaries have headed the agency. And because the agency is overseen by a 12 member farmer and rancher board, there is a degree of connection and understanding between the board and the industry that they regulate that is not always present in other state agencies.

Furthermore, the department heads for activities like meat inspection, water and pesticides are not puffed up bureaucrats in office for a short period to make a name for themselves or for the secretary or the governor and are themselves inclined to play a cop with a badge. We can all be proud of the agency's professionalism and success in achieving compliance without fanfare or political grandstanding.

*Senate Ag. Com.
1-24-94
Attachment 6*

My main point this morning, however, is to not elaborate about the existing statutory structure or to oppose this particular legislation. What KLA is asking, is for this committee to use patience and await the appeal decision of the Tenth Circuit Court of Appeals.

We believe the appeals process should be exhausted before any significant legislative action is taken. Said a different way; until the appeal process has been allowed to work, and a decision rendered, legislative action seeking to restructure the State Board of Agriculture would be a hasty response to one judge's opinion which many believe to be erroneous. Recent experience with the legislature hurriedly enacting major changes in response to one judge's opinion has been and continued to be viewed as imprudent and unnecessary by many interest groups, citizens and legislators alike.

At some point, when it's more certain whether the law has constitutional flaws, this bill or the bill scheduled for a hearing later in the week, may be concepts our members could support.

For now, we urge this committee and the entire legislature, to use caution and restraint until this question is fully adjudicated. Thank you.

STATEMENT
OF
IVAN W. WYATT, PRESIDENT
KANSAS FARMERS UNION

ON

SENATE BILL NO. 475
(APPOINTMENT OF STATE BOARD OF AGRICULTURE BY GOVERNOR)

BEFORE
THE SENATE COMMITTEE ON AGRICULTURE

JANUARY 24, 1994

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

THE KANSAS FARMERS UNION HAS STUDIED AND QUESTIONED THE CONSTITUTIONAL VIABILITY OF THE RECENT STATE BOARD OF AGRICULTURE FOR MANY YEARS.

WE HAVE TO OPPOSE SENATE BILL 475. FIRST, THE APPOINTMENT OF THE PROPOSED NEW STATE BOARD OF AGRICULTURE WOULD APPEAR TO BE IN VIOLATION OF THE COURTS ORDER OF EQUAL REPRESENTATION OF THE PEOPLE OF KANSAS.

IT COULD AND PROBABLY WOULD CAUSE CONFUSION IN WHERE RESPONSIBILITY LIES. THE GOVERNOR WOULD HAVE RESPONSIBILITY OF APPOINTING THE BOARD, BUT AFTER THAT WOULD HAVE NO RECOURSE TO ENFORCE RESPONSIBLE ACTION OF THE BOARD AND/OR SECRETARY.

THE QUESTION WOULD IMMEDIATELY ARISE: WHO IS THE SECRETARY OF THE STATE BOARD ANSWERABLE TO? THE BOARD WHO HIRED HIM OR HER, OR THE GOVERNOR WHO APPOINTED THE BOARD?

THIS COULD LEAD TO THE OPPORTUNITY FOR GREAT POLITICAL MISCHIEF AND CONFUSION IN DEALING WITH AGRICULTURAL MATTERS. THIS COULD LEAD TO, IN A SENSE, A GROUP OF "FREE AGENTS" ATTEMPTING TO RUN AT WILL AN IMPORTANT PART OF KANSAS GOVERNMENT RELATING TO KANSAS AGRICULTURE.

THE KANSAS FARMERS UNION ADOPTED AT ITS STATE CONVENTION HELD IN MCPHERSON THIS MONTH THE FOLLOWING POLICY STATEMENT ON THIS ISSUE.

"WE SUPPORT THE CONCEPT OF A SECRETARY OF AGRICULTURE APPOINTED BY THE GOVERNOR TO BE CONFIRMED BY THE SENATE."

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, THANK YOU.

Senate Ag Co
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attachment 7