

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Joann Flower at 9:00 a.m. on February 16, 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 Gene Shore
Leane Wiltse, Public Affairs Coordinator, Kansas Association of Wheat Growers
Dee Likes, Executive Vice President, Kansas Livestock Association
Jay Armstrong, Farmer, Fertilizer and Chemical Dealer, Grain Elevator Operator
Chris Wilson, Kansas Agricultural Aviation Association and Kansas Seed Industry Association
Joe Lieber, Executive Vice President, Kansas Cooperative Council
Donald R. Tannahill, Small Business Owner
Representative Laura L. McClure

Others attending: See attached list

Chairperson Flower called for the continuation of hearings on the four House 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 Gene Shore, Chairman of Governor Graves' Agricultural Advisory Committee, reported on the general consensus of the advisory committee. They feel that there should be a state board of agriculture, the board should be appointed by the governor, the board should hire the secretary, the board should be an active board, not just advisory, and there should be an annual agriculture convention. **HB 2384** is the result of meetings with the Chairperson, Vice-Chairperson, and Ranking Minority Member of the House Agriculture Committee, staff, and Representative Shore representing the wishes of the advisory committee. Representative Shore stated that he personally supported most of the provisions in **HB 2384**. He does think that in order to make the annual meeting important enough to encourage attendance, the nominees from the four congressional districts should be selected at the annual meeting. Delegates could be selected as outlined in **HB 2137**. The governor may or may not appoint these nominees. The three at-large members would be selected by the governor. (Attachment 1)

Leane Wiltse, Public Affairs Coordinator, Kansas Association of Wheat Growers, spoke in support of **HB 2384**. They feel that establishment of a state board of agriculture that can determine policies and plans for the state regarding agriculture is extremely important. They oppose an advisory board. The board as established

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE, Room 423-S Statehouse, at 9:00 a.m. on February 16, 1995.

in HB 2384 would be held accountable through the appointment and confirmation process. They would, however, prefer a nine member board--four members selected from the Congressional districts and five at large. The secretary, to be selected by the board, should be a member of the governor's cabinet. (Attachment 2)

Dee Likes, Executive Vice President, Kansas Livestock Association, reported that the Kansas Livestock Association would not have a policy on the selection of a state board of agriculture and secretary of agriculture until their members meet next week. Until that time they were remaining flexible on each of the proposals. He discussed various options as to what might be best for the citizens of Kansas and the agricultural community. (Attachment3)

Jay Armstrong, farmer, fertilizer and chemical dealer, grain elevator operator, and former member of the state board of agriculture from Muscotah, Kansas, appeared in support of HB 2137. As this bill was introduced last session before the Appellant Court decision, he thought some changes were probably in order. The governor, being the sole generally elected individual, should appoint the board. He questioned the need for districts, with the annual meeting of delegates to provide nominees to the governor. He felt that this board would, basically, only differ from the old board in two ways: 1) The word "election" in the old rules would be changed to "nomination"; and 2) The annual meeting would be expanded to include those who had previously been left out. (Attachment4)

Chris Wilson, representing The Kansas Seed Industry Association and The Kansas Agricultural Aviation Association, appeared as a proponent of HB 2384. They support a state board of agriculture with authority to select the secretary of agriculture, subject to Senate confirmation, with rule and regulation authority. They support the board being appointed by the governor based on a combination of congressional districts and at-large positions. They believe a board of agriculture broadens the public input and expands the decision-making ability of the agency. They feel the secretary should have his/her own management team. Representing the Kansas Agri Women, Chris reported that they, also, support having a state board of agriculture as outlined in HB 2384. (Attachment5)

Joe Lieber, Executive Vice President, Kansas Cooperative Council, appeared in support of the provision in HB 2447 that provides for the appointment of the secretary of agriculture by the governor, with Senate confirmation. The secretary should be a cabinet level position. They support an advisory state board of agriculture elected by their peers at an annual meeting. They feel the department heads should be classified positions for their expertise and continuity. (Attachment 6)

Donald R. Tannahill, Olathe, appeared before the committee as a small business owner that had been denied access to the former state board of agriculture election process. He thought HB 2384 was the best of the four bills being considered. Selection of board members from the congressional districts provides for statewide representation. The bill provides legislative oversight by requiring Senate confirmation of the board members and the secretary. Stability is assured by staggering the terms of the board members. Selection of the secretary by the board for a two-year term ensures that the secretary is responsive first to the board and industry and then to the governor. The secretary has the opportunity to select his assistants in unclassified positions to help accomplish his mission. (Attachment 7)

Representative Laura L. McClure testified in support of HB 2078. The bill calls for a non-partisan election of the board members by district similar to the board of education districts. It provides for annual meetings in each district so the public would get to know and visit with their board member and the secretary. The board would elect the secretary for a four-year term to give more continuity to the office and coincide with the governor's term of office. The bill authorizes the classified employment of a chief engineer of the division of water resources and such assistants, attorneys, clerical, and other help as may be necessary. She felt these positions needed to be classified as some cases can go on for years. She attached a copy of her request for an Attorney Generals opinion concerning HB 2078. She will share this with the committee when it is received. (Attachment 8)

This concluded the hearings on HB 2078, HB 2137, HB 2384, and HB 2447.

Chairperson Flower appointed a subcommittee of Vice Chairperson Lloyd, Ranking Minority Member Galen Weiland, and herself to study the issue and make a recommendation to the committee.

The meeting adjourned at 10:20 a.m. The next meeting is scheduled for February 17, 1995.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 16, 1995

| NAME | REPRESENTING |
|---------------------|---------------------------------|
| Joseph A. Luber | KS Co-op Council |
| Catherine A. Decker | Ks. V.A. Med. Assoc. |
| JEFF MYERS | us Vet Med Assoc. |
| Bill Craven | ICARC / Sierra |
| Jay Armstrong | Farmer |
| Don Tammarah, TI | Small Business |
| Alan Holmes | Division of Budget |
| Bill Fuller | Kansas Farm Bureau |
| Chris Wilson | KS Seed Industry Ass'n |
| Dee Likes | KLA |
| Cindy Baker | KASB |
| John Hertz | USA - Farmer |
| Dean Garwood | Ks Pest Control Assn. |
| Carole Jordan | Ks Dept of Ag |
| Allie Dwin | Ks Dept. of Ag |
| Marty Vanier | KAA |
| Rodney A. Willis | Farmer - Custom Grain Harvester |
| LARRY BOWERS | USD 217 - Rocca |
| DON L. SCHROEDER | FARMER |

EUGENE L. SHORE
 REPRESENTATIVE, 124TH DISTRICT
 GRANT, W. HASKELL, MORTON,
 STANTON AND STEVENS COUNTIES

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 TOPEKA, KANSAS 66612-1504
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TOPEKA

HOUSE OF
 REPRESENTATIVES
 Testimony to House Agriculture Committee
 February 14, 1995
HB 2384

COMMITTEE ASSIGNMENTS
 VICE-CHAIRMAN: EDUCATION
 MEMBER: TAXATION
 MEMBER: TRANSPORTATION

Madam Chairman and members of the Agriculture Committee, I wish to support most of the provisions contained in **HB 2384**.

Since agriculture is Kansas' largest industry, I think it is important that the Board and Secretary have the support of the Governor as well as the agricultural community. That will require a delicate balance; one which works with the Governor and the Legislature for the benefit of Kansas agriculture.

I am the Chairman of Governor Graves' Agricultural Advisory Committee. The Advisory Committee is made up of about thirty agricultural producers from across Kansas. They are livestock producers and crop producers, large and small, evenly distributed across Kansas.

We met as a group and considered a number of ideas as to what a State Board of Agriculture should be and what it should not be. Major points which seemed to have a consensus were:

1. There should be a State Board of Agriculture.
2. The board should be appointed by the Governor.
3. The board should hire the Secretary.
4. The board should be an active board, not just an advisory board.
5. There should be an annual agriculture convention at which business is conducted in addition to educational seminars.

HB 2384 is an outgrowth of this meeting and several meetings with the Chairman, Vice-Chairman and Ranking Minority Member, along with staff. I believe **HB 2384** is acceptable to most people involved in agriculture. I feel this bill most nearly represents the wishes of the agricultural community.

I have met and discussed these provisions with Governor Graves and Lieutenant Governor Frahm and believe they could accept this bill, even though they want to maintain flexibility to support what they believe will best serve agriculture and the consumer in Kansas.

One area concerns me - that is making the annual meeting important enough to attract people statewide to attend. In reviewing the bills, I believe it might be important for the Governor to choose the board from nominees chosen at the annual meeting. If the nominees for the two members from each congressional district were chosen with staggered terms, this would be important enough to gain needed attendance statewide. It appears delegates could be selected something like is proposed in **HB 2137**. I would ask the committee to consider eight of the board members being nominated by delegates to the annual convention. The Governor then may or may not appoint the nominees. The three at-large would be at the Governor's pleasure.

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*House Agriculture
 Attachment 1
 2-16-95*



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HOUSE AGRICULTURE COMMITTEE

RE: H.B. 2384

February 16, 1995

**Presented by:
Leane Wiltse, Public Affairs Coordinator
Kansas Association of Wheat Growers**

Madam Chairperson and Members of the Committee:

My name is Leane Wiltse and I am the Public Affairs Coordinator for the Kansas Association of Wheat Growers (KAWG). On behalf of the 3,200 wheat producing members of the KAWG I appreciate the opportunity to make a brief statement in support of H.B. 2384, regarding the State Board of Agriculture and the Secretary of Agriculture.

The issue of changing the structure of the regulatory institutions of agriculture in Kansas has been tedious, if not painful, for many farmers who have been served well by the previous structure. H.B. 2384 is a progressive bill which addresses the constitutionality issues raised by the courts. It would put in place a system of checks and balances in the selection process of both the board and the Secretary that the KAWG supports. The importance of establishing a board of agriculture who "shall determine the policies and plans for the state of Kansas relating to agriculture," is critical to our support of this measure. Other bills introduced in both chambers would establish only an advisory board with little regulatory authority. We oppose the advisory board philosophy.

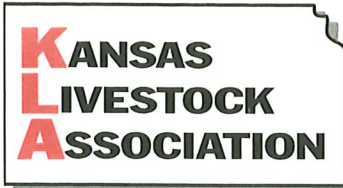
The board of agriculture, as established by H.B. 2384, would be held accountable by the electorate through the appointment and confirmation processes. The provisions included in this

*House Agriculture
Attachment 2
2-16-95*

bill regarding size, regional diversity, and terms of service of board members make common sense. We would prefer, however, a nine member board with four (4) members selected from Congressional districts and five (5) selected at large. This balance between at large positions and Congressional district appointments would put in place a system that may serve agriculture well for many years, given population trends in Kansas and the likelihood that Kansas may not always have Congressional districts that include significant agricultural representation.

We also support one other concept that this bill does not address but could be added without changing the purpose and intent of the bill. We would support a provision which insures that the Secretary of Agriculture would be an integral part of the Governor's cabinet. The position of the Secretary of Agriculture, whose selection is made by a board composed of governor appointees, should be on a level equal to other department heads in State Government.

Madam Chairperson, we voice our support of H.B. 2384 and would respond to any questions you or the members of your committee may have.



*A Century of Service
1894-1994*

**Statement of the Kansas Livestock Association
to the
House Agriculture Committee
Representative Joann Flower, Chairperson
With Respect to
Proposals To Restructure the Kansas State Board of Agricultural
Presented by
Dee Likes, Executive Vice President
February 16, 1995**

Madam Chairperson and members of the committee, the Kansas Livestock Association appreciates a chance to provide input on these proposals. As you've already found, there are several different options that won't necessarily be easy choices because reasonable people who genuinely care about agriculture may not be able to fully agree on the best structure to serve the industry in the future.

KLA's previous policy supported continuation of the "old" system. Because that is no longer possible, we intend to stay flexible until our members come to Topeka next week to develop interim policy on this and several other issues. Therefore, at this point, our association is not firmly in support of or adamantly opposed to any of these proposals. We hope to do a responsible job of analyzing and discussing with you the options that will best serve the citizens of Kansas and the agricultural community in the decades to come.

As we collectively try to sort through these ideas - both during internal discussions and during the hearing process, like we're involved with today - we have to admit to ourselves that none of the new ideas are going to be as acceptable to agriculture as the old structure was. Many of these bills are essentially hybrids, mixing new ideas with the old board of agriculture structure. Many, maybe even most, of those involved in agriculture would like to see some new structure that's as close as possible to the old. In other words, we want to hang on to as much as the past as possible. During that thought process, we need to have some honest reality checks with ourselves and realize that the past is gone, that there will no longer be a board of agriculture derived from, nominated by, and elected by the agricultural organizations to run a state agency. The courts have spoken and that type of structure is unconstitutional. As we grind through the political and legislative process trying to recreate the past (or something as close to it as possible) through the hybridization process - we will create some risks. None of them are perfect. Each simply brings with it a new set of problems.

Lets talk in generalities for a moment: My perception is that most of us have sorted through the pros and cons of electing either a secretary or a board by popular vote. I believe most understand that the election

*House Agriculture
Attachment 3
2-16-95*

process would be difficult or impossible to manage and that urban areas would dominate and heavily influence those elections. They are not supportable because they are too risky.

Several other proposals involve methodologies of selecting a board of agriculture that are so cumbersome they don't appear to be predictable, and therefore not supportable. Finally, it seems to me that two general approaches appear to be most viable: 1) Having the Governor appoint a board of agriculture who hires the secretary; or, 2) Having the Governor appoint the secretary and an advisory board.

Candidly, many of us in agriculture have had major fears about allowing the Governor to appoint the secretary. I believe most of that opposition came mainly from: a) wanting to hold on to the status quo, i.e. not changing what we had under the old structure because it worked so well for over a century, largely because a group of farmers and ranchers ran the agency with a common sense approach and a lot of continuity; and, b) because we had fears of the quality of appointments that would have been made by past and future Governors. It seems to me that what we must be careful about now, is maintaining a "blind spot" because we liked the past and we don't want to change.

If we are really honest we have to admit that recreating some type of a functional board of agriculture with authority to hire the secretary and review rules and regulations, does not come without its own particular set of risks and problems. Ask yourself some questions. Would most Governors appoint a board of agriculture every member of which was derived from and acceptable to the agricultural industry? An honest answer is: Not likely. I would speculate that most Governors would appoint a majority or a goodly portion of the board that would fit that criteria, but also would seek to achieve some broadening and balance of those appointments from other industries and other constituent groups for political purposes.

So, if you envision a future board of agriculture who hires and fires the secretary and who has authority over the rules and regulations and administration of the agency, do you like that board just as well when you think of its composition as including representatives of what may be consumer or environmental groups who have single issue viewpoints and positions on public policy issues that are inconsistent with or antagonistic to mainstream agriculture? Would there be the risk of proliferation of legal activity toward the agency? Would dissident board members in effect set the agenda of the board? Ladies and gentlemen of the committee, I realize these points and questions are not pleasant...but they need to be asked. We have to be careful before we simply recreate a structure that on its surface looks and sounds as much like the old structure as possible without considering the other ramifications. Here's another questions: If we don't trust the Governor to make one appointment - the secretary - that's acceptable to Kansas agriculture, how do we trust the Governor to make nine or eleven appointments, everyone of which we want to be acceptable to agriculture?

These are tough questions...but they need to be asked and answered. Let me emphasize that I don't pretend to have the answers, but that doesn't make the questions go away. The point that remains, is that

each of these options brings with it a certain number of offsetting considerations. We want to have a board of agriculture instead of an appointed secretary so that we broaden the input. We want to have some real farmers and ranchers involved, but how do we do that without letting other interest groups be involved? How do we have a board who has power over the agencies policies and still have a secretary who has full-fledged influence and status within the Governor's cabinet?

Next week, when our members gather for our legislative and board meeting, we intend to have this exact same dialogue. Hopefully, after that process has occurred we will be able to come to you with more specifics about our association's position on these questions and these specific bills.

MY NAME IS JAY ARMSTRONG. I AM A FARMER, FERTILIZER AND CHEMICAL DELAER, GRAIN ELEVATOR OPERATOR AND WHAT'S MORE I AM A FORMER MEMBER OF THE KANSAS BOARD OF AGRICULTURE FROM MUSCOTAH LOCATED IN ATCHISON COUNTY.

I WOULD LIKE TO SPEAK IN SUPPORT OF H.B. 2137. THIS BILL WAS INTRODUCED LAST SESSION BEFORE WE HAD THE APPELEATE COURTS RULING. THERE PROBABLY ARE SOME CHANGES THAT WE SHOULD MAKE IN THIS BILL TO MAKE IT LESS CONSTITUTIONALLY QUESTIONABLE. THOSE CHANGES SHOULD BE BY MAKING THE GOVERNOR THE SOLE GENERALLY ELECTED INDIVIDUAL FOR APPOINTING THE BOARD. WHAT'S MORE I QUESTION WHETHER THERE IS A NEED FOR DISTRICTS AND THAT AN ANNUAL MEETING OF DELEGATES CAN PROVIDE NOMINEES FOR EACH BOARD SEAT TO THE GOVERNOR.

THE BEAUTY OF THIS BILL IS THAT IT IS SIMPLE AND CLEAN. IT BASICALLY ONLY DIFFERS IN TWO WAYS FROM THE OLD BOARD. NO. 1, WHERE THE WORD ELECTION IS IN THE OLD RULE, WE CHANGE IT BY USING THE WORD NOMINATION. NO. 2, WE EXPAND THE ANNUAL MEETING TO THOSE WHO HAVE FELT LEFT OUT BEFORE. IN ESSENCE, IT HAS THE SAME GRASSROOTS PHILOSOPHY WITH AN EXPANDED DELEGATE BASE THAT NOMINATES TO THE GOVERNOR INSTEAD OF ELECTING A BOARD.

OUR GOVERNOR HAS SAID ON MORE THAN ONE OCCASION THAT IF THE FORMER STRUCTURE WAS DECLARED UNCONSTITUTIONAL, HE

*House Agriculture
Attachment 4
2-16-95*

WANTED A NEW ONE TO BE AS CLOSE AS POSSIBLE TO THE OLD ONE.

H.B. 2137 WITH THE ADJUSTMENTS MENTIONED, I FEEL, COMES AS CLOSE AS WE CAN GET COMPARED TO SOME OF THE OTHER BILLS I HAVE SEEN.

IT SEEMS TO ME IF LAWYERS CAN NOMINATE JUDGES, AND NURSES NOMINATE THEIR LICENSEING BOARD, THE KLA CAN MAKE NOMINATIONS FOR THEIR LIVESTOCK COMMISSIONER, OPTOMETRISTS ASSOCIATIONS FOR THEIR LICENSEING BOARD, JUST AS THE NEWLY FORMED WORKMEN'S COMP BOARD THAT IT'S NOMINATIONS ARE PLACED BY THE AFL-CIO AND THE CHAMBER OF COMMERCE, SURELY AGRICULTURE CAN MAKE NOMINATIONS TO THEIR AG BOARD. I WOULD LIKE TO POINT OUT THAT OUR ADVERSARYS THAT SUED US BROUGHT OUT THE POINT IN THEIR OPENING BRIEF, THAT THEY HAD NO QUALMS WITH THE JOB THE BOARD HAD DONE, IN FACT PRAISED US FOR IT.

AS A FORMER BOARD MEMBER I CAN TELL YOU THAT THE ONE THING THAT STANDS OUT THAT WAS TO THE SUCCESS OF THE OLD BOARD WAS THAT EVERY DAY PEOPLE ARE GIVEN AN OPPORTUNITY TO PARTICIPATE IN OVERSEEING THE ADMINISTRATION OF THOSE REGULATIONS, THAT THEY LIVE AND WORK UNDER.

I CAN'T THINK OF ANY THING THAT WOULD BE MORE DETRIMENTAL TO THE AG INDUSTRY IN THIS STATE THEN TO LET HEADLINES AND THE POLITICAL QUALMS OF THE DAY BE THE REGULATION OF THE DAY AS OPPOSED TO SCIENCE OR COMMON SENSE IN THE ADMINISTRATION OF

REGULATIONS.

SURE, THERE ARE DIFFERENCES IN AGRICULTURE. EACH SECTOR WANTS TO PROTECT AND PROFIT FROM THEIR SECTOR. SOME HAVE POLITICAL CLOUT THROUGH THEIR NUMBERS, SOME HAVE POLITICAL CLOUT THROUGH THEIR FINANCIAL RESOURCES, AND YOU HEARD SOME OF THEM TESTIFY. BUT LET ME TELL YOU THAT IN MY TENURE ON THE BOARD, THAT TWICE THOSE DELEGATES NUMBERING ANYWHERE FROM TWO HUNDRED TO TWO HUNDRED FOURTY, VOTED UNANIMOUSLY TO SUPPORT THAT STRUCTURE. IT WAS INTERESTING SOME FOUR YEARS AGO WHEN A SENATE BILL WAS BROUGHT TO REORGANIZE THE BOARD THAT THEN SENATOR ROSS DOYEN ASKED THE QUESTION OF THE PRESIDENT OF ONE OF THE GENERAL FARM ORGANIZATIONS WHO WAS WANTING TO CHANGE THE BOARD, ' WHY IT WAS THAT HIS POSTION WAS DIFFERENT THAN THE POSTION OF THOSE IN HIS SAME ORGANIZATION AT THE COUNTY LEVEL. HIS RESPONSE WAS 'WELL THEY SEE THINGS DIFFERENT AT THEIR LEVEL'. AND THAT OF COURSE IS THE BEAUTY. IT IS THAT GRASSROOTS LOCAL LEVEL INPUT THAT DEFINATELY DOES SEE THINGS DIFFERENTLY. AND PROBABLY SHOULD CAUSE ONE TO QUESTION JUST MAYBE HOW SOME ORGANIZATIONS DO DEVELOP THEIR POLICIES. BUT THE FACT REMAINS, THAT IN ALL THE VOTES THAT WERE EVER TAKEN IN THE OLD STRUCTURE, THERE NEVER WAS A DESENTING VOTE AS TO THEIR SUPPORT FOR THAT STRUCTURE. AND THOSE WERE GRASSROOTS

PEOPLE.

NOW I KNOW YOU HEARD TESTIMONY TUESDAY AS TO QUOTE THE TURMOIL THAT WAS ON THE BOARD DURING THE PESTICIDE MANAGEMENT TIME, OR ABOUT CERTAIN CHEMICALS BEING PUT ON A NOXIOUS WEED LIST, AND THERE IS TWO SIDES TO THOSE QUESTIONS. AND I WILL NOT TAKE THE TIME HERE AND NOW TO GO INTO THOSE. IF THERE ARE QUESTIONS, I WILL BE MORE THAN GLAD TO ANSWER THEM. BUT LET ME SAY THIS, WITHIN ONE HUNDRED AND TWENTY FIVE YEARS THIS BOARD HAS CONTINUALLY TRIED TO ACHIEVE THAT ELUSIVE GENIUS OF MODERATION THAT HAS TO BALANCE THE DIFFERENCES OF AGRICULTURE SO THAT REGULATIONS WILL PROVIDE THE QUALITY AND THE SAFETY THAT IS NEEDED TO INSURE A PRODUCTIVE AGRICULTURE WHILE AT THE SAME TIME, ALLOWING ENTRANTS INTO THE AG BUSINESS. AND THAT IS A TOUGH JOB, BUT NOBODY HAS KNOWN IT BETTER, AND NOBODY KNEW IT BETTER THAN THOSE ORIGINAL FRAMERS OF THE OLD BOARD.

I SEE YOUR PROBLEM AS THIS. YOU HAVE A REGULATORY AGENCY THAT WORKED, BUT THAT WAS UNCONSTITUTIONAL BECAUSE OF AN ELECTION. SOLVE THE ELECTION PROBLEM, AND YOU SOLVE THE PROBLEM. WHAT I SEE YOU DEALING WITH NOW, IS THAT AGE OLD QUESTION THAT HAS COME UP MANY TIMES DURING THE HISTORY OF THE OLD BOARD.

DO YOU WANT THE POLITICS OF HEADLINES AND PERCEPTIONS

IN LIEU OF SCIENCE AND GOOD GOVERNMENT TO DOMINATE THE
RATIONALE FOR THE ENFORCEMENT OF AG REGULATION.



STATEMENT OF

THE KANSAS SEED INDUSTRY ASSOCIATION

AND

THE KANSAS AGRICULTURAL AVIATION ASSOCIATION

TO THE HOUSE AGRICULTURE COMMITTEE

REPRESENTATIVE JOANN FLOWER, CHAIR

REGARDING THE ORGANIZATION OF THE

DEPARTMENT OF AGRICULTURE

FEBRUARY 16, 1995

Madam Chair and Members of the Committee, I am Chris Wilson, speaking today on behalf of the Kansas Agricultural Aviation Association (KAAA) and the Kansas Seed Industry Association (KSIA). KSIA's 200 members are involved in the production, processing, sale and distribution of seed in the state. KAAA's 300 members are involved in aviation and the aerial application of crop protection chemicals. Thank you for the opportunity to present the position of these Associations concerning the structure of the state department of agriculture.

Both Associations provide crop production inputs to farmers and ranchers and are regulated by the state department of agriculture. Generally, KSIA members are regulated by the Inspection Division of the department, and KAAA member firms are regulated by the Plant Health Division. These industries represent regulated businesses, in a very different relationship with the agency than the producer organizations. We depend on fair but firm regulation: fair to provide regulations and enforcement with which businesses can feasibly comply and efficiently operate; firm to insure the integrity of the industry, maintaining consumer confidence in our products and services, and equitable compliance. While

*House Agriculture
Attachment 5
2-16-95*

we did not always agree with the decisions of the board of agriculture in the past, we believe the board and the professional regulation personnel in the department have done an outstanding job of being fair and firm regulators. KSIA and KAAA have identical positions on the structure of the agency.

While there are many positive features in the various bills proposed, we are in support of H.B. 2384. We support having a bi-partisan state board of agriculture which has authority to select the secretary of agriculture, subject to senate confirmation, and having rule and regulation authority. We support the board being appointed by the governor, based on a combination of districts (such as congressional districts) and at-large representation.

We believe a bi-partisan board will provide for greater continuity within the agency. When the agency head is a gubernatorial appointee, changes often occur more frequently. For instance, consider the experience of USDA over the past decade. In ten years, there has been one change in party in power, two years ago. Yet, there have been SIX secretaries of agriculture. Changes often occur mid-term during political administrations. This is true at the state level as well as the federal level. **We also believe that a board provides leverage and additional clout for the secretary as she/he represents agriculture to the administration and other agencies.**

Our sense is that many affected organizations do not have firm policy on whether the secretary should be appointed by a board or the governor. We think this is in part because the current system under which governors have appointed acting secretaries has not caused great difficulty for them, and we are all impressed with the job the current secretary is doing; in part because which system one would prefer depends on who the governor is, who the secretary is, and who the board of agriculture members are; in part because of fear of an unknown board; and in part because they were sometimes unhappy with the old board of agriculture. We can relate to most of those feelings. **However, as we looked at the best options for the future, and sought to remove personality from policy, our policy bodies came to the unanimous conclusion to support a state board of agriculture, one which will take on a very different character and be selected very differently from the old system.**

We believe a board also offers a check and balance system which serves the state well. A recent experience of KAAA illustrates why we believe this is valuable. **Had it not been for the intervention of the House Agriculture Committee, the only next step we could have taken was to**

seek an injunction against the agency. We firmly believe that if a board had been in place, the crisis could have been resolved before emergency legislation was needed. At that time, numerous legislators said to me, "Well, one thing we've learned from this experience is why having a board is important."

Last year, the agency decided on March 1 to change its interpretation of a state law which had been in effect for 15 years. Thus, suddenly many of the aerial applicators in the state did not have valid pesticide business licenses or could not renew their licenses. We met with the agency, offering assistance in developing a workable alternative and seeking a period of time to adapt to the new interpretation. We were told "life is not fair", and applicators were grounded, given the alternative of refusing business which is their livelihood during their busiest season because of not having a license, or maintaining a livelihood by flying without a license.

We immediately sought the counsel of the House Agriculture Committee, which the next day passed a bill out of committee with provisions for a workable situation which would restore the applicators' licenses. **The bill passed the Legislature without a single dissenting vote and was readily signed by the governor. We believe that with a board in place, perhaps the agency would have worked with the industry to resolve the situation before a crisis occurred.**

Despite the pleas from legislative leaders and the governor's office, the agency did not attempt to resolve the situation in a way to maintain service to farmers until forced to do so by the legislation. The governor's office was told that the aerial applicators didn't need licenses until the season started in mid-May anyway, showing a lack of understanding of farming practices, as the season had been underway since the beginning of March. **We believe that a board of individuals from throughout the state would help the agency personnel remain in touch with the countryside, technology, and the industries they regulate and provide for greater public accountability.**

We relate this experience in no way as a criticism of any individual, but as an illustration of why we believe **a board of agriculture broadens the public input and expands the decision-making ability of the agency.**

We strongly believe that greater public input makes for better public policy. People support what they help create. If the regulated community has the opportunity to participate in the process by offering suggestions and technical expertise, they are much more likely to support and to comply with

the resulting regulations. We think that there should be more public input in the development of regulations and agency decisions in Kansas. However, there have been a great deal of public input sought and hearings held by the state board of agriculture. Generally, that input was well regarded. The lesson of not heeding the result of significant and well thought-out public input in part brings us here today. **We believe, however, that a board system fosters greater public input.**

A board system is not without precedent, and the legal experts we have consulted deem it constitutional.

We support allowing the secretary to appoint a few key members of her or his management team. We believe that in order for the secretary to truly have a team which works together to advance her/his goals and objectives, management leaders within the agency must share her/his vision and philosophy for the agency. While we believe that the number of appointees should be relatively small to avoid politicization and promote continuity, we believe that there definitely should be a number of appointed, or unclassified, positions to insure that the secretary is supported, not undermined, by the management staff. While we have the highest regard for key personnel in the agency, our decision to support having some unclassified staff must be based on what we believe to be the best state policy, not personality. A new secretary would not necessarily make changes in those positions, but needs the option to do so. Again, this adds greater accountability on the part of the agency.

In closing, I would relate that having a board of agriculture was a foreign system to me when I moved to Kansas ten years ago. Having grown up in Illinois and having spent 3 1/2 years as Assistant to the Director of the Illinois Department of Agriculture, I know firsthand about a system where the secretary is appointed by the governor, and there is no board. Having worked as Assistant to the Secretary of Agriculture at USDA for 4 1/2 years, I was familiar with most state departments of agriculture as well as the federal department. I was astonished that Kansas continued to have the board of agriculture system and even more astonished at how well it worked. Working the past ten years for agribusinesses regulated by the agency, we have not been part of the board of agriculture system as the producer groups have been. Yet, these Associations come wisely, I believe, to the conclusion that a properly constructed board system offers many benefits to the state.

If there are any questions, I would be glad to respond.

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TESTIMONY ON HB 2447
House Agriculture Committee
February 15, 1995

Prepared by Joe Lieber
Kansas Cooperative Council

Madam Chairman and members of the committee, I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council. The Council's membership consists of nearly 200 cooperative businesses having a combined total of nearly 200,000 members.

The Council supports the provision in HB 2447 that provides the appointment of the Secretary of Agriculture by the Governor, with Senate confirmation.

If we understand the language of the bill, we also support the provision of the bill that allows the department heads in the Department of Agriculture to be classified under the Kansas Civil Service Act.

Over the past eleven years, we've had an opportunity to work closely with most of the Department heads and feel part of the success of the Department of Agriculture is due to their abilities and their continuity.

The Council also supports the idea of having an state advisory board that are elected by their peers at the annual meeting.

If the districts are based on population, then the procedure should be constitutional according to the Court.

For these reasons, we support HB 2447.

We appreciate the opportunity to visit with you today and we will attempt to answer questions.

*House Agriculture
Attachment 6
2-16-95*

Madam Chairperson and other members of the House Agriculture Committee, thank you for this opportunity to express my views on the establishment of the Board of Agriculture and the selection of the Secretary of Agriculture.

My name is Donald R. Tannahill, 11690 Renner Road, Olathe, Kansas 66061. (913) 780-3322 I am Co-owner of a Small Business that is currently regulated and licensed by the Department of Agriculture. I am here today only as a representative of my small business.

The first question is - Does there exist a need for any type of Agriculture Board and if so does there need to be a Secretary? There has been some discussion as to whether there is a need for either or both.

A> Dean and Director, College of Agriculture, Kansas State University, Marc A. Johnson in his recent report to the Kansas Legislature indicated that Kansas "Agriculture is a \$7.4 billion dollar industry in which multiplier effects increase the farm-gate value to \$22.2 billion."

B> The 1992 Survey of part of the Horticultural Industry in Kansas revealed gross sales of over \$123 million. This survey included the Nursery, Greenhouse, Florists, Christmas Tree Growers and Grape Industries. As a group these industries provided employment for nearly 10,000 people and contributed nearly \$56 million in wages and benefits to the Kansas economy. Currently there surveys of the remaining horticultural industries being conducted to determine their economic value to the Kansas economy. They include the Nut Growers, Vegetable Growers, and the Turfgrass industries. The potential economical impact, both in sales and employment, of the total Horticultural Industry I believe will be both surprising and of great importance.

C> In 1994 there were 490 Kansas small businesses licensed to charge for applications of pesticides to Commercial and Homeowners turfgrass/trees and shrubs.

D> A recent National Gardening Survey (1991) estimated that in the lawn and garden retail market "the average expenditure per person in the US on gardening products was \$87.50." This represented an estimated \$22.1 billion to the national economy in 1991 with a projected growth to \$24.32 billion in 1995 and \$25.39 billion in 1996.

Conclusion: There needs to be a some type of established entity to provide guidance, determine policy and plan for the development of the state's agriculture/horticultural industry.

*House Agriculture
Attachment 7
2.16.95*

Once that conclusion is made, than one needs to determine the best formation of such "entity" to serve the industries, consumers, general public and environment.

The pending House Legislation provides several options on the formation of not only the "Board" but also the selection of the "Secretary".

It is my opinion that HOUSE BILL 2384 is the best of the four because:

- 1> It provides state wide representation with the selection of board members from the congressional districts.
- 2> It provides legislative oversight by requiring Senate approval of appointments to the board and the selection of the Secretary.
- 2> It provides stability of the board by staggering the terms of the board members.
- 3> It provides for the selection of the Secretary of Agriculture by the Board of Agriculture.
- 4> The selection of the secretary by the board insures that the secretary is responsive FIRST to the board and industry and than to the Governor.
- 5> It requires reelection of the Secretary every two years thus insuring the Secretary is responsive to the Board.
- 6>. It provides the Secretary (and this I feel is very important) the opportunity to select the assistant (unclassified) secretary or secretaries. One must have the authority to accomplish a mission once the responsibility for that mission has been delegated.

Thank you for this opportunity to express by views and receive by recommendation that House Bill 2384 be adopted.

Donald R. Tannahill
DONALD R. TANNAHILL
TRIDON Lawn Service, Inc
11690 Renner Road
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TOPEKA

HOUSE OF
REPRESENTATIVES

February 16, 1995

House Agriculture Committee

Restructure of the State Board of Agriculture

I wanted the opportunity to testify before you today in order to voice some of my concerns and ideas regarding the restructure of the State Board of Agriculture.

First I want to say that I want what's best for Kansas, it's people and for agriculture, the most important industry in the state.

We have the opportunity to pass legislation that will bring everyone into the process. We have the opportunity to pass legislation that can provide direction for the State for the next 50 years.

Let's look at the bills that have been introduced in the House as a smorgasbord. Let's pick and chose the best from all the bills.

I'd like to point out a couple of sections in HB 2078;

page 3, lines 2 through 7

" The secretary of the state board of agriculture shall organize and attend an annual public informational meeting in each state board of agriculture member district established in sections 3 through 12. The board member shall attend the annual meeting held in such board member's district and in an election year all candidates who have filed for office pursuant to section 28 shall be invited to attend."

I believe these working meetings are crucial. I've heard the argument that no one knows their Board of Education Member. With an annual meeting in each district the public would get to talk to their Board of Ag member and the Secretary of Agriculture.

page 4, line 1

This line provides for a four year term for the Secretary of Agriculture. I believe this is preferable to just a two year term. It gives more continuity to the office and coincides with the Governors term of office.

*House Agriculture
Attachment 8
2-16-95*

page 21, lines 18 through 23

"K.S. A. 74-506d is hereby amended to read as follows: The state board of agriculture is hereby authorized to employ a chief engineer of the division of water resources and such expert assistants, attorneys, clerical and other help as may be necessary to properly carry out the provisions of this act, and to fix their compensation, all of whom shall be under the classified service of the Kansas civil service act."

When researching this bill it was brought to my attention that the attorneys working for the Chief Engineer were unclassified positions. These attorneys work on cases that go on for years and require expertise in water law, these positions need to be classified.

We also need to make it very clear that the powers and duties currently assigned to the Chief Engineer are not transferred or diluted.

HB 2078 provides for a non-partisan election of the board members. The board would be accountable to the people of Kansas. The candidates would be under the same ethics and reporting laws we are with one exception. They are prohibited from accepting contributions from party committees.

The board elects the Secretary.

I've also provided copies of the request for an Attorney General's Opinion concerning HB 2078.

I'd be glad to answer any questions.

LAURA L. McCLURE
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HOUSE OF
REPRESENTATIVES

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February 7, 1995

Attorney General Carla Stovall
2nd Floor -- Kansas Judicial Center
BUILDING MAIL

Dear Attorney General Stovall:

This letter of request for opinion concerns the issue of reorganization of the Kansas State Board of Agriculture. During the last several years numerous bills have been introduced to resolve this issue by reorganizing the state agency in a variety of ways.

During this legislative session I asked the House Agriculture Committee to introduce 1995 H.B. 2078. This bill would provide for the election of the State Board of Agriculture in a manner similar to the current State Board of Education. The Secretary or chief executive officer of the agriculture agency would then be elected for a four-year term by the popularly elected State Board of Agriculture. Under this scenario, some have expressed concern as to whether there would be some infringement on the authority of the executive branch of government. The following outlines specific questions I have on this issue.

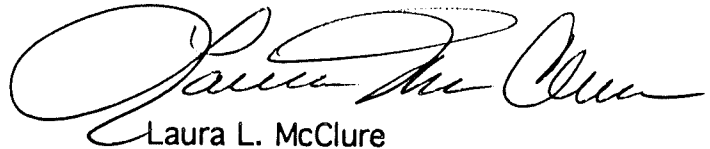
1. If a bill similar to 1995 H.B. 2078 were to become law, does the new Board of Agriculture fall in the executive or legislative branch of government? If it does not fall into either, does that automatically flaw the bill constitutionally?
2. Does the provision of 1995 H.B. 2078 allowing the board to select the secretary or chief executive officer interfere with the power of the executive branch of government in an unconstitutional manner?
3. Would any of the powers of the executive branch be infringed upon if the popularly elected board were to submit a list of three nominees to the Governor for selection as Secretary or chief

executive officer of the agency? Would this infringe on the power of the executive branch?

4. Can it be mandated by statute that the secretary be a member of the Governor's cabinet?

I would appreciate your prompt response to this pressing matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura L. McClure". The signature is fluid and cursive, with a large initial "L" and "M".

Laura L. McClure
Representative 119th District