

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Joann Flower at 9:00 a.m. on January 23, 1996, in Room 313-S of the Capitol.

All members were present except: Representative Crabb - Excused
Representative Freeborn - Excused
Representative Lloyd - Excused
Representative Sloan - Excused

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

Conferees appearing before the committee:
Sharon Patnode, Legislative Division of Post Audit
Allie Devine, Secretary, State Department of Agriculture

Others attending: See attached list

The House Committee on Governmental Organization and Elections joined the House Committee on Agriculture for a briefing by the Legislative Division of Post Audit concerning the audit report on the Department of Agriculture's Weights and Measures Enforcement Program.

The Weights and Measures Section within the Inspections Division of the Department of Agriculture is responsible for ensuring the accuracy of at least 33,000 measuring devices in the State of Kansas. It is also responsible for monitoring the octane levels of refined fuels sold at retail. In the mid 1980's, primary responsibility for testing the accuracy of scales was transferred from State employees to private companies.

Sharon Patnode, Legislative Division of Post Audit, briefed the committees on the Performance Audit Report Reviewing the Department of Agriculture's Weights and Measures Enforcement Program. Internal reviews of the Weights and Measures Program by the Secretary of Agriculture's staff revealed a number of problems. The Secretary brought her concerns to the Legislative Post Audit Committee, and the Committee authorized an audit of the Weights and Measures Program to fulfill the requirements of the Kansas Governmental Accountability Law. A copy of the report is available from the Legislative Division of Post Audit. The audit addresses two questions:

1. Has the Weights and Measures Program within the Department of Agriculture been effective at ensuring the accuracy of scales, scanners, and other measuring devices?
2. Does Kansas have an adequate program for testing gasoline sold at the pump to ensure that mislabeled gasoline is not being sold to consumers?

Ms. Patnode detailed the audit process and their findings for the committee. They found that many measuring devices in Kansas aren't accurate. Inadequacies in how the Department monitors the measuring devices, oversees the private companies that do inspections, and takes enforcement actions when problems are found have contributed to the large number of inaccurate devices being allowed to operate. They found the Department's reports on the effectiveness of the program overstated, not only the level of its regulatory activities, but also the level of accuracy in the State's measuring devices. In the area of gasoline labeling, they found that the Department focused on checking water and alcohol levels in gasoline, instead of octane levels even though octane mislabeling may be an area of significant financial risk for the consumer.

Recommendations by the Legislative Division of Post Audit were covered, as well as the Department's response. A letter from Allie Devine, Secretary, Kansas Department of Agriculture, setting forth her proposals for corrective measures to be taken by the Department is included in the report. Her response

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE, Room 313-S Statehouse, at 9:00 a.m. on January 23, 1996.

included factual corrections and clarification; responses to recommendations; corrective measures already instituted during the summer and fall of 1995; and statutory changes the Department is recommending.

Allie Devine, Secretary, Kansas Department of Agriculture, addressed the committee concerning her proposals to return integrity and credibility to the Kansas Weights and Measures Inspection Program. (Attachment 1) She provided background information as well as corrective action the Department has taken. She felt that it is important to present realistic proposals of reform that stay within the parameters of the current mandates of the law and of the current budget situation. She went over the statutory changes and corrective measures being proposed by the Department and approved by the Governor's Advisory Agriculture Board. Statutory changes they are asking the legislature to consider are:

1. Require registration of all devices;
2. Remove conflict of interest from the law;
3. Improve inspector education and testing requirements;
4. Seek civil penalty authority;
5. Transfer headhouse scale program back to the Department of Grain Inspection; and
6. Enhance fuel quality enforcement program.

Chairperson Flower informed the committee that any legislation concerning the weights and measures program will start in the Senate.

The meeting adjourned at 10:20 a.m. The next meeting is scheduled for January 24, 1996.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: January 23, 1996

NAME	REPRESENTING
FRANCES KASTNER	Ks Food Dealers Assn
Don SNOBBRASS	KANSAS FOOD DEALERS ASSN
Rich McKee	KS Livestock Assoc.
Nick Haines	KS Public Radio
Sharon Patnode	Post Audit
Jimmie Murdie	Post audit
Jamie Clover Adams	KS Grain & Feed Assn
Matthew Holt	Division of the Budget
Ken Peterson	KS Petroleum Council
BUD GRANT	KCCI
LEE EISENHAWER	PROPANE MARKETERS ASSN OF KS
Tom Tunnell	KS Grain & Feed Assn.
Christy Bailey	Senator Harr
Mike Jensen	Ks Pork Producers
Ken Brown	mid. Am. Livestock Assn
Frankie DeWitt	self
Mr Johnson	self
Greg Teyman	KDA
Diane Bruner	Ks Coop Council

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: January 23, 1996

NAME	REPRESENTING
Marty Vanier	Kansas Agricultural Alliance
Mike Beam	Ks Livestock Assn.
Sandy Strand	Ks Advocates for Better Care
David Debenham	Attorney General
Grey Krissik	KS Dept Ag
T J Byram	KS Dept Ag
Leslie Kaufman	Kansas Farm Bureau
Tom PALACE	KOMA
BILL R. FULLER	Kansas Farm Bureau
Mary Jane Stattelman	KDA
Shirley Swine	Ks Dept. of Agriculture

KANSAS DEPARTMENT OF AGRICULTURE
PROPOSAL SUMMARY

Subject:

Weights and Measures Inspection

Summary:

The proposal is intended to return integrity and credibility to Kansas' weights and measures inspection program by establishing a statistically valid sampling program and improving inspector training.

Background:

Concerns over the integrity of Kansas' weights and measures program began to surface from a number of sources shortly after Secretary Devine took office in January 1995. In February, weights and measures staff expressed much dissatisfaction with program procedures and administration during interviews conducted by a staff member with the office of the governor.

In May, officials from USDA's Packers and Stockyards Administration (PSA) office in Kansas City expressed concern about the veracity of the state's inspection program. Results of random livestock scale tests conducted by PSA showed eight of 14 scales tested were out of compliance despite recently having been tested and approved by private service companies.

The Secretary requested the State Division of Personnel to conduct an internal review of the program. The personnel study, presented June 12, confirmed many of the same concerns expressed earlier to the Secretary.

In June, a representative of the Petroleum Marketers Association conveyed to the Secretary his industry's concern about privatization of petroleum device inspections and its support for returning to a state program.

The Secretary contacted Attorney General Stovall about these program concerns. At the Attorney General's direction, a KBI investigation was ordered. The findings, released in December, showed no evidence of criminal behavior but listed recommendations for improved operations of the program.

*House Agriculture
Attachment 1
1-23-96*

In September, Legislative Post Audit began a K-GOAL audit of weights and measures.

Corrective Action:

The Secretary requested a KBI Investigation. Results and recommendations were announced in December 1995.

The Secretary requested a program audit to be conducted by Legislative Post-Audit.

Internal examination of the program began and continues.

Research of proposed petroleum measurement regulations and proposed MOU with Department of Revenue is ongoing.

Letters, regulatory discussion and meetings with service companies served to undo "gentlemen's agreements" and underscore commitment to Kansas law, rules and regulations, and National Institute of Standards handbooks and tolerances.

Scheduling of testing, requiring regular testing and improving test standards is underway.

The department is enforcing requirements for submission of service company reports to the Department of Agriculture within 10 days.

A series of meetings have been conducted with field staff informing them to enforce the law, red tag devices or take necessary action; field staff input has been sought.

A series of meetings were held with industry groups informing them of changes from past practices.

Compliance conferences are being scheduled as necessary and conducted by agency legal staff.

Data bases on devices and facilities are being updated.

Statistically defensible sampling plans have been developed for each subprogram; actual testing in the field to determine the level of compliance of devices in Kansas has begun setting a baseline of information.

Other states and the National Institute of Standards have been consulted.

Staff of the Allied Signal Department of Energy Plant in Kansas City have assisted in performing a systems analysis of the weights and measures program.

In December, meetings were held with service companies and device owners to formulate reforms.

Statutory changes/corrective measures have been proposed and approved by the Governor's Advisory Agriculture Board.

Proposal:

The agency will require registration of all devices. Efficient ways of registering will be explored, including telephone registration and use of other state agency scale databases.

The agency will attempt to remove conflicts of interest. Service company technicians will still conduct annual testing of devices. State inspectors then will do the actual enforcement action of tagging out-of-compliance devices.

Inspector education and testing requirements will be improved. Private company technicians who calibrate devices will attend educational seminars covering all aspects of device testing, as well as National Institute of Standards and Technology handbooks.

The agency will seek civil penalty authority to fine scale owners and service companies in violation of statutes and regulations.

The head house scale program will be transferred to the Department of Grain Inspection.

The agency will seek ways to provide meaningful fuel quality testing.

In addition to the outlined changes, the agency will institute statistical testing as a part of the permanent work plan for the weights and measures program. Statistical testing will provide meaningful data on device accuracy and service company performance.