

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Joann Flower at 9:00 a.m. on February 22, 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:

Others attending: See attached list

Chairperson Flower asked the committee to review the minutes of February 20. If there are corrections or additions to let the secretary know by 5:00 or they would stand approved as presented.

Additional written testimony concerning the reorganization of the state board of agriculture was handed out from Ivan W. Wyatt, President, Kansas Farmers Union, and from Jere White, Executive Director, Kansas Corn Growers Association and Kansas Grain Sorghum Producers Association. (Attachments 1 and 2)

**Discussion and action 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**

The Chairperson asked Jill Wolters to explain the subcommittee's recommendations on the reorganization of the state board of agriculture. The subcommittee recommended passage of **HB 2384** with two changes. The first amendment would add on page 3, line 6, in Section 8 (a) after "for a term of two years." the sentence: "The secretary shall have a demonstrated executive and administrative ability to discharge the duties of the office of secretary." The second amendment occurs on page 4, line 29, in Section 10 a new subsection (g) to be inserted, with the following subsections to be renumbered accordingly. New subsection (g) to read: "All rules and regulations of the division of water resources of the state board of agriculture or the chief engineer of the division of water resources of the state board of agriculture in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the chief engineer of the division of water resources of the department of agriculture established by this act until revised, amended, revoked or nullified pursuant to law." Representative Lloyd moved to adopted the amendments recommended by the subcommittee as Jill presented them. Representative Freeborn seconded the motion. The motion carried. (Attachment 3)

Representative McClure said she had just received the Attorney General Opinion she had requested regarding the secretary of the board of agriculture being a member of the governor's cabinet. In part it said that the legislature may require that the secretary of the board of agriculture serve as a member of the governor's cabinet because as a member of the executive department he/she is already subject to the governor's request for information regarding her duties. A copy of the AG Opinion will be distributed to each committee member and a copy attached to these minutes. (Attachment 4)

Representative McClure moved to amend HB 2384 on page 3, line 13, in Section 8 by adding a new subsection (c) to read: "The secretary of the state board of agriculture shall organize and attend an annual public informational meeting in each congressional district. The two board members appointed from such district, as well as any at large member residing in such district, shall attend the annual meeting held in such board member's district." Representative Feuerborn seconded the motion. Motion failed by a vote of 9-7. (Attachment 5)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE, Room 423-S Statehouse, at 9:00 a.m. on February 22, 1995.

Representative McClure offered another amendment to **HB 2384** on page 6, line 20, a new Section 16 to be inserted, with the remaining sections renumbered accordingly. New Section 16 to read: "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." The only change from current statute is the addition of the attorneys to the classified service. Representative Bryant seconded the motion. Motion failed. (Attachment 5)

Representative Sloan offered a conceptual amendment to have the board of agriculture recommend at least three and no more than five names to the governor for appointment of the secretary of agriculture. Should the governor reject all nominees, the board would submit a new list of candidates. The governor's appointees shall be confirmed by the Senate and serve at the pleasure of the board. The secretary would not have a specific length of term, but would serve as long as the board wanted him/her. Representative Humerickhouse seconded the motion. Motion failed. (Attachment 6)

Following discussion on confirmation of the secretary, Representative Lloyd offered a conceptual motion that every newly appointed secretary would need to have Senate confirmation. A retained secretary would not need to be reconfirmed. Representative Weiland seconded the motion. The motion carried.

Representative Sloan offered a conceptual motion to strike the language on line 19 beginning with "Two members shall" through "was elected." on line 26, and to strike all of lines 28 and 29. The governor should be able to make appointments without reference to congressional districts or location. The motion was seconded by Representative Humerickhouse. Motion failed.

Representative Sloan offered another conceptual motion to amend lines 33-38 on page 1. The governor would appoint all eleven board of agriculture members in 1995 for staggered terms over four years. Two members would serve 1 year, 3 members would serve 2 years, 3 members would serve 3 years, and 3 members would serve 4 years. Representative Humerickhouse seconded, motion failed.

Representative Lloyd moved to pass **HB 2384** out favorably as amended. Representative Correll seconded the motion. Representative Lloyd, with Representative Correll's approval, withdrew his motion.

There was discussion regarding the two political party requirement on lines 22-26 on page 1 of **HB 2384**. It was the general consensus of the committee that this could prevent an independent or minor party member from being appointed to the board. However, it was felt that at no time should more than six members of the board be of any one political party. Representative McClure moved to strike the entire sentence beginning on line 22 with "All members" through "was elected." on line 26. Representative Ballou seconded the motion. The motion carried.

The Attorney General Opinion stating that the secretary may be a member of the governor's cabinet was discussed. **HB 2384** makes no requirement that the secretary serve on the governor's cabinet, it is left to the governor's discretion.

Representative Lloyd moved to pass **HB 2384** out favorably as amended. Representative Correll seconded the motion. Motion carried.

The meeting adjourned at 10:00 a.m. The next meeting is scheduled for February 23, 1995.

# HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 22, 1995

NAME	REPRESENTING
Joe Lieber	KS Co-op Council
Lisa Andres	KVMA (Kansas Veterinary Med Asso.)
Carolyn Andrus	"
Marty Vanier	KS Ag Alliance
Bruce Claven	KNRC / Sierra
Jamie Clover Adams	KBFA / KFCA
Carole Jordan	KS of Ag
<del>Allie Dumas</del>	<del>Dept. of Agriculture</del>
Alan Volner	Division of Budget
Kara Bieberly	Governors Office
<del>Joan Wilke</del>	<del>KANSAS</del>
Chris Wilson	KS Seed Industry Ass'n
Carl Christensen DVM	KANSAS VETERINARY MEDICAL ASSOCIATION
Russ Frey	KVMA
John Andrus, DVM	Kansas Veterinary Medical Association
BILL R. FULLER	Kansas Farm Bureau
Mike Jensen	KS Pork Council
Paul E. Fleener	Kansas Farm Bureau

STATEMENT  
OF  
IVAN W. WYATT, PRESIDENT  
KANSAS FARMERS UNION  
BEFORE  
THE SENATE AGRICULTURAL COMMITTEE  
ON  
HOUSE BILL 2447  
(DEPARTMENT AND SECRETARY OF AGRICULTURE)  
ON FEBRUARY 7, 1995

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

A MAJORITY OF THE MEMBERS OF THE KANSAS FARMERS UNION, AT THEIR STATE CONVENTION HELD IN MCPHERSON IN JANUARY, IN A MAJORITY VOTE STATED THE FOLLOWING IN THE KFU POLICY STATEMENT:

"WE RECOMMEND THE ESTABLISHMENT OF A DEPARTMENT OF AGRICULTURE. WE SUPPORT THE CONCEPT OF A SECRETARY OF AGRICULTURE APPOINTED BY THE GOVERNOR AND CONFIRMED BY THE SENATE."

THERE WAS STRONG SUPPORT FOR AN ELECTED SECRETARY AT THE GENERAL ELECTION. THE FEELING WAS THAT EACH FOUR YEARS THERE WOULD BE A FOCUS ON AGRICULTURE, AND THAT AN ELECTED SECRETARY WOULD BE MORE INDEPENDENT TO INITIATE AND DEVELOP

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NEW PROGRAMS AND POLICIES.

THERE WAS NO SUPPORT INDICATED FOR A LEGISLATED BOARD, EITHER AS AN ADVISORY, REGULATORY OR POLICY BODY. OUR MEMBERS FELT THE GOVERNOR AND HIS SECRETARY SHOULD BE FREE TO CHOOSE WITHOUT LEGISLATED RULES THAT COULD SIMPLY LEAD TO ANOTHER BUREAUCRACY THAT COULD THWART A GOVERNOR AND SECRETARY FROM ORGANIZING THE DEPARTMENT FOR ITS' MOST EFFICIENT OPERATION.

THIS BILL IS SIMILAR IN MANY WAYS WITH SENATE BILL NUMBER 61, EXCEPT SENATE BILL 61 AMENDS KSA 1994 SUPP. 15-2935. WE THINK THIS IS AN IMPORTANT CHANGE. MANY ARGUE WE NEED TERM LIMITATION OF ELECTED REPRESENTATIVES TO ASSURE CHANGE OCCASIONALLY. HOWEVER MANY RECOGNIZE THAT TOO OFTEN THE PROBLEM IS AN EMBEDDED BUREAUCRACY THAT SELDOM CHANGES DESPITE ELECTIONS THAT IMPEDES PROGRESS, CHANGE AND EFFICIENCY.

THEREFORE, MR. CHAIRMAN, THE MEMBERS OF THE KANSAS FARMERS UNION WOULD PREFER, OF THE PROPOSALS OF THE HOUSE, HOUSE BILL 2447 WITH AN APPOINTED SECRETARY AS A MEMBER OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT, EXCEPT WE WOULD URGE THE USE OF THE LANGUAGE OF THE ORIGINAL SENATE BILL 61 THAT REFERS TO KSA 75-2935 BE AMENDED INTO HB-2447.

THANK YOU.



**TESTIMONY**

**Kansas House Agriculture Committee  
H.B. 2078, H.B. 2137, H.B. 2384, H.B. 2447**

**Testimony submitted by Jere White, Executive Director**

The Kansas Corn Growers and Grain Sorghum Producers Associations wish to submit the following comments in regards to the restructuring of the Kansas State Board of Agriculture. These comments are based on policy adopted by both organizations at recent annual membership meetings.

In regards to a Board, our members were unanimous that a legitimate functioning board was in the best interest of agriculture and the State of Kansas. Both groups support the gubernatorial appointment of board members from congressional districts and at large positions. We prefer to have two board members per congressional district. At large board members should not constitute a majority on the board. Board members should stand for confirmation by the Senate, serve a four year term, and be able to designate the president or chairperson of the board. We believe there should be a board comprised of no more than a simple majority of any one political party. In order to facilitate a smooth transition during changes in administration, we support that a simple

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majority of the board be appointed during the first year of the administration, with the balance being appointed the second year of the administration.

We further support that the Secretary be hired by the board subject to Senate confirmation. We believe that the Secretary should possess a reasonable knowledge of Kansas agriculture and be a member of the cabinet.

In general, we believe rule and regulatory duties should transfer to the new board, with the exception of those relative to the Chief Engineer, Division of Water Resources, which should not.

In view of our adopted policies on this issue, we find support from both the Kansas Corn Growers Association and the Kansas Grain Sorghum Producers Association for the provisions of H.B. 2384, but would encourage cabinet status for the Secretary.

We are strongly opposed to provisions in H.B. 2078 and H.B. 2447, as the provisions of these bills are inconsistent with the language and spirit of our adopted policy. Several provisions found in H.B. 2137 may be acceptable to many of our members, however they are inconsistent with our policy. Also, there is considerable doubt whether the Federal Court could find constitutional compliance in H.B. 2137. Therefore, we decline support for H.B. 2137 as it has been presented.

If I can answer any questions, please contact our office at 1-800-489-2676. Thank you for your consideration of our views on this very important issue.

## HOUSE BILL No. 2384

By Committee on Agriculture

2-6

9 AN ACT concerning agriculture; relating to the state board of agriculture  
10 and the secretary of the state board of agriculture; repealing K.S.A.  
11 74-502, 74-503 and 74-504c.  
12

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

14 Section 1. (a) On January 1, 1996, there shall be and is hereby es-  
15 tablished a state board of agriculture. The board shall determine the pol-  
16 icies and plans for the state of Kansas relating to agriculture.

17 (b) The board shall be composed of 11 members who shall be ap-  
18 pointed by the governor subject to confirmation by the senate as provided  
19 in K.S.A. 75-4315b, and amendments thereto. Two members shall be  
20 appointed from each congressional district with the remaining members  
21 appointed at large, however, no two members shall reside in the same  
22 county at the time of their appointment. All members of the board of  
23 agriculture shall be selected from among the members of the two political  
24 parties casting the highest and second highest number of votes respec-  
25 tively for secretary of state at the last preceding general election at which  
26 a secretary of state was elected. At no time shall more than six members  
27 of the board of agriculture be members of the same political party.

28 (c) Subsequent redistricting shall not disqualify any member of the  
29 board from service for the remainder of such member's term.

30 (d) The regular term of office of members of the board of agriculture  
31 shall be four years. Regular terms shall commence on the second Monday  
32 in January following appointment of the board member.

33 (e) Of the members of the board appointed in the year 1995: (1) Six  
34 members shall have terms ending on the second Monday in January 1998  
35 and no more than three such members shall be members of the same  
36 political party; and (2) five members shall have terms ending on the sec-  
37 ond Monday in January 2000 and no more than three such members shall  
38 be members of the same political party.

39 (f) Any member appointed subsequent to 1995 shall be appointed for  
40 a four-year term, unless such appointment is to fill the unexpired term  
41 where a vacancy has occurred on the board, in which case the member  
42 shall be appointed for the two years remaining of the unexpired term.

43 (g) The provisions of the Kansas governmental operations accounta-

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1 bility law apply to the state board of agriculture and to the office of sec-  
2 retary of the state board of agriculture, and the office and board are  
3 subject to audit, review and evaluation under such law.

4 Sec. 2. (a) The initial meeting of the board shall be on the second  
5 Tuesday in January 1996 in the office of the secretary of state in the state  
6 capitol building, and such meeting shall commence at 10:00 o'clock a.m.  
7 The initial meeting of the board may be recessed and moved to another  
8 meeting place by common consent of the members.

9 (b) Meetings of the board subsequent to its initial meeting shall be  
10 held and conducted as provided in this act in accordance with rules and  
11 regulations established by the board.

12 (c) Commencing at the time of the initial meeting of the board, the  
13 powers, authorities, duties and responsibilities conferred and imposed  
14 upon the board by this act shall be operative and effective.

15 Sec. 3. At the board's initial meeting and at the board's first meeting  
16 after the second Monday in January of each odd-numbered year, the  
17 board shall organize by election of a chairperson, vice-chairperson and  
18 such other officers as the board deems appropriate.

19 Sec. 4. A quorum of the board shall be six members and no meeting  
20 shall commence until a quorum is present, but any number of members  
21 less than a quorum may recess a meeting to a later time. Official actions  
22 of the board shall be adopted by a favorable vote of six or more members.  
23 A recorded vote shall be taken and made a part of the board's public  
24 record.

25 Sec. 5. The state board of agriculture may authorize members  
26 thereof to attend in-state meetings for participation in matters of agri-  
27 cultural interest to the state of Kansas, and when attending a meeting so  
28 authorized, members shall receive compensation and travel expenses and  
29 subsistence allowances as provided in K.S.A. 75-3212, and amendments  
30 thereto, for members of the legislature. Whenever under any provision  
31 of law, a member of the state board of agriculture is authorized to attend  
32 an out-of-state meeting, or whenever the state board of agriculture au-  
33 thorizes one of its members to attend an out-of-state meeting for partic-  
34 ipation in matters of agricultural interest to the state of Kansas, such  
35 members, when attending a meeting so authorized, shall receive com-  
36 pensation and travel expenses and subsistence allowances as provided in  
37 K.S.A. 75-3212, and amendments thereto, for members of the legislature.

38 Sec. 6. The board may sue in the board's own name, may be sued  
39 and may defend any action brought against the board or any of the board's  
40 members who are sued in situations relating to and arising out of the  
41 performance of such member's official duties. The board shall appoint an  
42 attorney to represent the board or any of the board's members in all  
43 litigations. The attorney for the board shall attend all meetings of the

1 board and render such legal services as are directed by the board.

2 Sec. 7. The board is hereby authorized to adopt rules and regulations  
3 not in conflict with law on any and all matters within such board's juris-  
4 diction, except as is otherwise specifically provided by law.

5 Sec. 8. (a) The state board of agriculture shall appoint the secretary  
6 of the state board of agriculture for a term of two years. Every appointed  
7 secretary of the state board of agriculture shall be appointed subject to  
8 confirmation by the senate as provided in K.S.A. 75-4315b, and amend-  
9 ments thereto.

10 (b) The secretary may establish policies governing the transaction of  
11 business of the board and the administration of each of the divisions  
12 within the board.

13 Sec. 9. The secretary of the state board of agriculture shall be in the  
14 unclassified service under the Kansas civil service act and shall receive an  
15 annual salary fixed by the board with the approval of the governor. The  
16 secretary may appoint an assistant secretary or secretaries of the state  
17 board of agriculture, who shall serve at the pleasure of the secretary. Any  
18 such assistant secretary of the state board of agriculture shall be in the  
19 unclassified service under the Kansas civil service act and shall receive an  
20 annual salary fixed by the board with the approval of the governor. The  
21 secretary of the state board of agriculture also may appoint such other  
22 staff assistants and employees as are necessary to enable the secretary to  
23 carry out the duties of the office. Except as otherwise provided in this act  
24 and in K.S.A. 75-2935, and amendments thereto, such staff assistants and  
25 employees shall be within the classified service under the Kansas civil  
26 service act. The assistant secretary or secretaries of the state board of  
27 agriculture and such other staff assistants and employees so appointed  
28 shall be within the state board of agriculture and shall have such powers,  
29 duties and functions as are assigned to them by the secretary or are pre-  
30 scribed by law. Such assistant secretary or secretaries of the state board  
31 of agriculture, staff assistants and employees shall act for and exercise the  
32 powers of the secretary of the state board of agriculture to the extent  
33 authority to do so is delegated by the secretary of the state board of  
34 agriculture.

35 Sec. 10. (a) On January 9, 1996, the state board of agriculture created  
36 by K.S.A. 74-503, and amendments thereto, and the office of secretary  
37 of the state board of agriculture created by K.S.A. 74-503, and amend-  
38 ments thereto, are hereby abolished.

39 (b) Except as otherwise provided by this act, all of the powers, duties  
40 and functions of the existing state board of agriculture and the existing  
41 secretary of the state board of agriculture are hereby transferred to and  
42 conferred and imposed upon, the state board of agriculture and the sec-  
43 retary of the state board of agriculture established by this act.

The secretary shall have a demonstrated executive and adminis-  
trative ability to discharge the duties of the office of secretary.

3-5

1 (c) Except as otherwise provided by this act, the state board of agri-  
 2 culture and the secretary of the state board of agriculture established by  
 3 this act shall be the successor in every way to the powers, duties and  
 4 functions of the state board of agriculture and the secretary of agriculture  
 5 in which the same were vested prior to the effective date of this act. Every  
 6 act performed in the exercise of such powers, duties and functions by or  
 7 under the authority of the state board of agriculture or the secretary of  
 8 the state board of agriculture established by this act shall be deemed to  
 9 have the same force and effect as if performed by the state board of  
 10 agriculture or the secretary of the state board of agriculture, respectively,  
 11 in which such powers, duties and functions were vested prior to the ef-  
 12 fective date of this act.

13 (d) Except as otherwise provided by this act, whenever the state  
 14 board of agriculture, or words of like effect, is referred to or designated  
 15 by a statute, contract or other document, such reference or designation  
 16 shall be deemed to apply to the state board of agriculture established by  
 17 this act.

18 (e) Except as otherwise provided by this act, whenever the secretary  
 19 of the state board of agriculture, or words of like effect, is referred to or  
 20 designated by a statute, contract or other document, such reference or  
 21 designation shall be deemed to apply to the secretary of the state board  
 22 of agriculture established by this act.

23 (f) All rules and regulations of the state board of agriculture or the  
 24 secretary of the state board of agriculture in existence on the effective  
 25 date of this act shall continue to be effective and shall be deemed to be  
 26 duly adopted rules and regulations of the state board of agriculture es-  
 27 tablished by this act until revised, amended, revoked or nullified pursuant  
 28 to law.

(h) 29 ~~[(g)]~~ All orders and directives of the state board of agriculture or the  
 30 secretary of the state board of agriculture in existence on the effective  
 31 date of this act shall continue to be effective and shall be deemed to be  
 32 orders and directives of the state board of agriculture established by this  
 33 act until revised, amended or nullified pursuant to law.

34 ~~[(h)]~~ 4 On the effective date of this act, the state board of agriculture as  
 35 established by this act shall succeed to whatever right, title or interest the  
 36 state board of agriculture has acquired in any real property in this state,  
 37 and the board shall hold the same for and in the name of the state of  
 38 Kansas. On and after the effective date of this act, whenever any statute,  
 39 contract, deed or other document concerns the power or authority of the  
 40 state board of agriculture or the secretary of the state board of agriculture  
 41 to acquire, hold or dispose of real property or any interest therein, the  
 42 state board of agriculture as established by this act shall succeed to such  
 43 power or authority.

(g) All rules and regulations of the division of water resources of the  
 state board of agriculture or the chief engineer of the division of water  
 resources of the state board of agriculture in existence on the effective  
 date of this act shall continue to be effective and shall be deemed to be  
 duly adopted rules and regulations of the chief engineer of the division  
 of water resources of the department of agriculture established by this  
 act until revised, amended, revoked or nullified pursuant to law.

3-4

(j) 1 (i) The state board of agriculture established by this act shall be a  
2 continuation of the existing state board of agriculture and the secretary  
3 of the state board of agriculture.

4 Sec. 11. Except as otherwise provided in this act, on the effective  
5 date of this act, officers and employees who, immediately prior to such  
6 date, were engaged in the performance of powers, duties or functions of  
7 any state agency or office which is abolished by this act, or which becomes  
8 a part of the state board of agriculture, or the powers, duties and functions  
9 of which are transferred to the state board of agriculture, and who, in the  
10 opinion of the state board of agriculture, are necessary to perform the  
11 powers, duties and functions of the state board of agriculture, shall be  
12 transferred to, and shall become officers and employees of the state board  
13 of agriculture established under this act. Any such officer or employee  
14 shall retain all retirement benefits and all rights of civil service which had  
15 accrued to or vested in such officer or employee prior to the effective  
16 date of this act. The service of each such officer and employee so trans-  
17 ferred shall be deemed to have been continuous. All transfers and any  
18 abolition of personnel positions in the classified service under the Kansas  
19 civil service act shall be in accordance with civil service laws and any rules  
20 and regulations adopted thereunder.

21 Sec. 12. (a) When any conflict arises as to the disposition of any  
22 power, function or duty or the unexpended balance of any appropriation  
23 as a result of any abolition, transfer, attachment or change made by or  
24 under authority of this act, such conflict shall be resolved by the governor,  
25 whose decision shall be final.

26 (b) The state board of agriculture shall succeed to all property and  
27 records which were used for or pertain to the performance of the powers,  
28 duties and functions transferred to the state board of agriculture. Any  
29 conflict as to the proper disposition of property or records arising under  
30 this section, and resulting from the transfer, attachment or abolition of  
31 any state agency, or all or part of the powers, duties and functions thereof,  
32 shall be determined by the governor, whose decision shall be final.

33 Sec. 13. (a) The state board of agriculture shall have the legal custody  
34 of all records, memoranda, writings, entries, prints, representations or  
35 combinations thereof of any act, transaction, occurrence or event of the  
36 state board of agriculture and any agency or office abolished or trans-  
37 ferred thereto under this act.

38 (b) No suit, action or other proceeding, judicial or administrative,  
39 lawfully commenced, or which could have been commenced, by or against  
40 any state agency mentioned in this act, or by or against any officer of the  
41 state in such officer's official capacity or in relation to the discharge of  
42 such officer's official duties, shall abate by reason of the governmental  
43 reorganization effected under the provisions of this act. The court may

1 allow any such suit, action or other proceeding to be maintained by or  
2 against the successor of any such state agency or any officer affected.

3 (c) No criminal action commenced or which could have been com-  
4 menced by the state shall abate by the taking effect of this act.

5 Sec. 14. (a) On the effective date of this act, the balance of all funds  
6 appropriated and reappropriated to any of the state agencies abolished  
7 by this act is hereby transferred to the state board of agriculture and shall  
8 be used only for the purpose for which the appropriation was originally  
9 made.

10 (b) On the effective date of this act, the liability for all accrued com-  
11 pensation or salaries of officers and employees who, immediately prior to  
12 such date, were engaged in the performance of powers, duties or func-  
13 tions of any state agency or office abolished by this act, or which becomes  
14 a part of the state board of agriculture established by this act, or the  
15 powers, duties and functions of which are transferred to the state board  
16 of agriculture provided for by this act, shall be assumed and paid by the  
17 state board of agriculture established by this act.

18 Sec. 15. No officer or employee of the state board of agriculture shall  
19 be a member of the state board of agriculture.

20 Sec. 16. If any provision of this act or the application thereof to any  
21 person or circumstance is held invalid, the invalidity shall not affect other  
22 provisions or applications of the act which can be given effect without  
23 the invalid provision or application, and to this end the provisions of this  
24 act are severable.

25 Sec. 17. K.S.A. 74-502, 74-503 and 74-504c are hereby repealed.

26 Sec. 18. This act shall take effect and be in force from and after its  
27 publication in the statute book.



State of Kansas

## Office of the Attorney General

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

CARLA J. STOVALL  
ATTORNEY GENERAL

February 22, 1995

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751  
FAX: 296-6296ATTORNEY GENERAL OPINION NO. 95- 24

The Honorable Laura L. McClure  
State Representative, One Hundred Nineteenth District  
State Capital, Room 278-W  
Topeka, Kansas 66612-1504

Re: State Boards, Commissions and Authorities -- State  
Board of Agriculture -- Election of Board Members

Synopsis: The "governor's cabinet" has evolved through custom and tradition loosely patterned after the United States president's cabinet. Each member of the president's cabinet has a constitutional duty to provide opinions as the principal officer of an executive department when required by the president. U.S. const., art. II, § 2. There is a similar provision in the Kansas constitution. As such, cabinet members serve as advisors to the governor. The members of the current governor's cabinet include the secretaries of various state departments who are appointed by the governor subject to the confirmation of the senate and serve at the pleasure of the governor. In our opinion, the legislature may require that the secretary of the board of agriculture serve as a member of the governor's cabinet because as a member of the executive department she is already subject to the governor's request for information regarding her duties. Cited herein: K.S.A. 32-801; 74-5002; K.S.A. 1994 Supp. 75-3702; 75-5001; 75-5101; 75-5203; 75-5301; 75-5601; 75-5701; 75-5903. Kan. Const., art. 1, § 1; Kan. Const., art. 2, § 18; Kan. Const., art. 15, § 1; U.S. Const., Art. II, § 2.

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House Agriculture  
Attachment 4  
2-22-95

Dear Representative McClure:

As representative for the 119th district you ask whether the person selected as the secretary to the board of agriculture (in accordance with current proposed legislation) may by statute be made a member of the "governor's cabinet."

We find no constitutional or statutory reference to the "cabinet." The only mention of the term in Kansas case law is in a Kansas Supreme Court dissenting opinion:

"The state government is not modeled on the cabinet system. On the contrary, the constitution expressly provides (const., art. 1, § 1) that the executive department shall consist of a governor, lieutenant-governor, secretary of state, auditor, treasurer and attorney general, and superintendent of public instruction." State v. Dawson, 86 Kan. 180, 192 (1911) (J. West, dissenting). (Kan. Const., art. 1, § 1 was amended eliminating the auditor, treasurer, and the superintendent of public instruction from the executive department.) L. 1972, ch. 390, sec. 1.

The term "governor's cabinet" is a term of art which has evolved by tradition and is patterned after the president's cabinet, also a creation of custom and tradition. Each member of the president's cabinet has a constitutional duty as the principal officer of an executive department to provide opinions to the president as he requires pursuant to article II, section 2 of the United States Constitution. There is a similar provision in article 1, section 4 of the Kansas constitution wherein the governor may require information "from the officers of the executive department, upon any subject relating to their duties." These constitutional provisions are the basis of our argument although, as discussed below, rather than conferring power, our state constitution limits it.

The Supreme Court in Leek v. Theis, 217 Kan. 784 (1974), reiterates succinctly the principle that all governmental power under our system of government is inherent in the people of our state, who exercise such power through the legislative branch of government. Id. at 802. Accordingly, the legislature is free to act, except as it is restricted by the state and federal constitutions. Id. These principles have given rise to the oft-repeated proposition that our constitution limits rather than confers powers, and any power

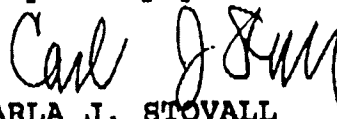
Representative Laura L. McClure  
Page 3

not limited by the constitution remains with the people and their legislators. See, e.g., NEA-Forst Scott v. U.S.D. No. 234, 225 Kan. 607, 609 (1979).

The legislature has acted to create those executive officers that head the state departments. The governor's "cabinet" currently includes the lieutenant governor, the secretary of the board of agriculture and the secretaries of the following state departments: Wildlife and parks, commerce and housing, administration, transportation, revenue, corrections, social and rehabilitation services, health and environment, human resources, and aging. Although there is no constitutional or statutory provision which indicates that these secretaries are part of the "cabinet," they have some common characteristics. All of the secretaries listed above are appointed by the governor subject to the confirmation of the senate, and serve at the pleasure of the governor. See K.S.A. 32-801; 74-5002; K.S.A. 1994 Supp. 75-3702; 75-5001; 75-5101; 75-5203; 75-5301; 75-5601; 75-5701; 75-5903, respectively. Under proposed legislation House Bill No. 2078 the secretary would be elected by the board of agriculture. Our conclusion under these circumstances remains the same because as a head of an executive department the secretary is subject to the Kansas constitutional provision in Art. 2, sec. 4. This provision does not require that the governor take the advice of this executive head. It allows the governor to request advice as he needs it.

A legislative enactment providing that the secretary of the board of agriculture serve as a member of the executive department and thus be subject to the governor's requirement that she provide information relating to her duties does not in our judgment amount to more than what article 1, section 4 of the Kansas constitution already requires. In conclusion, and for this reason, it is our opinion that the legislature may enact legislation requiring the secretary serve as a member of the governor's cabinet that historically has been comprised of the executive department officers who provide advice as required by the governor.

Very truly yours,



CARLA J. STOVALL  
ATTORNEY GENERAL OF KANSAS



Guen Easley  
Assistant Attorney General



Session of 1995

# HOUSE BILL No. 2384

By Committee on Agriculture

2-6

9 AN ACT concerning agriculture; relating to the state board of agriculture  
10 and the secretary of the state board of agriculture; ~~repealing K.S.A.~~  
11 74-502, 74-503 and 74-504c.  
12

amending K.S.A. 74-506d and repealing the  
existing section; also

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

14 Section 1. (a) On January 1, 1996, there shall be and is hereby es-  
15 tablished a state board of agriculture. The board shall determine the pol-  
16 icies and plans for the state of Kansas relating to agriculture.

17 (b) The board shall be composed of 11 members who shall be ap-  
18 pointed by the governor subject to confirmation by the senate as provided  
19 in K.S.A. 75-4315b, and amendments thereto. Two members shall be  
20 appointed from each congressional district with the remaining members  
21 appointed at large, however, no two members shall reside in the same  
22 county at the time of their appointment. All members of the board of  
23 agriculture shall be selected from among the members of the two political  
24 parties casting the highest and second highest number of votes respec-  
25 tively for secretary of state at the last preceding general election at which  
26 a secretary of state was elected. At no time shall more than six members  
27 of the board of agriculture be members of the same political party.

28 (c) Subsequent redistricting shall not disqualify any member of the  
29 board from service for the remainder of such member's term.

30 (d) The regular term of office of members of the board of agriculture  
31 shall be four years. Regular terms shall commence on the second Monday  
32 in January following appointment of the board member.

33 (e) Of the members of the board appointed in the year 1995: (1) Six  
34 members shall have terms ending on the second Monday in January 1998  
35 and no more than three such members shall be members of the same  
36 political party; and (2) five members shall have terms ending on the sec-  
37 ond Monday in January 2000 and no more than three such members shall  
38 be members of the same political party.

39 (f) Any member appointed subsequent to 1995 shall be appointed for  
40 a four-year term, unless such appointment is to fill the unexpired term  
41 where a vacancy has occurred on the board, in which case the member  
42 shall be appointed for the two years remaining of the unexpired term.

43 (g) The provisions of the Kansas governmental operations accounta-

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1 board and render such legal services as are directed by the board.

2 Sec. 7. The board is hereby authorized to adopt rules and regulations  
3 not in conflict with law on any and all matters within such board's juris-  
4 diction, except as is otherwise specifically provided by law.

5 Sec. 8. (a) The state board of agriculture shall appoint the secretary  
6 of the state board of agriculture for a term of two years. Every appointed  
7 secretary of the state board of agriculture shall be appointed subject to  
8 confirmation by the senate as provided in K.S.A. 75-4315b, and amend-  
9 ments thereto.

10 (b) The secretary may establish policies governing the transaction of  
11 business of the board and the administration of each of the divisions  
12 within the board.

13 Sec. 9. The secretary of the state board of agriculture shall be in the  
14 unclassified service under the Kansas civil service act and shall receive an  
15 annual salary fixed by the board with the approval of the governor. The  
16 secretary may appoint an assistant secretary or secretaries of the state  
17 board of agriculture, who shall serve at the pleasure of the secretary. Any  
18 such assistant secretary of the state board of agriculture shall be in the  
19 unclassified service under the Kansas civil service act and shall receive an  
20 annual salary fixed by the board with the approval of the governor. The  
21 secretary of the state board of agriculture also may appoint such other  
22 staff assistants and employees as are necessary to enable the secretary to  
23 carry out the duties of the office. Except as otherwise provided in this act  
24 and in K.S.A. 75-2935, and amendments thereto, such staff assistants and  
25 employees shall be within the classified service under the Kansas civil  
26 service act. The assistant secretary or secretaries of the state board of  
27 agriculture and such other staff assistants and employees so appointed  
28 shall be within the state board of agriculture and shall have such powers,  
29 duties and functions as are assigned to them by the secretary or are pre-  
30 scribed by law. Such assistant secretary or secretaries of the state board  
31 of agriculture, staff assistants and employees shall act for and exercise the  
32 powers of the secretary of the state board of agriculture to the extent  
33 authority to do so is delegated by the secretary of the state board of  
34 agriculture.

35 Sec. 10. (a) On January 9, 1996, the state board of agriculture created  
36 by K.S.A. 74-503, and amendments thereto, and the office of secretary  
37 of the state board of agriculture created by K.S.A. 74-503, and amend-  
38 ments thereto, are hereby abolished.

39 (b) Except as otherwise provided by this act, all of the powers, duties  
40 and functions of the existing state board of agriculture and the existing  
41 secretary of the state board of agriculture are hereby transferred to and  
42 conferred and imposed upon, the state board of agriculture and the sec-  
43 retary of the state board of agriculture established by this act.

(c) The secretary of the state board of agriculture shall organize and attend an annual public informational meeting in each congressional district. The two board members appointed from such district, as well as any at large member residing in such district, shall attend the annual meeting held in such board member's district.

1 allow any such suit, action or other proceeding to be maintained by or  
2 against the successor of any such state agency or any officer affected.

3 (c) No criminal action commenced or which could have been com-  
4 menced by the state shall abate by the taking effect of this act.

5 Sec. 14. (a) On the effective date of this act, the balance of all funds  
6 appropriated and reappropriated to any of the state agencies abolished  
7 by this act is hereby transferred to the state board of agriculture and shall  
8 be used only for the purpose for which the appropriation was originally  
9 made.

10 (b) On the effective date of this act, the liability for all accrued com-  
11 pensation or salaries of officers and employees who, immediately prior to  
12 such date, were engaged in the performance of powers, duties or func-  
13 tions of any state agency or office abolished by this act, or which becomes  
14 a part of the state board of agriculture established by this act, or the  
15 powers, duties and functions of which are transferred to the state board  
16 of agriculture provided for by this act, shall be assumed and paid by the  
17 state board of agriculture established by this act.

18 Sec. 15. No officer or employee of the state board of agriculture shall  
19 be a member of the state board of agriculture.

20 Sec. 16. If any provision of this act or the application thereof to any  
21 person or circumstance is held invalid, the invalidity shall not affect other  
22 provisions or applications of the act which can be given effect without  
23 the invalid provision or application, and to this end the provisions of this  
24 act are severable.

25 Sec. 17. K.S.A. 74-502, 74-503 ~~and 74-504~~ are hereby repealed.

26 Sec. 18. This act shall take effect and be in force from and after its  
27 publication in the statute book.

Sec. 16. K.S.A. 74-506d is hereby amended to read as follows: 74-506d. 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.  
Renumber remaining sections accordingly

and 74-506d

5-3

**TOM SLOAN**  
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TOPEKA

HOUSE OF  
 REPRESENTATIVES

## Memorandum

COMMITTEE ASSIGNMENTS  
 MEMBER: AGRICULTURE  
 LOCAL GOVERNMENT  
 ENERGY & NATURAL RESOURCES

**TO:** Agriculture Committee Members  
**FROM:** Representative Tom Sloan  
**DATE:** February 20, 1995  
**RE:** Board/Secretary of Agriculture

In recognition of the number of bills introduced, the diverse opinions being expressed on the above topics, and conversations with several constituents, the following proposal is made to take into account the role of the Department with specific constituencies and its diverse responsibilities.

- 1) In recognition of the need for political accountability, the Board of Agriculture will recommend at least three and no more than five candidate names to the Governor for appointment as Secretary of Agriculture. The Governor may reject all nominees. In such cases, the Board will submit a new list of candidates. The Governor's appointee shall be confirmed by the Senate and serve at the pleasure of the Board.
- 2) A Board of Agriculture will be appointed by the Governor to advise the Secretary on policies and review proposed Department rules and regulations. The 13 board members will represent areas and constituencies of the Department as follows:

<u>General Category</u>	<u>Illustrative Background</u>	<u>Board Positions</u>
Agriculture Production	Grain Livestock Feedlots Misc. Foods & Dairy	6
Agriculture Business & Processing	Food Processors Elevators, Food Dealers Pesticide Applicators Food Wholesalers & Retailers Seed Dealers	4
Agriculture Consumers	Retail Consumers Water Users Environmentalists	3

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Four year board terms will be staggered, no more than 8 members may be from one political party. Members may be reappointed. Board members are subject to Senate confirmation.

- 3) The Secretary of Agriculture may appoint assistant secretaries as necessary. These persons will be unclassified state employees. Persons heading all divisions and other Department employees will be classified state employees.
- 4) The Governor will evaluate all potential candidates for the position of Secretary of Agriculture on the basis of having both strong agricultural and administrative experiences.
- 5) Board of Agriculture shall meet on the call of the Secretary or Board Chairman, but no less than quarterly, nor more often than eight times per year. Expenses paid and per diem for Board attendance.

This concept provides for a strong Secretary and a strong Board, accountability to the Governor, legislature, and the Department's constituencies, strong advocates for producers, processors, and consumers.