

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on January 31, 2001, in Room 423-S of the Capitol.

All members were present except: Representative Faber - excused  
Representative Flora - excused

Committee staff present: Raney Gilliland, Legislative Research Department  
Gordon Self, Revisor of Statutes Office  
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:  
Jamie Clover Adams, Secretary, Kansas Department of Agriculture  
Greg Foley, Assistant Secretary, Kansas Department of Agriculture

Others attending: See attached list

Copies of the Kansas Dairy Marketing Advisory Board's 2001 Annual Report to the House and Senate Agriculture Committees were distributed. (Attachment 1)

Representative Showalter requested introduction of a committee bill to protect agricultural landowners from liability when individuals come onto their property and steal anhydrous ammonia. As there were no objections, a committee bill will be introduced.

Representative Thimesch requested introduction of two committee bills. His first proposal would establish the Agricultural Opportunities in Value Added Partnership Act, similar to legislation passed in Nebraska last year. His second request would create a position of judge or arbitrator to settle disputes between state inspectors and small meat processing plant owners. As there were no objections, these two committee bills will be introduced.

**Hearing on HB 2101 - Creating the plant pest emergency response fund.**

Chairman Johnson opened the hearing on **HB 2101**. Raney Gilliland, Legislative Research Department, explained that this bill would establish a Plant Pest Emergency Response Fund within the Kansas Department of Agriculture to be used in an emergency to mitigate pests entering the state. Revenue in the fund would be generated from a \$5.00 annual fee collected from nursery dealers and nursery certificate holders.

Jamie Clover Adams, Secretary, Kansas Department of Revenue, testified that establishing a Plant Pest Emergency Response Fund as outlined in **HB 2101** would allow the Department to more effectively fulfill its responsibility to protect the state's natural and cultivated resources from plant pests by providing the capability to rapidly respond to the introduction of harmful plant pests -- including insects, plant disease, and weeds. She noted that the movement of nursery stock shipped in commerce is one of the highest risk pathways of new pest introduction into the state. She reported that currently these issues are addressed on an ad hoc basis depending on savings and year-end fund availability, as well as participation in the Interstate Pest Control Compact. The Department estimates that passage of this proposal would generate an additional \$7,000 in annual revenue. (Attachment2).

There being no other conferees, the Chairman closed the hearing on **HB2101**.

## CONTINUATION SHEET

### Hearing on HB 2102 - Unlawful acts and annual testing requirements involving weighing and measuring devices.

Chairman Johnson opened the hearing on **HB 2102** that would amend the Weights and Measures Act. Raney Gilliland explained that this bill would exempt stationary volumetric provers, which are used to calibrate large petroleum gas meters, from the mandatory annual testing and inspection requirement for weighting and measuring devices. The bill would also remove the annual requirement for the inspection and testing of a dispensing device. These devices primarily include automotive gas pumps. Under current law, all volumetric provers and dispensing devices in commercial use are to be tested and inspected annually.

Greg Foley, Assistant Secretary, Kansas Department of Agriculture, appeared in support of **HB 2102** and outlined four changes in the Weights and Measures Act the Department believes would allow for more efficient, effective administration of the program:

- 1) Standardize repair time for all measuring devices;
- 2) Provide necessary statutory authority for the program to effectively implement the law;
- 3) Exempt from annual testing by the state metrology laboratory volumetric provers which have a capacity that exceeds that of the state metrology laboratory or a design that prohibits testing; and
- 4) Remove the requirement for inspection of gas pumps every 12 calendar months.

Mr. Foley indicated that these changes would have no fiscal impact on the regulated industry or the Kansas Department of Agriculture. (Attachment 3)

As there were no other conferees, the Chairman closed the hearing on **HB 2102**.

The meeting adjourned at 4:52 p.m. The next meeting is scheduled for February 5, 2001.

# HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: JANUARY 31, 2001

NAME	REPRESENTING
Audrey Shaw	Kearney Law Office
Joe Luben	HS Co-op Council
Justin Holts	Ks Coop Council
Greg Polley	KDA
Constantine Corsora di	"
Tom Sam	"
Jimmie Clover Adams	KDA
Bob Brown	M.L.A.
Lee Eisenhower	PMAR
Woody Moses	KAPA
Wendy Harris	KAPA
Todd Johnson	KLA
Cleta Penyer	
Chris Wilson	KS Ag Aviation Assn
Bill Suller	Kansas Farm Bureau
STEVE KARRICK	ATTORNEY GENERAL

STATE OF KANSAS

BILL GRAVES, GOVERNOR  
Jamie Clover Adams, Secretary of Agriculture  
109 SW 9th Street  
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FAX: (785) 296-8389



KANSAS DEPARTMENT OF AGRICULTURE

February 1, 2001

Senator Derek Schmidt, Chair  
Senate Agriculture Committee  
Room 143 North  
State Capitol  
Topeka, KS 66612-1504

Representative Dan Johnson, Chair ✓  
House Agriculture Committee  
Room 426 South  
State Capitol  
Topeka, KS 66612-1504

Re: 2001 Report of the Kansas Dairy Marketing Advisory Board

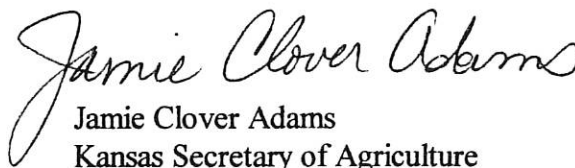
Dear Senator Schmidt and Representative Johnson:

Attached for your consideration and that of the agriculture committee you chair is the 2001 report of the Kansas Dairy Marketing Advisory Board. Several issues continue to face Kansas dairy producers. They include:

- Low dairy prices and their impact on this important segment of the Kansas economy.
- Congressional action on the Southern Dairy Compact, which Kansas could join.
- Possible impacts of energy prices and shortages on dairy producers in California and Kansas.

Please contact me at 296-3558 if you require any additional information concerning the Kansas Dairy Marketing Advisory Board.

Sincerely,

  
Jamie Clover Adams  
Kansas Secretary of Agriculture

House Agriculture Committee  
January 31, 2001  
Attachment 1

STATE OF KANSAS

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KANSAS DEPARTMENT OF AGRICULTURE

**Report of the Kansas Dairy Marketing Advisory Board**

**Presented to the Senate and House Agriculture Committees of the 2001 Kansas Legislature**

**February 1, 2001**

The Kansas Legislature created a Dairy Marketing Advisory Board in 1994. This board reports annually to the Senate and House agriculture committees.

Members of the board are designated as two representatives of dairy producers, one representative of dairy processors, one consumer, and the Secretary of Agriculture or his or her designee. Currently serving are Dennis Metz, a dairy producer from Wellington; Elaine Sauerwein, consumer representative from Newton; and Kansas Secretary of Agriculture Jamie Clover Adams. Two positions, one representing producers and one representing processors, are not filled.

**The Kansas Dairy Industry**

As with all agriculture, changes and challenges continue to face the dairy industry.

The face of the industry also has changed. On January 1, 1994, the Kansas Department of Agriculture had 940 Grade A dairies and 153 manufacturing grade dairies permitted. On the same date of 2001, there were 588 permitted Grade A dairies and 48 manufacturing grade dairies permitted. Total milk production in Kansas continues to increase, with our ranking among the states in total milk produced rising from 27 to 26<sup>th</sup> between 1999 and 2000. The value of milk produced in the state approaches \$2 million annually.

The trend of declining numbers of dairy farms producing more milk likely will continue in Kansas and nationally. According to the National Agricultural Statistics Service, the number of 1-200 head dairies is declining at an ever-increasing rate. The number of dairies with more than 200 head is increasing and significant increases in the 500 and over head farms are being seen.

The state's Grade A fluid milk and Grade A milk product processing capacity continues at last year's level, but non-Grade A dairy product processing capacity (such as cheese, butter and

powdered milk production) has decreased as small, older processing plant operations cease.

As a result of increasing raw milk production and declining overall processing capacity, a large portion of Kansas-produced milk is being transported out of state for processing.

### **Southern Dairy Interstate Compact**

In 1999 the Kansas Legislature took action that allows the Kansas Secretary of Agriculture to seek to enter into a southern interstate dairy compact if it should be determined this would benefit Kansas producers.

The U.S. Supreme Court has upheld the validity of the Northeast Interstate Dairy Compact; however, it is scheduled to sunset September 30, 2001. Since July 1997, the Northeast Interstate Dairy Compact has paid out more than \$130 million to farmers. Retail prices in that region are in line with and more stable than equivalent prices in areas without a compact. Work at the federal level to extend the Northeast Compact and enact the Southern Interstate Dairy Compact continues.

The Kansas Dairy Association supports the Northeast Compact and would support the establishment of a Southern Interstate Compact.

### **Current Prices and Federal Assistance**

The year 2000 was one of low milk prices in Kansas and across the country. For November, the Statistical Uniform Price for the Central Milk Marketing Order was \$10.85 per hundredweight. Many producers believe their break-even price to be in the \$13 to \$15 per hundredweight range.

Federal Milk Marketing Orders are intended to stabilize market conditions, benefit producers and consumers by establishing and maintaining orderly marketing conditions, and assure consumers of adequate supplies of pure and wholesome milk at all times. Producers supplying milk for each of the 11 Federal milk markets have approved amending the current Class III and Class IV pricing formulas under Federal milk orders.

Beginning January 1, 2001, USDA implemented the changes in the Federal Milk Marketing Order system affecting Class III and Class IV pricing formulas. The new formula adjusts the make allowance for Class III (cheese and whey) and adjusts the relative value of butterfat and protein used to make cheese. It adjusts upward the Class IV (butter and powder) make allowances and changes the yield factor for nonfat dry milk. Net results to producers will depend on the future market prices of cheese butter and nonfat dry milk, but are expected to result in slightly higher producer pay prices.

### **Suggestions to the Legislature**

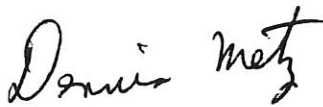
The Kansas Dairy Marketing Advisory Board respectfully recommends to the Kansas Legislature

that it continue to monitor these issues.

- Low prices to dairy farmers and impact of volatile prices on this important segment of Kansas agriculture.
- Congressional action on the Southern Dairy Compact.
- Effects and impacts of volatility in the California dairy industry on prices and production in the rest of the nation.

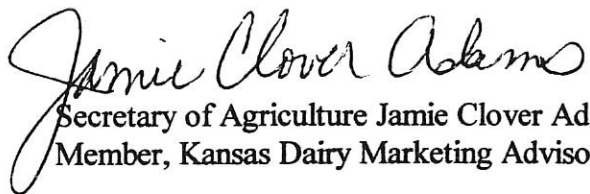
The Dairy Marketing Advisory Board stands ready to appear before the Senate and House Agricultural Committees, if appropriate, to discuss these ongoing issues and any recent developments.

Sincerely Submitted,



Dennis Metz  
Member, Kansas Dairy Marketing Advisory Board

Elaine Sauerwein  
Member, Kansas Dairy Marketing Advisory Board



Secretary of Agriculture Jamie Clover Adams  
Member, Kansas Dairy Marketing Advisory Board

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The Dairy Marketing Advisory Board stands ready to appear before the Senate and House Agricultural Committees, if appropriate, to discuss these ongoing issues and any recent developments.

Sincerely Submitted,

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Member, Kansas Dairy Marketing Advisory Board



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KANSAS DEPARTMENT OF AGRICULTURE

House Agriculture Committee

H.B. 2101

January 31, 2001

Jamie Clover Adams, Secretary

Chairman Johnson and members of the House Agriculture Committee, I am Jamie Clover Adams, Kansas Secretary of Agriculture. I appear today in support of House Bill 2101. You will recall the Kansas Department of Agriculture (KDA) requested introduction of this bill.

Rationale

Establishing a plant pest emergency response fund will allow KDA through the plant pest and weed control program to more effectively fulfill its responsibility to protect the state's natural and cultivated resources from plant pests by providing the capability to rapidly respond to the introduction of harmful plant pests – insects, plant disease and weeds -- in the state.

The movement of nursery stock shipped in commerce is one of the highest risk pathways of new pest introduction. Kansas is a net importer of nursery stock and each year imports plant materials from over 30 states to satisfy consumer demand. Each state supplying nursery stock to the Kansas nursery industry has unique pest problems that do not occur in Kansas. Regulatory pest exclusion authority and techniques provided in the Kansas Plant Pest Act, such as quarantines, host plant inspection and pest detection, are utilized to direct activities toward regulation of high-risk pests. However, the department's ability to mitigate new pest introductions is limited. Establishing an emergency response fund will allow the department to more quickly mitigate pest introductions that occur.

Rapid mitigation will reduce the potential harm to Kansas agriculture, horticulture and the environment by reducing the amount of pesticides needed to control a newly introduced pest, should it become established and widely distributed in the state. Mitigation decisions will be risk-based following established national standards to ensure the most efficient and effective use of funds provided for this purpose.

Currently, these issues are addressed on an ad hoc basis depending on savings and year-end fund availability, as well as our participation in the Interstate Pest Control Compact.<sup>1</sup>

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<sup>1</sup>Kansas is a member of the Interstate Pest Control Compact. This organization remains a potential source for pest mitigation funds. However, not all plant pest control applications are approved, and the length of time to prepare and process an application seldom takes less than four to six months.

However, with the rapidly increasing amount of nursery stock entering the state, and therefore increased risk, a more methodical approach should be used. No federal funds are available for this purpose.

### High Risk Pests

KDA is currently using program and agency savings to fund efforts at 11 sites in three northwest Kansas counties infested with **pine pitch moth**. Two infested sites in Thomas County have been eradicated. The moth larvae bore into the trunks of pine trees and kill them. If left unchecked, this moth could be devastating to wind breaks that took years to establish.

KDA has been addressing a **Grecian foxglove** infestation for approximately five years at a site in Wilson County. Infested acreage has been reduced from approximately 20 acres to three acres. Plant density is also reduced. This plant is a threat to livestock production as it produces high levels of digitalis, a cardiac stimulant. One cow and one sheep on the property have been killed and the landowner had to be hospitalized after trying to control the plant. KDA received \$12,000 in Interstate Pest Control Compact (IPCC) funds for this project in 1998, but the funds will be depleted in 2001. While work will remain beyond this year, it is unlikely the IPCC will provide additional funds.

Another pest KDA is watching is the **oriental beetle**. It attacks the roots of many species of trees and shrubs. We have surveyed for this pest in recent years and it is not known to be present in Kansas. However, it is present in states in the eastern United States from which nursery stock is shipped to Kansas. If it were to become established in Kansas, it would be difficult to control and would cause losses in nurseries and landscapes.

### Financial Impact

H.B. 2101 establishes a surcharge of \$5 for each nursery dealer license and certificate of nursery inspection issued by KDA to generate emergency response funds. The current annual fees for a nursery dealer license and a certificate of nursery inspection are \$40 and \$30, respectively. The surcharge would generate approximately \$7,000 annually. H.B. 2101 also authorizes the Secretary of Agriculture to reduce the fee whenever, in his or her discretion the fund has sufficient revenue to pay the expenses for potential pest mitigation. It is my intent to suspend the surcharge when the fund accumulates \$15,000 and to reinstate it when the balance is at \$5000. We are aware of two other states who have similar funds. Wisconsin, for example has implemented surcharges to combat the gypsy moth and Oregon has established a surcharge to fund research on nursery stock pest control techniques.

### Conclusion

KDA currently has no ability to methodically address the introduction of high-risk pests in Kansas. To date these issues have been funded with program savings and agency year-end savings. Under current and foreseeable future budget scenarios, it is unreasonable and irresponsible to continue to rely on savings to fund these important prevention activities.

KDA asks for your favorable consideration of H.B. 2101. I would answer questions at the appropriate time.

STATE OF KANSAS

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KANSAS DEPARTMENT OF AGRICULTURE

**House Agriculture Committee**

**January 31, 2001**

**Testimony Regarding HB 2102**

**Greg A. Foley, Assistant Secretary of Agriculture**

Good morning Chairman Johnson and members of the committee. I am Greg Foley, Assistant Secretary of Agriculture, and I am here to explain four primary changes that will improve and clarify the Kansas Weights and Measures Law.

The Kansas Weights and Measures Law received a major overhaul in 1996. Since that time, day-to-day operation has brought to light several areas of the law that need modified to allow for more efficient, effective administration of the program. House Bill 2102 proposes to modify four specific statutes to address implementation issues within the weights and measures program. These statutes are:

- K.S.A. 83-145 Standardizes repair time for all measuring devices;
- K.S.A. 83-219 Provides necessary statutory authority for the program to effectively implement the law;
- K.S.A. 83-304 Exempts from annual testing by the state metrology laboratory volumetric provers which have a capacity that exceeds that of the state metrology laboratory, or a design (e.g., stationary provers, compact provers) that prohibits testing;
- K.S.A. 83-404 Removes the requirement for inspection of gas pumps every 12 calendar months.

**Fiscal Impact**

These changes will not have a fiscal impact on the regulated industry or the Kansas Department of Agriculture.

**Policy Implications**

**K.S.A. 83-145** Currently, for all devices except scales or meters used to measure liquid petroleum gas (LPG), the weights and measures program uses professional judgement in cases where devices are inaccurate. Depending on the circumstances, an immediate stop of a scale or

House Agriculture Committee  
January 31, 2001  
Attachment 3

meter may create a hardship on a business or a consumer. Consequently, it may be prudent to allow a period of time for repairs instead of immediately removing an inaccurate device from service. Most inaccuracies will not significantly impact an individual sale, or be detectable by the consumer. In determining whether or not to remove a device (other than one used to measure LPG) from service, the program considers the harm of allowing the device to remain in service versus the harm of immediately removing it. However, current law does not allow the program to consider these factors for LPG measuring devices — it must be removed from service. The proposed amendment would remove this requirement and allow the program to treat devices used to measure LPG the same as all other devices. The weights and measures program will retain the authority to remove inaccurate devices from commercial service under K.S.A. 83-215, 83-216 and 83-219.

**K.S.A. 83-219** There are 25 unlawful acts contained in this statute, 19 of which do not require using a commercial weighing or measuring device. For example, it is unlawful to “misrepresent or represent in a manner calculated or tending to mislead or deceive an actual or prospective purchaser, the price of an item offered, exposed or advertised for sale at retail.” Owning a commercial weighing or measuring device is not required for an individual or organization to misrepresent the price of an item. However, as it is currently written, it is unlawful only for an owner of a weighing or measuring device. The statute could create problems if an individual is using a commercial weighing or measuring device, but does not own it. The proposed amendment will allow the agency to take action against any entity that has committed unlawful acts, including businesses that rent or lease weighing or measuring devices. KDA uses civil penalties only as a tool to gain compliance.

**K.S.A. 83-304** The current statute requires all test equipment used by service companies to have been tested within the last 365 days. Meters at oil terminals require the use of large capacity provers or small volume compact provers. Large capacity provers generally are stationary and cannot be transported to the KDA metrology laboratory for testing. Small volume compact provers are mobile, but their design requires special test equipment which KDA’s metrology laboratory does not have. Consequently, these provers are not tested annually by KDA’s metrology laboratory and, thus, are not to be used to calibrate terminal meters. The provers have been tested by a private company that has mobile equipment. The private company is not certified by the National Institute of Standards and Technology (as required by statute) and they do not follow national procedures for testing this type of equipment. However, their test should be reliable, and it is certainly better than no test. The proposed amendment would not change the current practice, but the meter owner/operators would no longer be in violation of the law.

**K.S.A. 83-404** The purpose of this amendment is to remove the annual test requirement by striking the provision that says the secretary is to remove from service devices not tested within the last 12 calendar months. Implementing the existing law was possible when gas pumps



were required to be tested annually by licensed service companies. However, KDA is currently responsible for conducting the annual tests, so the requirement creates problems. KDA has three state inspectors and three contract inspectors statewide to address pump inspections and to investigate consumer complaints. With existing staff and budget constraints, it is not possible to schedule and complete on an annual basis tests on approximately 24,000 gas pumps. This means that some gas pumps will not be tested within 12 calendar months of the last test, so they will be in violation of the statute and should be subject to removal from service by KDA.

While the weights and measures program strives to test every gas pump annually, it is not practical to test each gas pump within 12 calendar months of their last test. Consumer complaints, special projects and vacancies challenge testing schedules and cause gas pumps to go beyond 12 months between tests. To guarantee that each pump is tested every 12 months would require scheduled or methodical inspections that may not reveal some operating problems that cripple the checks and balances of the system. Removing the reference to annual test will not affect the high compliance rate of gas pumps, but it will remove the annual testing compliance issue for gas pump owners.

The compliance rate for gas pumps has improved from 88 percent in FY1997 to 95 percent in FY2000. In FY 2000, the weights and measures program tested 85 percent of the approximate 24,000 gas pumps statewide. We hope to test at least 90 percent of the pumps in FY 2001. We attribute improved compliance rates to sound program management and inspections.

Consumer complaints are our highest priority, although they disrupt the typical inspection routine. We received 100 consumer complaints in FY2000. We do not have backup coverage in any of the six districts. Therefore, if an employee resigns or is dismissed, there is a period of time when inspections are not completed. The only remedy is to increase the number of staff.

The Kansas Department of Agriculture respectfully requests passage of HB 2102 to help us implement an efficient, responsible regulatory program.