

Approved: _____

Date

1-27-99

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Steve Morris at 10:00 a.m. on January 26, 1999 in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
 Bruce Kinzie, Revisor of Statutes
 Nancy Kippes, Committee Secretary

Conferees appearing before the committee:
 Allie Devine, Secretary, Department of Agriculture

Others attending: (See Attached)

Senator Corbin made a motion to approve the minutes of the January 21, 1999 meeting as submitted.
Senator Clark seconded. Motion carried.

Hearing on:

SB 64 - Relating to state officers and employees; concerning placement of certain positions in the Department of Agriculture in the unclassified service

Allie Devine, Secretary, Department of Agriculture, testified before the Committee in support of **SB 64** (Attachment 1). Secretary Devine advised that this bill is about accountability not personalities or performance of people currently holding positions, and about assuring that the people assigned to administer the laws of the state are accountable to all of the people of the state. A chart of management level positions in the Department of Agriculture and a listing of proposed positions to be unclassified and their responsibilities was provided. Secretary Devine stated that placing those positions in the unclassified service would provide the Secretary and Governor more flexibility in hiring of candidates, oversight in day to day operations, and, if necessary, termination of service.

Written testimony was provided by Chris Wilson, Kansas Seed Industry Association in support of **SB 64** (Attachment 2).

Chris McKenzie, Executive Director, League of Kansas Municipalities, also provided written testimony stating the League does not have a specific position on **SB 64** but does have some concerns about Section 3 (Attachment 3).

The next meeting will be January 27, 1999.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 1-26-99

NAME	REPRESENTING
<i>Alia Duran</i>	<i>Ks. Dept. of Agriculture</i>
<i>Jeff Arpin</i>	<i>Division of the Budget</i>
<i>John Kabus</i>	<i>SHAWNEE Co. Noxious Weeds</i>
<i>Michelle Wallace</i>	<i>Div of Pers. Services</i>
<i>Don Moler</i>	<i>League of KS Municipalities</i>
<i>Charles Benjamin</i>	<i>KS Natural Resource Council KS Sierra Club</i>
<i>Woody Moses</i>	<i>Ks. App. Prod. Assn.</i>
<i>Wendy Harms</i>	✓ ✓ ✓ ✓
<i>Mary Jane Stattelman</i>	<i>KS Dept of Agriculture</i>

)

STATE OF KANSAS

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Topeka, Kansas 66612-1280
(913) 296-3558
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KANSAS DEPARTMENT OF AGRICULTURE

Testimony
to the

Senate Agriculture Committee

by

Allie Devine
Secretary of Agriculture

January 26, 1999

Good morning Mr. Chair and members of the committee.

This bill is about accountability. It is about assuring that the people assigned to administer the laws of the state are accountable to all of the people of the state. This bill is not about the personalities or performance of people currently holding the positions today. This bill specifically states that the unclassification of the positions will not take place until there is a vacancy, unless the incumbent elects to move into the unclassified service. The noxious weed director, the chief engineer, and the dairy commissioner are mentioned because they are the only program manager positions currently outlined in statute. Obviously, these changes will not be sudden. The changes will take place over many years as managers leave employment of the department.

Our constitution provides for three branches of government--legislative, judicial, and executive. The publicly-elected legislature establishes the laws. The judicial branch interprets the laws. The executive branch, led by the publicly-elected Governor, administers these laws. To assist in the administration of the laws, delegations of authority are made to the various departments or agencies. This provides for a system of checks and balances, to assure that no one branch exceeds its authority and that the government is accountable to the people.

In 1992 the structure of the Board of Agriculture was challenged because the procedures for the election of the board who administered the laws of the state affecting all Kansans did not provide accountability, through voting rights, to all of the people of the state. The court held the following:

"Statutory system for election of State Board of Agriculture by delegates from private agricultural associations violated "one person, one vote" rule under equal protection clause, in light of Board's authority to affect residents' daily lives so that exception from

rule for governmental units having limited focus did not apply; Board governed quality of meat and daily products consumed in state, accuracy of scales used for consumer goods, rights to divert and use water, and use of pesticides on residential lawns, city parks and farmlands."

In 1995, the legislature responded by passing K.S.A. 1997 Supp. 74-560 which created a Department of Agriculture within the executive branch to be administered under the direction and supervision of the secretary of agriculture, who is in the unclassified services. The law also created a board of agriculture, appointed by the governor, that serves in an advisory capacity to the governor and secretary to review and make recommendations on department legislative initiatives, and proposed rules and regulations, except those of the chief engineer, prior to their submission to the secretary of administration. Upon the vacancy of the secretary, the board nominates three new individuals to the governor for appointment as secretary. The appointment must be confirmed by the Senate. The checks and balances are in place to assure that the department, and its leadership, is accountable to the people of the state.

Under K.S.A. 75-2935 and 74-561 the secretary is authorized to appoint an assistant secretary or secretaries who are unclassified and whose salary is approved by the governor. In addition, the secretary is authorized to appoint a personal secretary, a special assistant, a public information officer, and a chief attorney for the department. Attached is a chart of management level positions in the department of agriculture. It states who the current manager is and whether the position is unclassified or classified. Also attached is a listing of the proposed positions to be unclassified and their responsibilities. There is also a listing of current unclassified positions. Of the 35 unclassified positions within Agriculture only 6 are in management positions. The remainder are attorneys or special project positions because the program's funding or existence is limited.

In this bill, I am requesting that you further institutionalize accountability in the department of agriculture. The Governor has repeatedly stated that we serve ALL Kansans. As manager of the department I have the responsibility to assure that those responsible for program management follow and administer the law; protect the fiscal and personnel resources of the department; and serve the public. Placing these positions in the unclassified service provides the secretary and governor with more flexibility in the hiring of candidates; oversight in the day to day operations; and, if necessary, termination of service.

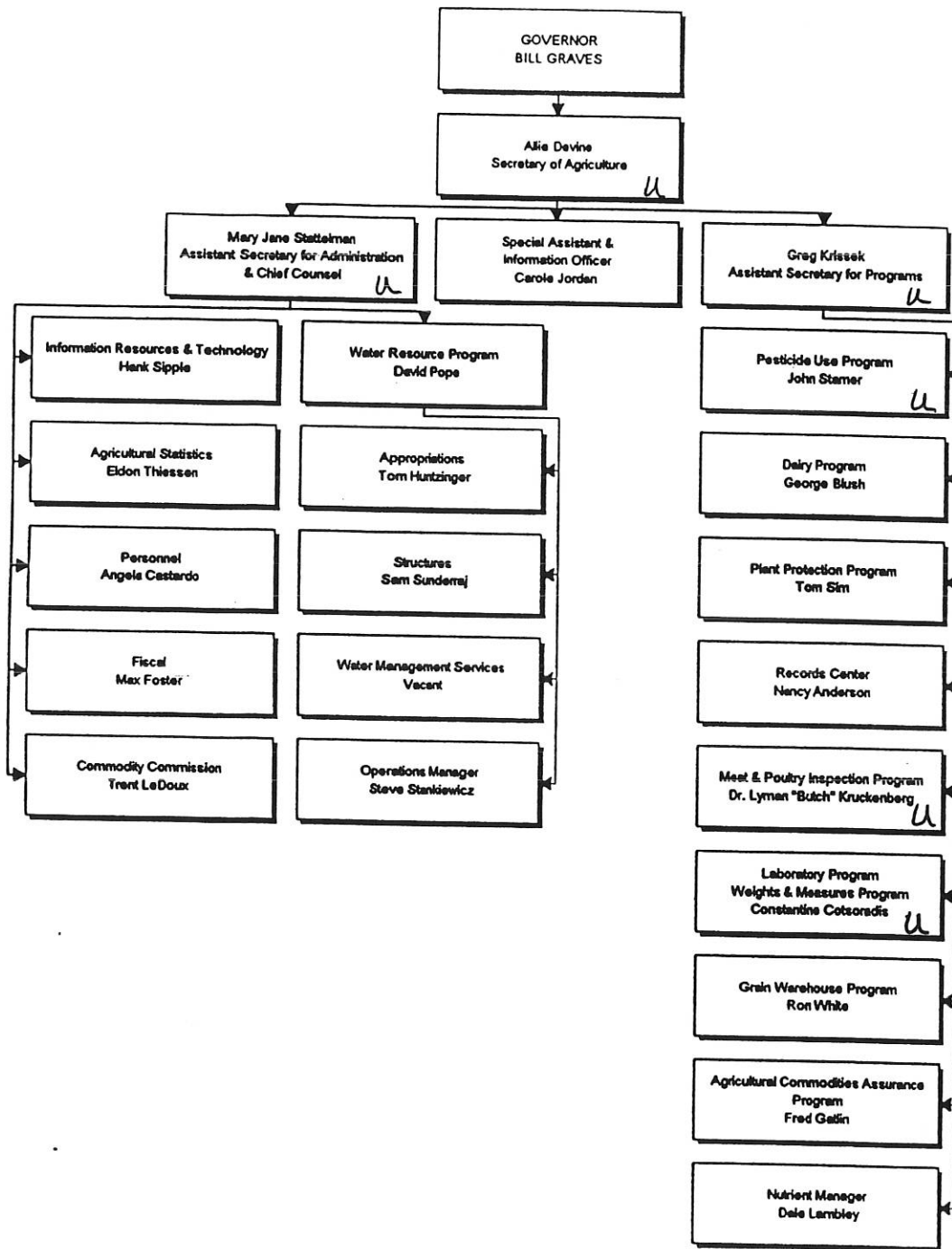
Many of the management positions of the department require managerial experience and technical expertise. To attract this type of person we need to pay market rates. The classified system does not always permit that flexibility. Timing is also an issue in the hiring of management. Sometimes it is critical to move quickly to assure leadership is provided in a program. For example, when the manager of the meat inspection program resigned in the mist of a critical and intense review by USDA, I needed to hire someone with expertise and experience quickly to place immediate stability and leadership in the program. I used an unclassified temporary position to accomplish this. It worked, but it is not a permanent solution.

The unclassified system provides a financial incentive for individuals to perform. The Governor allocates and approves the salary increases. In the classified system satisfactory work is rewarded the same as exceptional work. We have many dedicated and hardworking people serving in both the classified and unclassified system who deserve compensation for their efforts. I would encourage the legislature to develop a reward system for exceptional performance by classified employees. In the meantime, this bill would allow flexibility to at least one sector of employees.

Finally, I would like to return to the concept of accountability. As an employee in the unclassified service you know that you must be accountable EVERY DAY lest you can be gone the next. This inspires performance. We entrust the managers of departments with the fiscal and personnel resources, and the regulatory power of the state. This trust places responsibility and considerable discretion and latitude in these individual's hands for affecting customer's and citizens livelihoods. These individuals must be well-qualified technicians and MANAGERS. The accelerating pace of change in technology and business demands, not to mention public health and consumer protection issues regulated by KDA, that managers be flexible, have interpersonal skills, and ability to motivate and direct staff. The department chief executive must be able to direct this staff and expect quick response, especially in times of crisis, to implement executive branch responsibilities that are expected to occur by the public.

By approving the budget of the department the legislature has placed a fiduciary responsibility on the management. Fiduciary responsibilities carry the maximum requirement for accountability. With regard to personnel, managers must continuously challenge employees to perform to their maximum capacity. If the management is not excited, enthusiastic responsive, productive and continuously seeking high standards--who will? Finally, I believe, as the court stated, that the people who have the power to make decisions that directly impact another persons life or livelihood, should be held directly accountable for those decisions. The managers of the department of agriculture make these types of decisions every day. For this reason, I encourage you to support Senate Bill 64.

DEPARTMENT OF AGRICULTURE ORGANIZATIONAL CHART



PROGRAM MANAGERS
(Proposed to be Unclassified)

TITLE

PUBLIC SERVICE EXECUTIVE II/PERSONNEL DIRECTOR (#K068217)

Performs human resources management and administrative management actions by directing this department's comprehensive personnel operations.

PUBLIC SERVICE EXECUTIVE III/FISCAL (#K0103260)

This position is assigned to maintain a comprehensive accounting program and administer the agency's accounting and budgetary system for effective fiscal control.

PUBLIC SERVICE EXECUTIVE II/PUBLIC INFORMATION (#K0048932)

Plans, organizes and directs the agency's public information program. Functions as the agency spokesperson to provide the department's position on major policies or issues.

POLICY AND PROGRAM ANALYST (#K0076307)

Performs analysis tasks for senior agency managers regarding the development of policy and programs designed to help the agency reach its goal of maintaining a viable agricultural sector while protecting the Kansas environment and the health, safety and welfare of its citizens.

INFORMATION RESOURCE MANAGER II (#K0049764)

This position is responsible for all information technology planning and integration for the agency's administrative office, including the Division of Water Resources, Division of Laboratories and other divisions and remote locations.

ECONOMIC DEVELOPMENT REPRESENTATIVE III/COMMODITIES (#K0071378)

This position formulates, designs, implements, supervises, and directs all program policies regarding marketing campaigns, education, and publicity for Kansas grain commodities and products in domestic and international markets.

PUBLIC SERVICE ADMINISTRATOR III/GRAIN (#K0204483)

Enforce all statutes, rules and regulations issued by the State of Kansas and the USDA relating to the Grain Warehouse Program.

PUBLIC SERVICE ADMINISTRATOR II/RECORDS (#K0109352)

This position manages, directs and assigns the work of the Kansas Department of Agriculture's Record Center by regulatory record keeping and support staff operations of the dairy, feed, fertilizer, meat and poultry, pesticide use, plant protection etc.

PUBLIC SERVICE ADMINISTRATOR III/ACAP (#K0048067)

Establishes procedures and formulates or interprets rules and regulations pertaining to the laws assigned to Agricultural Commodities Assurance Program.

PUBLIC SERVICE ADMINISTRATOR III/DAIRY (#K0103209)

Establishes procedures and formulates or interprets rules and regulations pertaining to the laws assigned to the State's Dairy Program.

ENVIRONMENTAL SCIENTIST IV/PLANT PROTECTION (#K0047129)

This position serves as the administrator of the Plant Protection and Weed Control Section in the Division of Plant Health. The statutes currently assigned to this section are: Kansas Plant Pest Act; Kansas Apiary Inspection Act; Kansas Noxious Weed Law; Kansas Black Stem Rust Law; and Kansas Tree and Shrub Law.

PUBLIC SERVICE EXECUTIVE III (#K0042140)

This position is assistant to the Director of Laboratories. Helps to plan, organize and direct the development and implementation of all analytical programs contained in the Division.

CHIEF ENGINEER/DIRECTOR (DWR) (#K0075641)

This position is responsible by statute, for the administration and enforcement of laws related to the conservation management, use and control of water in Kansas for all types of beneficial uses. These laws involve major regulatory duties and responsibilities.

PUBLIC SERVICE EXECUTIVE II/DWR (#K0065760)

Manages, oversees and coordinates the day to day administrative operations of the Division, which include customer service, review and evaluate programs and procedures used to carry out the Division's functions.

PROFESSIONAL CIVIL ENGINEER III/DWR (#K0052236)

Exhibits a thorough working knowledge and understanding of relevant statutes, rules and regulations, and division policies and procedures, hydrology and water resources engineering to effectively manage the water appropriation program.

PROFESSIONAL CIVIL ENGINEER III/DWR (#K0046683)

Sets priority outcomes with section employees and team leaders to meet program goals. Exhibits a thorough working knowledge and understanding of relevant statutes, rules and regulations and division policies and procedures to effectively administer the division's Water Structures program.

PROFESSIONAL CIVIL ENGINEER III/DWR (#K0149272)

Develops priority outcomes with section's supervisors to meet program goals. Directly manages the interstate water issues team within the section, acting as team leader, managing the day-to-day assignments of team staff as they assist the Chief Engineer and others in the resolution of interstate water issues.

**DEPARTMENT OF AGRICULTURE
UNCLASSIFIED POSITIONS (35)**

TITLE

SECRETARY OF AGRICULTURE (#K0072225)

Directs and manages the department and supervises all program managers. This position has final decision making authority on all programs.

ASSISTANT SECRETARY OF AGRICULTURE (#K0184110)

Assists the Secretary of Agriculture in carrying out the functions of the agency.

ASSISTANT SECRETARY OF AGRICULTURE (#K0182733)

Assists the Secretary of Agriculture in carrying out the functions of the agency.

CHIEF ATTORNEY (#K0183603)

Works under the Secretary of Agriculture to enforce the laws of the agency.

PROGRAM MANAGER/VETERINARIAN (SPECIAL PROJECT) (#K00143152)

Oversees the Meat & Poultry Program to ensure that proper meat inspection procedures are being followed by staff employees and that all meat plants are in compliance with the Federal government.

DIRECTOR/DIVISION OF LABORATORIES (#K0202180)

Directs and supervises the work of the Division of Laboratories.

PROGRAM MANGER/PESTICIDE (#K0183602)

Manages the Pesticide section of the agency and enforces the laws pertaining to same.

**ATTORNEY C (#K0066201); ATTORNEY B (#K007084); ATTORNEY B (#K0143014);
ATTORNEY A (#K0203239)**

These positions work under the Chief Counsel to enforce all rules and regulations for the agency.

ATTORNEY B (SPECIAL PROJECT) (#K0161190)

This position provides legal advice to Kansas Commissioners on the Republican River Compact. This project will sunset in year 2003.

LAW CLERK (#K0203403)

Does research for the attorneys of the agency.

VETERINARIAN (SPECIAL PROJECT) (#K0205930); VETERINARIAN (SPECIAL PROJECT) (#K0205931); VETERINARIAN (SPECIAL PROJECT) (#K0205933); VETERINARIAN (SPECIAL PROJECT) (#K0205932)

These four positions explain and advise Agricultural Inspector I's on proper meat inspection procedures including proper ante mortem and post mortem disposition, sanitation inspection, proper procedure for handling potentially hazardous foods, control of inedible and condemned materials, etc.

ADMINISTRATIVE ASSISTANT (SPECIAL PROJECT) (#K0206034)

Assist the Program Manager of the Meat and Poultry Program, by doing research and reports, as well as any other special project.

ENVIRONMENTAL SCIENTIST III (SPECIAL PROJECT) (#K016885)

This position serves as the project manager for the subbasin water resources management teams for headquarters and field offices. This project will sunset in year 2003.

ENGINEERING ASSOCIATE III (SPECIAL PROJECT) (#K0161189); ENGINEERING ASSOCIATE III (SPECIAL PROJECT) (#K0168886); ENVIRONMENTAL SCIENTIST III (SPECIAL PROJECT) (#K0203264); ENVIRONMENTAL SCIENTIST II (SPECIAL PROJECT) (#K016887); ENVIRONMENTAL SCIENTIST II (SPECIAL PROJECT) (#K0175515); ENVIRONMENTAL SCIENTIST II (SPECIAL PROJECT) (#K0175511); ENVIRONMENTAL SCIENTIST II (SPECIAL PROJECT) (#K0202348); ENVIRONMENTAL SCIENTIST II (SPECIAL PROJECT) (#K0168888); ENVIRONMENTAL SCIENTIST II (SPECIAL PROJECT) (#K0175513); ENGINEERING TECHNICIAN (SPECIAL PROJECT) (#K0162142); SECRETARY II (SPECIAL PROJECT) (#K0161191)

These are support positions for the subbasin water resources management teams. This project will sunset in year 2003.

AGRICULTURAL INSPECTOR II (SPECIAL PROJECT) (#K0203160); AGRICULTURAL INSPECTOR II (SPECIAL PROJECT) (#K0203161); AGRICULTURAL INSPECTOR II (SPECIAL PROJECT) (#K0203159)

These three positions inspect retail motor-fuel dispensers for compliance with NIST Handbook 44; specifications and tolerances.

CASE REVIEW OFFICER (SPECIAL PROJECT) (#K0162140)

Gives legal advice and works with the pesticide enforcement under the program manager.

OFFICE ASSISTANT (SPECIAL PROJECT) (#K0176856)

Clerical support for the pesticide enforcement section.



Christina M. Wilson
Director of Member Services
4210 Wam-Teau Drive
Wamego, Kansas 66547
913-456-9705 phone & fax

January 25, 1999

To: Members of the Senate Committee on Agriculture

Re: S.B. 64

Dear Senators:

We are writing in support of S.B. 64, which provides for placing management positions within the Kansas Department of Agriculture in the unclassified service. KSIA is the state seed association in Kansas, and we are unable to be present for the hearing because our annual meeting is being held this week in Manhattan.

KSIA has the highest regard for the individuals we work with at the Department of Agriculture, such as Fred Gatlin, the administrator for the Kansas Seed Law and other laws in the Agricultural Commodities Assurance Program. We are pleased that the proposed bill does not affect these current managers.

However, as a general rule, we believe it is best to provide for policy level officials who are unclassified. The people of the state elect the governor who in turn appoints the secretary of agriculture. In order to be able to effectively carry out the governor's policies and philosophies for his administration, it is important that policy level personnel share the governor's and secretary's philosophies. They need to be able to speak for the administration and to aggressively work to implement the priorities and initiatives of the administration. For the secretary to effectively manage the agency, the policy personnel need to be held accountable to her. On balance, we believe such accountability is a positive thing and should be encouraged in state government.

We realize that in another administration, if we did not have the confidence in a future secretary which we do in the current one, that we might regret having good managers be unclassified and therefore replaced with managers who in our view might be less qualified or capable. We would like to be able to separate job performance from politics.

But we are willing to take that gamble, because - personalities aside - we believe it is wiser to provide for unclassified policy level personnel. This is really a basic tenet of our democratic system. We believe it is this way at the federal level and in most state agencies.

Thank you for your consideration.

Sincerely,

Chris Wilson
Director of Member Services

Senate Agriculture
1-26-99
Attachment 2



**League
of Kansas
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3912 (785) 354-9565 FAX (785) 354-4186

January 25, 1999

Senator Steve Morris, Chairman
Senate Committee on Agriculture
State Capitol, 143 N
Topeka, Kansas 66612

SUBJECT: League Concerns About Section 3 of SB 64

Dear Senator Morris:

I apologize that I won't be able to be present for the hearing on SB 64 on Tuesday, January 26, 1999. I will be participating in a meeting with representatives of the Environmental Protection Agency in Washington, D.C. which has become necessary as a result of changes in federal guidance on surface water quality which could affect the development of the new Kansas Surface Water Quality Standards by the Kansas Department of Health and Environment. As you will recall, there has been considerable controversy about the 1994 Surface Water Quality Standards, and we are still working to address many of those concerns.

Section 3 of SB 64 would place the Chief Engineer of the Division of Water Resources in the unclassified service subject to removal by the Secretary of Agriculture. I am currently in the process of collecting information on this particular portion of SB 64 and its possible impacts on the cities of Kansas. I would advise you, however, that in my experience many city officials across Kansas have taken great comfort over the years from the fact that the Chief Engineer has been allowed, we believe, to operate with a high degree of independence in making decisions under the Kansas Water Appropriation Act and related statutes. In fact, it is that independence which has been important to us in view of the Division being part of the Department of Agriculture.

Section 3 of SB 64 raises important questions about whether or not that independence may be affected. I also fully understand that it also may address other issues connected with the administration with the Division of Water Resources that deserve your consideration.

At this time, the League does not have a specific position on SB 64, but I did want to advise you of the concerns we have about Section 3. We will continue to study this matter and will advise you as soon as possible about any specific position we may have.

Sincerely,

Christopher McKenzie
Executive Director

cc: Secretary Allie Devine, Kansas Department of Agriculture

*Senate Agriculture
1-26-99
Attachment 3*