

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Joann Flower at 9:00 a.m. on February 15, 1995, in Room 423-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Representative Richard R. Reinhardt
William Craven, Kansas Natural Resource Council, Common Cause, and Kansas Sierra Club
Bill Fuller, Associate Director, Public Affairs Division, Kansas Farm Bureau

Others attending: See attached list

Chairperson Flower called the meeting to order and welcomed a new member to the committee. Representative Daniel Thimesch has joined the Agriculture Committee, while Representative Greta Goodwin left to join the Tax Committee. She then called for the continuation of hearings on the four bills to reorganize the state board of agriculture.

Continuation of Hearing on HB 2078 - Election of the state board of agriculture using districts identical to the state board of education districts

Continuation of Hearing on HB 2137 - Selection of members of state board of agriculture

Continuation of Hearing on HB 2384 - State board of agriculture selected by the governor; 11 members, 2 from each congressional district, 3 at large; secretary selected by the board

Continuation of Hearing on HB 2447 - Creating a department of agriculture, secretary appointed by the governor, creating an advisory state board of agriculture selected in the same manner as current statute

Representative Richard R. Reinhardt appeared in support of **HB 2384**, which he said was similar to **SB 62**. As a former member of both the Board of Agriculture and the Board of Regents, he felt this proposal would allow lay people appointed by the governor to serve on the Board of Agriculture in much the same way as the Board of Regents. This keeps the agency as far removed from politics as possible. He felt **HB 2384** improved upon **SB 62** in that two members would be appointed from each congressional district. He suggested staggering the terms every year, rather than every two years for stability. He felt it unwise to change half of the board at any one time. It was his opinion that appointment by either the governor or the board would be better than elected. However, he preferred hiring a secretary by the board, feeling this would be more stable. He thought that if the board did the hiring of the secretary, they might take their job more seriously. (Attachment 1)

William Craven, representing the Kansas Natural Resource Council, Common Cause, and the Kansas Sierra Club, addressed the committee. He had brought the lawsuit that prompted the reorganization of the board of agriculture on behalf of KNRC and Common Cause. The three groups opposed all four bills, with the exception of parts of **HB 2447**. While they don't disagree with having an advisory board, they do not like the election of an advisory board from the very same groups as the former board of agriculture. They feel the governor should appoint the secretary, subject to senate confirmation, and the secretary should be a member of the governor's cabinet.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE, Room 423-S Statehouse, at 9:00 a.m. on February 15, 1995.

With the exception of HB 2137, he felt these bills would satisfy the one person, one vote requirement of the federal constitution. He had concerns about the separation of powers. The executive and legislative responsibilities must remain clear and distinct. The question is whether having the board appoint the secretary constitutes a legislative limitation on the executive branch, as the secretary is clearly an executive branch official. (Attachment 2)

Bill Fuller, Associate Director, Public Affairs Division, Kansas Farm Bureau, stated that Farm Bureau felt that a board of agriculture should be established, the board should select the secretary, and the secretary should be confirmed by the Senate. Farm Bureau Policy adopted November 19, 1994, offered three alternative methods for establishing a state board of agriculture: 1) A broad-based assembly of agricultural producers and consumers to elect members of the board; 2) Election of the board from geographic districts; or 3) Members to be nominated by producer, consumer, and agribusiness groups with appointments to be made by the governor, Senate president, and speaker of the House from this list. The state board of agriculture should continue to select the secretary with Senate confirmation. HB 2384 meets the three general Farm Bureau recommendations. The governor would appoint the board, subject to Senate confirmation, and the board would appoint the secretary, also with Senate confirmation. (Attachment 3)

Hearings on HB 2067, HB 2137, HB 2384, and HB 2447 will continue in committee tomorrow.

The meeting adjourned at 9:55 a.m. The next meeting is scheduled for February 16, 1995.

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TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER: AGRICULTURE
 APPROPRIATIONS
 LEGISLATIVE EDUCATIONAL PLANNING COMM.

TO: HOUSE AGRICULTURE COMMITTEE
 FROM: REP. RICHARD R. REINHARDT
 RE: SB 62

I am here to testify as a proponent of HB 2384. I testified last week in support of SB 62 before the Senate Agriculture Committee. These two bills are similar in nature and I feel this concept should be pursued.

I would like to share with you some thoughts from my perspectives as a former member of both the Board of Agriculture and Board of Regents. I mention the Regents, as this proposal is similar to the structure of the Board of Regents.

I believe it is important to realize that with the exception of marketing, the primary function of the laws administered by the Department of Agriculture are regulatory in nature. This is reason enough to keep the Secretary of Agriculture removed from the election process.

The Board of Regents model has served higher education well and I believe would work for agriculture as well. This allows lay people appointed by the Governor to be advocates for agriculture as well as consumers and keeps the agency as far removed from politics as possible.

House Bill 2384, I believe improves SB 62 in that two members are appointed from each congressional district. One change I would recommend is to stagger terms to every year to provide stability to the Board. I think it would be unwise to change half of the Board at one point in time.

I would be happy to answer any questions.

*House Agriculture
 Attachment 1
 2-15-95*



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House Ag Committee
Structure of Kansas Department of Agriculture
William Craven
Feb. 14, 1995

This testimony is presented on behalf of KNRC and Common Cause, the two groups which brought the lawsuit which prompts this legislative consideration of this issue. Additionally, this testimony reflects the views of the Kansas Sierra Club.

The committee has before it four bills, all of which appear to be offered as good-faith solutions to creating a new and democratic structure for this important agency. In shorthand, the bills provide as follows:

H.B. 2447 provides for the creation of a department of agriculture within the executive branch of government. It provides that the governor shall appoint the head of the agency, subject to confirmation by the senate. It creates an advisory board elected in the same way as the old Board of Ag.

H.B. 2137 retains for a year the election method of the old KSBA but adds new language allowing any organization to participate. These delegates nominate the Board. Then, in 1996, the governor the speaker, and the president of the senate make appointments to the Board. The Board selects the Secretary.

H.B. 2078 provides for the nonpartisan election of the board and for the board to elect the secretary.

H.B. 2384 provides for a board appointed by the governor. The board then appoints the secretary.

The groups I represent oppose all of these bills, with the exception of parts of H.B. 2447. (We oppose that bill's proposed election of an advisory board). With the exception of H.B. 2137, these bills satisfy the requirement of the court case that a structure be created which satisfies the one person, one vote requirement of the federal constitution.

The problem with 2137 is that it repeats the mistakes of the old structure. During the transition, it enfranchises organizations, not people. After the transition, it provides for appointments to be made from both the executive and legislative branches. That provision doesn't foreclose the possibility of additional litigation under the state constitution's separation of powers provisions. H.B. 2078 and 2384 also contemplate legislation limiting the freedom of the executive branch to name the secretary.

While I don't really have any trouble with an advisory board, I do question the provision in H.B. 2447 which provides for the advisory board to be elected from the same groups which comprised the former Board of Ag. Why would the state want to go to the expense to have a statewide election for an advisory board? Isn't it bad policy to allow the same special interests who caused the last litigation to be resurrected in this new advisory capacity?



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A separate issue is my belief that most people want the Secretary to be in the cabinet. Agriculture is important enough that it should be. But if it is in the cabinet, then the governor should be granted the authority to make the appointment. I don't think it should be assumed that the secretary would be in the cabinet in any of these bills, except for 2447. The secretary would not and could not be in the cabinet under the other three bills.

While it hasn't been litigated or determined in the Board of Ag case, the separation of powers questions are important considerations. In a nutshell, what that doctrine requires is that executive and legislative responsibilities remain clear and distinct. The question posed by many of these bills is whether the board appointing the secretary constitutes a legislative limitation on the executive branch relative to the appointment of what is clearly an executive branch official. If the secretary is to serve in the cabinet, this is an especially important consideration. Is it constitutional for the legislature to limit who the governor appoints to the cabinet? That's one question. Another is why such limitations should attach to this appointment, when doing so is not uniform with other cabinet appointments?

The groups I represent believe in what is called the "unitary executive." This is how political scientists describe the important constitutional principle that the governor is the top elected official accountable to all the voters. Officials appointed by the governor can be removed by the governor. Under this proposal, who has the power to remove the secretary of agriculture?

The option we prefer is for the governor to appoint the secretary, subject to senate confirmation. In fact, I would encourage the committee to take a close look at S.B. 61 or S.B. 221 which reflects this approach. There are four points I'd like to make. First, we believe agriculture is important enough that it should be in the cabinet with no strings attached. As stated, the governor is the top elected official and should make cabinet appointments. Second, we now have a bi-partisan track record which proves that there is no reason to fear or distrust the governor's appointees to head the ag agency. Both Governor Finney and Governor Graves have shown that this appointment will be very carefully considered to reflect the diverse interests of agriculture. Third, a board with appointment authority is very likely to reflect the same special interests who were challenged in the lawsuit which forced the lawsuit in the first place. Even if a variation of this approach might satisfy the one person, one vote requirement, it won't eliminate the perception that the regulators are accountable to the regulated community. Fourth, I have concerns that an election, even a non-partisan election, will be controlled by special interests. I also have concerns that, because of population differentials, elections won't provide enough opportunity for rural interests to elect representatives of their choice. I say these things as someone who is trying to minimize urban-rural divisions about agricultural and environmental issues in Kansas. The election proposal is perhaps the most difficult to rebut. On one hand, it seems extremely democratic to have elections. But the countervailing consideration is that the agency should be placed in the executive branch. There are strong policy reasons and reasons grounded in democracy and accountability for the secretary to be in the cabinet.

I'm not going to say that anything short of the plaintiffs preferred option will result in future litigation. My opinion is that the separation of powers concerns present a closer case than the federal litigation. However, I wanted to outline the general reasons I believe we should all unite and support what I believe is the best policy option given the court case: the most accountable and democratic method is to permit the governor to name the secretary.

In a sentence, what we want is a structure that is uniform, democratic, and accountable to the public. We want a structure that places agriculture in the cabinet, which, because of the industry's importance to all Kansans, is where it should be. I'd be pleased to stand for questions.



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON AGRICULTURE

RE: H.B. 2078, H.B. 2137, H.B. 2384 AND H.B. 2447 - Establishing a new Department of Agriculture; providing a procedure for selecting a Board and Secretary.

February 15, 1995
Topeka, Kansas

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

Madam Chair and members of the committee:

My name is Bill Fuller. I am the Associate Director of the Public Affairs Division at Kansas Farm Bureau. We appreciate this opportunity today to present our members' recommendations on the structure of a new Department of Agriculture.

Farmers and ranchers are directly impacted by the programs and regulations administered by the Kansas Department of Agriculture. In some cases the agency regulates the activities of farmers and ranchers. In others, enforcement of regulations on agribusiness dealing with seed, feed and fertilizer provides consumer protection for the farmer. For that reason, the more than 430 Voting Delegates representing the 105 county Farm Bureaus have adopted policy at the

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last two Kansas Farm Bureau Annual meetings on the appropriate structure of a new Department of Agriculture. A year ago, Farm Bureau members expressed their support of the current organizational structure and requested no changes be made until there was an opportunity for a ruling by the federal appeals court.

Our members appreciated the fact that the Kansas State Board of Agriculture provided more than 120 years of outstanding service to Kansas agriculture, in fact to all Kansas citizens. The Board avoided partisan political squabbles because it was non-partisan. All Kansans benefited from the continuity of administering programs and regulations since the leadership was not affected when changes occurred in the Governor's office. In addition, the Board was producer-sensitive. It knew how to work with farmers, ranchers, agri-business and general business to achieve maximum benefits for all Kansans.

Delegates to the most recent Kansas Farm Bureau Annual Meeting said the 1995 Kansas Legislature should give careful consideration to enactment of one of three alternative methods to establish a State Board of Agriculture. On November 19, 1994, KFB Policy was debated, revised and adopted (attached).

An examination of Farm Bureau policy reveals three important provisions:

1. A Board of Agriculture should be established;
2. The Board should select the Secretary; and
3. The Secretary should be confirmed by the Senate.

On December 19, 1994, the 10th Circuit Court of Appeals in Denver upheld the ruling of U.S. District Judge Lungstrum that the current selection process is unconstitutional. The legislature was left with the task to change the selection process. That process began this week in the House Agriculture Committee.

Under H.B. 2078, a 10-member Board, by popular vote, is elected from 10 districts similar to those of the State Board of Education. The Secretary is elected by the Board and confirmed by the Senate. This plan closely parallels one of the alternatives outlined in Farm Bureau policy. Unfortunately, we have found limited support for this approach in the legislature this year.

Under H.B. 2137, delegates from all statewide organizations with a membership of at least 100 may nominate and the Governor, President of the Senate and Speaker of the House appoints the Board. The Board elects and the Senate confirms the Secretary. This plan is compatible with one alternative outlined in Farm Bureau policy. The complexity of the system and the large number of organizations involved seems to limit legislative support for this plan.

The plan that seems to have broad legislative support and meets the three general Farm Bureau recommendations, is H.B. 2384. This bill authorizes the Governor to appoint an 11-member Board subject to Senate confirmation. Two Board members are appointed from each congressional district and three at large. The Board appoints the Secretary, also subject to Senate confirmation. We ask you to give serious consideration to passage of H.B. 2384.

Under H.B. 2447, the Governor appoints the Secretary. A 12-member Advisory Board is elected from 6 districts by farm and agribusiness organizations in the same manner as the previous Board of Agriculture. While this plan provides that all participation on the Advisory Board is from agricultural organizations, the plan falls short of Farm Bureau policy that recommends a broad-based Board of agricultural producers and consumers select the Secretary.

Several bills contain provisions compatible with Farm Bureau policy. We commend the Chair and members of the Committee for the introduction of four bills that explore various organizational structures for the new Department of Agriculture.

We certainly appreciate your consideration of adopted Farm Bureau policy as you consider a new structure for the Kansas Department of Agriculture. Thank you!

State Board of Agriculture

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We strongly believe Kansas farmers should take a progressive and pro-active approach in shaping legislation to establish both a Kansas Department and a State Board of Agriculture.

We support continuation of all current duties and responsibilities of all existing divisions within the Board/Kansas Department of Agriculture.

We believe the Kansas Legislature should give careful consideration in 1995 to enactment of one of the three alternative methods listed for establishing a State Board of Agriculture:

1. Provide for a broadly-based delegate assembly of agricultural producers and consumers to elect members of the State Board of Agriculture, or
2. Provide a constitutionally permissible procedure for election of the State Board of Agriculture from geographic districts, or
3. Devise a system for members to be nominated by certified producer, consumer and agribusiness organizations. Appointments to be made by the Governor, Senate President and Speaker of the House from this list of nominees.

The State Board of Agriculture should continue to select, and the Kansas Senate should continue to confirm the Secretary of the State Board of Agriculture.