

Approved: 1/31/96
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION.

The meeting was called to order by Chairperson Al Ramirez at 1:30 p.m. on January 24, 1996 in room 531--N of the Capitol.

All members were present except:

Committee staff present: Julian Efird, Legislative Research Department
Jacqueline Breymeyer, Committee Secretary

Conferees appearing before the committee: Alice A. Devine, Secretary of Agriculture
Dave Debenham, Deputy, Criminal Division,
Attorney General's office

Others attending: See attached list

The meeting of the Senate Governmental Organization was called to order at 1:35 p.m. By Senator Ramirez, Chairman. The first order of business was the vote on the confirmations appointments of William A. Dean, State Civil Service Board; James Richard "Dick" Pratt, State Civil Service Board; and Gale Haag, State Fire Marshal.

Senator Harris moved to recommend William Dean for confirmation. Senator Feleciano gave a seconded to the motion. The motion carried.

Senator Feleciano moved to recommend James Richard "Dick" Pratt for confirmation. Senator Papay gave a second to the motion. The motion carried.

Senator Reynolds moved to recommend Gale Haag for confirmation. Senator Steffes gave a second to the motion. The motion carried.

As **SB 319** concerning USD 203 had been incorporated into **HB 2152**, the Chairman asked for a motion on the bill to remove it from the calendar. Senator Feleciano moved to report **SB 319** adversely. Senator Jordan gave a second to the motion. The motion carried.

The Chairman welcomed Secretary Alice A. Devine to the committee. Secretary Devine was present to continue her presentation on the Weights and Measures program of the Department of Agriculture. Secretary Devine distributed an attachment entitled "Kansas Department of Agriculture Proposal Summary". (Attachment 1)

The Chairman stated that he had spoken to the President of the Senate to try to get the Weights and Measures issue assigned to one committee instead of several committees.

The comment was made by one of the committee that something has to be done; can it be done without any taxpayer dollars or will there be user fees.

Secretary Devine responded that the budget is approximately \$650 thousand to \$700 thousand. Basic math projections are based on man hours, how many employees there are and what work loads there are. The following things will be done on the current budget: 4 statistical samples of small scales and scanners; 2 statistical samples of devices themselves and 2 of the followup service company work. In the area of fuel quantity and large scale, the first projections would be to do 2 statistical samples in those categories; one of devices and one of service company work. One statistical sample of devices of one of service work would continue to be done in the LPN propane area; the headhouse scale program would be transferred to the Department of Grain Inspection. The agency is working with the Kansas Oil Marketers Association to come up with a fuel program. One penny per barrel inspection fee is now being paid at the distributor level. That equates to one-fiftieth of a penny at the consumer pump per gallon. The proposal will be to raise that slightly to generate some fees to run the fuel program. An adequate fuel program can be run for \$500,00 to \$600,000. That means a probable fee increase of from one cent to two cents. Statistical sampling in that area plus the actual testing of samples.

CONTINUATION SHEET

MINUTES OF THE SENATE GOVERNMENTAL ORGANIZATION COMMITTEE ROOM 531--N
Statehouse, at 1:30 p.m. on January 24, 1996.

The Secretary stated that Tennessee runs a fuel program for approximately \$600,000. They started with a 10% rejection rate and have reduced it to 1%. She visited with the manager of that program. He is going to visit Kansas sometime in the next two weeks to help put in the details of the fuels program. Increase in fees will occur only in the fuel area. With regard to the funding issue, the Department is working with the Governor's office on some budget amendments. This will entail some computer purchases and mechanical purchases. The Department does not have numbers on this yet.

One of the committee commented that this problem had been in existence for a long time. What can be done about this.

The Secretary replied that the civil penalties that are being drafted will take care of the violators. Over the weekend she discussed this with the New York manager of the Weights and Measures program. He is now the Chairman of the National Conference of Weights and Measures. He stated that civil penalties have to be in line and have to be used; people have to know they will be enforced. Let the press know about it after it has been used. The Secretary stated that is what the Department intends to do.

A member of the committee expressed concern that although the Department is aggressively dealing with the issue, if it is not given the tools to implement the type of safety programs that should be in place, nothing will be accomplished. Has the Department analyzed what it is going to take to fully implement the kind of safety measures so that the citizens of the state are not adversely impacted by what the report highlights.

The Secretary responded that she had gone to Florida for one specific purpose, that is, to get the National Conference of Weights and Measures people to review what is being proposed and say whether they thought the program would or would not work. They think what the Kansas Department is doing is on the right track; the loopholes that have been identified have been closed and now it is a matter of managing it and getting it underway. In regard to funding, there is not enough base-line data at this time to tell whether the Department can work with what it has. California has one of the best operated programs on Weights and Measures in the nation. Darrell Gunsler is the manager of that program. Mr. Gunsler's comment to the Secretary was that the fact that Kansas has service companies doing what most states spend all their time doing instead of doing the analytical work of overseeing where the patterns of abuse are and looking deeper into the market place and seeing what is actually happening. His point was that if the agency does it right they can have a better program than most other states. In regard to fees, it is felt that a statistical sampling and a program in the scales area can be done within the current budget.

The Secretary was asked some of the history of how this happened; when the problem began to develop. The Secretary replied that a warning should have gone off when the National Institute of Standards and Technology came to Kansas and did an audit in 1993. This program was being touted in other states as a privatized program. As she has stated before, this is not privatization, it is licensing. The report outlined some of the problems that should have been addressed. She does not know how far this goes back, but Larry Woodson wrote a memo outlining several concerns in 1990. With regard to field staff, it would be a fair assumption to say that they felt there misgivings about the program from the very beginning. Some of the inspectors were concerned about their jobs; some were concerned about retribution. Larry had raised the issue, there was a meeting, that was the end of the issue.

In response to another question, Secretary Devine stated that when the employees came to her they were making allegations of mismanagement. At some point those allegations rose to the level of criminal activity. This is when she contacted the Attorney General and gave her an overview of what was being found. This was April of 1995.

Dave Debenham, Deputy, Criminal Division of the Attorney General's office stated that he had read the audit report. He stated that when the KBI was asked to get involved in this they were dealing with the question of, was there any crime committed within the Department of Agriculture, and, basically, on one individual's part, the State Sealer. There was an agent assigned to this. He looked at the records that were produced by the State Sealer, the accuracy rate of those particular records. The performance audit goes through all of the facets of the Department of Agriculture, small scales, scanners, etc. The agent did not look at all these specific areas. What the agent looked at was what the State Sealer did that was criminal in nature. What he found was, because of the nature of the records produced, it was very hard to determine what the accuracy rates were. He came up with different figures than the State Sealer did, but the Department of Agriculture employees did not actually go and look at the heavy scales and calibrate them to see if they were correct. What they did was to look and them to see if they had been tested. Mr. Debenham was asked if this issue of why this was allowed to go on in the state of Kansas shouldn't be pursued. He replied that he had not spoken with the Attorney General on this specific issue.

CONTINUATION SHEET

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.The question was asked if there was some way for a particular fuel company or agency to pay back to the public what they have had taken away from them. The Secretary replied the only way to prove that something was done is through documentation. There were 43 samples taken in 1995 and very few in 1994. If a case cannot be proven, it cannot be taken to court. By what the Department is proposing to do in the future, it will be able to prove the case.

The Secretary stated the State Sealer position will be upgraded to make that a person who has a technical and managerial background. The position held by the State Sealer had been an Ag Inspector I position.

A comment was made that it should make certain that no matter what is done, or who is the Secretary, the consumer will be protected.

The Secretary commented on being public service executives rather than technical people. That is why the Department went to the National Conference. One of the groups of people the Department has coming in is from California, and there will be three from the National Institute. One of the meetings the Department is hosting is to find out data and reports needed, as well as the equipment needed to make it flow. The Department hopes to use their expertise to build on and go from there.

The Secretary was asked if no employees had come to her, would this situation have become apparent by the way things were being handled.

The Secretary responded by stating her biggest fear is that something like this is happening somewhere else in the Department that she does not know about.

The people that came to her were not new employees; they had been there for numerous years. It takes courage and persistence to get things done in government. This takes standing up day after day without fear of losing one's job or it won't happen.

After several further questions and comments the Chairman thanked Secretary Devine and adjourned the meeting at 2:30 p.m.

The next meeting is scheduled for January 30, 1996.

GOVERNMENTAL ORGANIZATION COMMITTEE GUEST LIST

DATE: January 24, 1996

NAME	REPRESENTING
Kevin Bevens	CN Co. Leadership Conf.
Dana Dake Dreyf.	" " "
Janice De Vood.	" " "
Kerri Ebert	KUMA / RDA
John @ Stammers	CN CO. LEADERSHIP CONF.
Lew Jene Schneider	Ks Livestock Assoc -
Leslie Kaufman	Kansas Farm Bureau
Tammy Zumbelman	Cn. Co. Leadership Conf.
Ophelia	" " "
Carol Brubaker "The Kansas Kernel" Bird City, USA	
Frances Kastner	Ks Food Dealers Assn
Don SmoGrass	KANSAS FOOD DEALERS ASSN
John Klie	Chuyenne Co Leadership Conf.
LESLIE LACY	CHEYENNE CO. LEADERSHIP CONF.
STEVE KEARNEY	KOMA
Christy Bailey	Senator Karr
Era Cathy	Pop. M. Cure
Lee Eisenhauer	PMAK
Sharon Patwode	Leg. Post Audit

C. Jordan
 Dept of Ag
 Jamie Clover Adams
 Kansas Grain and Feed Assn
 Jim Brown
 mip - Am Linn Sec news APPS
 Marty Brown Vanier
 Kansas Agricultural Alliance

Name

Organization

Mary Jane Stettelman

KS Dept. of Ag

David Debenham

Attorney General

T. J. Berryman

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John Campbell

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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.

History: 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.

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

*Senate Governmental Organization
Attachment 1
1/24/96*

Action: The Secretary requested a KBI investigation, the results of which were announced in December 1995. The Secretary also requested a program audit by Legislative Post-Audit Committee.

Research of proposed petroleum measurement regulations and a proposed memorandum of understanding with the Department of Revenue is underway.

Through a series of meetings, discussions, and correspondence with service companies, the Secretary revoked informal "gentlemen's agreements" and underscored KDA's commitment to enforcing weights and measures law, rules and regulations, and National Institute of Standards and Technology (NIST) handbooks and tolerances. For example, KDA is enforcing requirements for submission of service company reports to KDA within 10 days.

Meetings were held with industry groups informing them of changes from past practices. Similarly, meetings were conducted with field staff instructing them to enforce the law, including taking devices out of service if necessary.

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

KDA's device and facilities data base is being updated. Statistically defensible sampling plans have been developed for each subprogram. Baseline compliance data is being collected through actual field testing of devices.

Experts in other state programs, as well as at NIST, have been consulted. Engineers with of the Department of Energy's Kansas City Plant, operated by AlliedSignal, have assisted KDA in a systems analysis of the weights and measures program, including failure/effects and trend analyses.

Input on program improvements has been sought from KDA field staff. Meetings were also held with service companies and device owners to formulate reforms.

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

Proposal:

KDA 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, KDA 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.