

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on March 6, 2001 in Room 231-N of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Kansas Legislative Research Department
Mary Torrence, Revisor of Statute's Office
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Senator Tim Huelskamp
Mike Beam, Kansas Livestock Association, 6031 SW 37th,
Topeka, KS 66614-5129
Jamie Clover Adams, Secretary, Kansas Department of
Agriculture, 109 SW 9th Street, Topeka, KS 66612-1280
David L. Pope, Chief Engineer, Division of Water
Resources, Kansas Department of Agriculture, 109 SW 9th
Street, Topeka, KS 66612-1280
Leslie J. Kaufman, Division, KS Farm Bureau, 2627 KFB
Plaza, Manhattan, KS 66505-8508
Chris Wilson, SW Kansas Groundwater Management
District #3, 409 Campus Dr. Ste 106, Garden City, KS 67846
Steve Williams, Secretary, KS Department of Wildlife and
Parks, 900 SW Jackson, Ste 502, Topeka, KS 66612-1220
Ron Klataske, Executive Director, Audubon of Kansas, PO
Box 156, Manhattan, KS 66505
Art Brown, Mid America Lumbermen, 638 W. 39th Street,
PO Box 419264, Kansas City, MO 64141-6264
Mary Jane Stattelmann, Administrator, KS Agricultural
Remediation Board, 816 SW Tyler, Topeka, KS 66612
Doug Wareham, KS Fertilizer & Chemical Association, 816
SW Tyler, Topeka, KS 66612
Clint Riley, Dept. Attorney, KS Department of Wildlife and
Parks, 900 SW Jackson, Ste 502, Topeka, KS 66612-1220
Bill Gill, KS Director, US Fish and Wildlife Service, 315
Houston Street, Ste E, Manhattan, KS 66502
Alan J. Pollom, Director, The Nature Conservancy, 700 SW
Jackson, Ste 804, Topeka, KS 66603-3758
Charles D. Lee, Extension Specialist, Wildlife K-State
Research and Extension, K-State University, Manhattan, KS
66506

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She assigned a sub-committee to study **HB2373** and **Substitute for SB204**; Rep. Joann Freeborn, Chair; Rep. Jeff Peterson; Rep. Bill Light; Rep. Vaughn Flora; and Rep. Laura McClure.

The Chairperson Recognized Rep. Don Myers. He submitted copies of the Sub-Committee report on **SB37 - An act prohibiting sales of certain motor-vehicle fuel and providing penalties for violations**. He reviewed the changes that had been made. Two amendments had been made to the bill, (1) On page one, section one, (c), line 23, "motor vehicle fuel retailer" had been changed to "distributor". (2) On page 2, lines 15 through 18, (h), had been stricken. (See attachment 1) Questions and discussion followed.

Rep. Sharon Schwartz made a motion the sub-committee report be adopted. Rep. Becky Hutchins seconded the motion. Motion carried.

Rep. Vaughn Flora made a motion the bill be passed favorably as amended. Rep. Don Myers seconded the motion. Motion carried. Rep. Don Myers will carry the bill on the House Floor.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol
at 3:30 p.m. on March 6, 2001.

The Chairperson opened public hearing on SB237.

SB237: An act supplementing the Kansas water appropriation act; providing for certain accounts for deposit of certain water under a water right; providing for term permits for use of such water, less a conservation element.

Chairperson Freeborn welcomed Senator Tim Huelskamp to the committee. Senator Huelskamp addressed the committee in support of the bill, which he introduced and believes is different from some of the ideas that have been floated to address concerns about the declining groundwater aquifers. It provides a clear policy direction, elimination of the state's "use it or lose it" policy. Currently policy dictates that, at the end of each year, any water not used by a water-right holder is forever lost to that user. Thus, an individual water right holder has little or no direct incentive to conserve water, there is no possibility to save that water for later use. No direct incentive to conserve water, no flexibility year to year. This bill, if implemented, will change this by allowing multi-year water appropriations to provide a direct incentive to conserve water in anticipation of future needs. (1) This bill would allow water right holders, at their option only, to deposit their water right in a multi-year flex account. (2) The water user would then be issued a term permit that would allow maximum time flexibility in water usage over the next five years and, (3) In exchange, the user is permitted to use only 90% of his historical water usage during that time period, thus guaranteeing a 10% conservation element. (See attachment 2)

Mike Beam, Kansas Livestock Association, was welcomed to the committee. He testified in support of the bill. KLA believes this bill would allow any groundwater right holder to establish a "flex account" and deposit, in advance, water from a water right for any five consecutive calendar years. The amount of water that shall be deposited in the account shall be 90% of the amount of the holder's "base average usage", times five. Base average usage means the average amount of water actually used during calendar years 1998, 1999, and 2000. Division of Water Resources would provide term permits to groundwater right holders who have established flex accounts. The permits would authorize the use of water in a flex account at any time during the five consecutive calendar years without annual limits on usage. (See attachment 3)

Jamie Clover Adams, Secretary of the Department of Agriculture, was welcomed to the committee. The Secretary made comments in support of the bill and supported the testimony of David Pope, Chief Engineer, Division of Water Resources, Department of Agriculture. She believes the Kansas water resource is a mature resource and as such, requires a different set of regulatory tools than were necessary fifty years ago. We need to look for new and innovative ways to give flexibility to individual water right holders while still providing adequate administrative control over the appropriation of water to prevent injury to established uses and the underlying source of water supply. She believes this bill, with the modifications outlined in David Pope's testimony meets this criteria and deserves the committee's careful consideration. (See attachment 4)

David Pope, Chief Engineer, Division of Water Resources, Department of Agriculture, was welcomed to the committee. Mr. Pope testified in support of the bill and believes implementing this bill will affect the division of water resources and its duties relating to the administration of the Kansas Water Appropriation Act. This bill would allow a groundwater water right holder to establish a five year flex account subject to certain conditions. The amount of water that may be deposited into an account would be equal to 90% of five times the average annual amount of water used between 1998 through 2000. The 10% reduction in the amount of groundwater used is based on historical data and it is requested in exchange for the flexibility that allows an annual diversion amount to exceed what is currently authorized. The bill requires the chief engineer to issue term permits to authorize diversion of the water any time during the five year term of the permit. One positive aspect of the bill is the 10% reduction in water use it requires. He believes, however, that the three year base average usage calculated using data from 1998, 1999, and 2000 would not adequately characterize water use. He suggests using a 5 year average to calculate the base average usage and more accurately characterize water use. (See attachment 5, an amendment to the bill is attached.)

Leslie Kaufman, Associate Director, Public Policy Division, Kansas Farm Bureau, was welcomed to the committee. She addressed the committee in support of the bill. KFB believes this authorizes any holder of a groundwater water right the opportunity to establish a flex account where the holder may deposit, in advance, water from such water right for any five consecutive calendar years. The Chief Engineer of the

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol
at 3:30 p.m. on March 6, 2001.

Division of Water Resources at the Kansas Department of Agriculture shall provide for the issuance of term permits to holders of groundwater water rights who have established flex accounts and authorize the use of water in a flex account at any time during the five consecutive calendar years without annual limits on such use. This bill is designed to conserve water while allowing irrigators more flexibility in managing their water right. Kansas Farm Bureau respectfully encourages the committee to recommend the bill favorable for passage and advance the measure to the full Senate. (See attachment 6)

Chris Wilson, Legislative Liaison for Groundwater Management District #3, was welcomed to the committee. She testified in support of the bill and supports the effort to bring additional flexibility to water right holders and encourage water conservation. This bill would allow water users to hold water appropriations in reserve for greatest times of need, and not feel they have to "use it or lose it". Potential benefits of this approach would include: (1) Conservation benefits would apply not just to irrigation. (2) Would allow for more efficient use of water in times of greater demand. (3) Allows for drought preparedness. (4) Creates the opportunity to provide amnesty for illegal over pumping that may have caused people to become victims of circumstance. (5) Allows senior water right holders to compensate for problems that may have resulted from impairment by junior rights. (6) May help buy time while addressing "zero depletion." (See attachment 7) Questions and discussion followed.

There were no opponents to the bill. The Chairperson closed the hearing on **SB237**. She opened the hearing on **SB147**.

SB147: An act concerning wildlife and parks; relating to certain fees.

Chairperson Freeborn welcomed Steve Williams, Secretary of the Kansas Department of Wildlife and Parks, to the committee. Secretary Williams testified in support of the bill and asked for consideration to redefine selected fee ranges. Since 1996, the department has provided the public with numerous innovative programs and services, which include: Walk-in Hunting Areas program; Fish Impoundment and Stream Habitat program; Shooting range development grants to communities; Community lake assistance grants to communities; State fishing lake dam repairs; Incentive-based upland bird habitat enhancement projects on private land; ADA renovation work at state fishing lakes and wildlife areas; and Motor boat access facilities. In addition to these new programs, the department has experienced increased salaries, wages, benefits, operations, maintenance, and capital outlay expenses. The Wildlife and Parks Commission and department ask for the committee's help in addressing this financial concern. (See attachment 8)

Ron Klataske, Audubon of Kansas was welcomed to the committee. He testified in support of the bill. He believes the economies of communities throughout the state benefit from the recreation associated with hunting, fishing, boating, wildlife watching and other activities. Wildlife and other natural resources, and the uses of these resources, require professional personnel and management at the state level. In order to keep pace with the challenges of changing circumstances and to keep financial resources within the framework of inflationary factors, the Kansas Department of Wildlife and Parks, under the guidance of the Commission, need to have the ability to modestly adjust the fee structure as outlined in this bill. (See attachment 9) Questions and discussion followed.

There were no opponents to the bill. The Chairperson closed the hearing on **SB147** and asked if the committee wished to take action.

Rep. Tom Sloan made a motion to reinstate language on page (1) lines 33 and 34 to "Resident: maximum \$250., Nonresident: maximum \$1000", and remove all reference to minimum through out the bill. Rep. Vaughn Flora seconded the motion. Motion carried. Discussion followed

Rep. Tom Sloan made a motion the bill be passed favorably as amended. Rep. Dan Johnson seconded the motion. Motion carried. Rep. Dan Johnson will carry the bill on the House Floor.

Chairperson Freeborn opened public hearing on **SB254**.

SB254: An act concerning environmental remediation; relating to fees of pesticide dealers.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol
at 3:30 p.m. on March 6, 2001.

The Chairperson welcomed Art Brown, Mid-America Lumbermens Association, to the committee. He testified as a proponent to the bill and believes the bill would allow a reduction of the fee paid to the Kansas Remediation fund that was created by the Legislature during the 2000 session to a segment of their smaller businesses. The bill would lower these fees from the current \$80.00 paid to the fund to a fee payment of \$5.00. This payment would be based on the first \$2500.00 of sales of such pesticides defined by current Kansas law. Sales beyond the \$2500.00 threshold would continue to pay the current \$100.00 fee. The \$20.00 pesticide license fee paid to the Kansas Department of Agriculture is not impacted by this change. Dealers, applicators and distributors as defined under current Kansas law all pay a scheduled fee to the Department of Agriculture to provide financial resources to the Kansas remediation fund. Farmers are exempted from paying a fee to this fund. (See attachment 10)

Mary Jane Stattelman, Administrator, Kansas Agriculture Remediation Board, was welcomed to the committee. The Remediation Board is supportive of the bill as drafted and think a number of the amendments that have been made will strengthen the law. As they have begun to work with the current law they discovered a few items that caused the Board concern and this bill addresses these concerns. However, the reality is they are not sure that they have discovered all of the clarifications that may need to be made so that the law functions in a reasonable and rational manner. Amendments to address concerns are included in the testimony. (See attachment 11)

Doug Wareham, Kansas Grain & Feed Association and Kansas Fertilizer & Chemical Association, was welcomed. Both KGFA and KFCA support the bill, which adjusts the annual assessment paid by small volume pesticide dealers to the Kansas Agricultural Remediation Fund. They support the amendments that were adopted that enable the Secretary of Agriculture to adopt rules and regulations concerning the collection of fees associated with the agricultural remediation program and specifically the provision that enables the Department to reimburse those businesses that have overpaid any fee. (See attachment 12)

Jamie Clover Adams, Secretary of the Kansas Department of Agriculture, was welcomed. She provided testimony in support of the bill which amends current environmental remediation law. As currently written, this bill will not have a fiscal impact on the Kansas Department of Agriculture because the proposed changes impact fees that are forwarded to the Kansas Remediation Board for administration. (See attachment 13)

There were no opponents to the bill. Questions and discussion followed. The Chairperson closed the hearing on **SB254**. She asked if the committee wished to take action.

Rep. Tom Sloan made a motion the bill be passed favorably. Rep. Becky Hutchins seconded the motion. Motion carried. Rep. Becky Hutchins will carry the bill on the House Floor.

Chairperson Freeborn opened the informational hearing on **HB2470**, which will be held over until Legislative Session 2002, for public hearing.

HB2470: An act concerning certain wildlife; relating to management and control.

The Chairperson welcomed Ron Klataske, Audubon of Kansas, to the committee. He testified in support of the bill and believes approval of the bill will be particularly valuable because of the determination by the US Fish and Wildlife Service that classified the black-tailed prairie dog as a candidate species, ("warranted but precluded" for designation as a threatened species) under the Federal Endangered Species Act. (See attachment 14)

Clint Riley, Department Attorney, Kansas Department Wildlife and Parks, was welcomed. He testified in support of the bill. This bill would amend certain laws addressing black-tailed prairie dogs. Although the bill explicitly allows anyone to voluntarily eliminate prairie dogs from their own land, the bill also establishes an alternative to extermination of the prairie dogs. Without evidence of positive efforts by the state to address prairie dog status, federal listing of the species becomes more likely. The department believes that legislation such as this bill is important for western Kansas landowners and for protection of our natural resources. (See attachment 15)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol
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Bill Gill, Kansas Director, US Fish and Wildlife Service, was welcomed. He provided testimony in support of the bill. In August of 1998 the US Fish and Wildlife Service received a petition from the National Wildlife Federation and others to list the black-tailed prairie dog as a threatened species under the Endangered Species Act. After a review of the information submitted with the petition and available information, FWS found on February 3, 2000 that there was sufficient information to warrant listing under the Endangered species Act, however, higher priority listing activities preclude it from being listed at this time. The FSW will review this finding on an annual basis until such time that the priority changes or threats are removed so that listing is no longer warranted. (See attachment 16)

Alan Pollom, Vice President and Kansas Director of The Nature Conservancy, was welcomed to the committee. He presented testimony in support of the bill as a representative of The Nature Conservancy and its 8,000 Kansas members. The Nature Conservancy is a non-profit conservation organization that operates the world's largest system of privately owned natural areas. Their status is perhaps unique among those parties appearing before the committee today because they are a large private landowner with prairie dogs occurring on various lands that they manage. They recognize that many land managers have historically considered prairie dogs a nuisance animal. The focus of their management, however, is the promotion of healthy populations of our native wildlife in their natural habitat. (See attachment 17)

Leslie Kaufman, Kansas Farm Bureau, was welcomed to the committee. She provided testimony on behalf KFB in support of the bill and believes this bill provides a starting point to take the discussions regarding prairie dog control before the people of Kansas and it contains several provisions they can lend conceptual support to. The bill does represent a significant departure from current, long-standing state policy. KFB encourages the legislature to hold the bill over until next session, allowing it to become a vehicle for debate "out in the county" during the 2001 interim. For years, the people of Kansas have waged war on the prairie dog. KFB encourages the legislature to give these same constituents time to adapt to the concept of management and control. (See attachment 18)

Written only testimony, in support of the bill, was submitted by Charles D. Lee, Extension Specialist, Wildlife K-State Research and Extension. (See attachment 19)

The Chairperson welcomed Mike Beam, Kansas Livestock Association. He testified in a neutral position to the bill. KLA intends to schedule several meetings in western Kansas this summer and fall to discuss the prospects for listing the prairie dog, learn more about the prairie dog survey conducted this spring, and analyze the bill. Kansas Department of Wildlife and Parks and US Fish and Wildlife Service officials have offered to participate in these meetings. It's obvious to KLA that many of their members located in prairie dog country are uneasy about this bill and any efforts to preserve and protect this species. Most ranchers who care for well managed grazing lands absolutely detest the presence of a creature that burrows holes in the prairie and eats the grass and plants right into the ground. (See attachment 20)

The Chairperson welcomed Bob Bolen, Supervisor, Wallace County Noxious Weed and Prairie Dog Control, to the committee. He testified in opposition to the bill and believes this bill is putting the cart before the horse. As of today, he does not think we have enough information to go forward with this bill. We do not have an exact number of infested acres in Kansas. Until we have these figures, we cannot propose legislation that is effective. Further, we need to keep counties in control of what's happening in their respective counties. The landowners who pay the taxes should have more input either for or against this bill. He thinks this bill needs a lot of work before it goes any further. (See attachment 21) Questions and discussion followed.

Chairperson Freeborn closed the informational hearing on **HB2470**.

The meeting adjourned at 6:15 p.m. The next meeting is scheduled for Thursday, March 8, 2001.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: March 6, 2001

NAME	REPRESENTING
Jenny Hutchins	Intern
Ron Appletoft	Water Dist No 1 of JoCo
Andy Shaw	PMCA
David L Pope	WDA
Jamie Clover Adams	KS Dept. of Agriculture
Dick Koerth	KDWP
STEVE WILLIAMS	KDWP
Clint Biley	KDWP
Mary Jane Stattelmaier	KS Ag Remediation Bd
John J. Peave	KS Ag Remediation Board
Snobh Keminger	HNS
Leslie Kaufman	Ks Farm Bureau
Kelcester	KS Dept. of Agriculture
Darcy Wareham	KGFA / KFCA
Bill Damm	M. C. A.
Len Peters	KPC
Margaret A. Fast	KS Water Office
Debra M. Ferrell	REAP
Shirley Allen	Botterberg Assoc.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: March 6, 2001

NAME	REPRESENTING
Tom Klein	City of Stockton
Bob Bolen	Wallace Co
Chuck Layman	KDHE
Joe Lieber	KS Co-op Council
Pom Klataske	Audubon of Kansas
Rylan Martin	KCCI
Ben Sherber	Intern Representative Hutchins
ALAN POLLOM	THE NATURE CONSERVANCY
Senator Tim Hudnut	
Chris Med	Burdette Loomis
Jini Kaup	City of Hays
Chris Wilson	Southwest KS GMD 3
Pat Lehman	GMD 4
Greg Krissch	KS Com Growers / KS Grain Storage Prod
William H. Gill	U.S. Fish + Wildlife Service, Manhattan, KS
Mike Beem	Ks. LVSTK. ASSN.

SENATE BILL No. 37

By Senator Corbin

1-16

House Environment
3-6-01
Attachment 1

10 AN ACT prohibiting sales of certain motor-vehicle fuel and providing
11 penalties for violations. , deliveries and importing

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. ~~(a) No person shall sell or offer for sale in Kansas any~~
15 ~~motor-vehicle fuel, as defined in K.S.A. 79-3401, and amendments~~
16 ~~thereto, containing methyl tertiary butyl ether (MTBE), except as pro-~~
17 ~~vided in this section.~~

18 ~~(b) On and after July 1, 2003, no motor-vehicle fuel delivered to any~~
19 ~~service station within Kansas shall contain MTBE in quantities greater~~
20 ~~than 0.5% by volume. On and after July 1, 2004, no motor-vehicle fuels~~
21 ~~delivered at the pump to any motor vehicle in Kansas shall contain MTBE~~
22 ~~in quantities greater than 0.5% by volume.~~

23 (c) On and after July 1, 2003, the ~~motor-vehicle fuel retailer~~ shall be
24 provided, at the time of delivery of motor-vehicle fuel, on an invoice, bill
25 of lading, shipping paper or other documentation, a declaration of the
26 MTBE content, by volume percent, in the motor-vehicle fuel delivered.

27 ~~(d) On and after July 1, 2002, a notice stating "THIS FUEL CON-~~
28 ~~TAINS MTBE" shall be displayed on each dispenser from which motor-~~
29 ~~vehicle fuel containing MTBE in excess of the detection limit of the~~
30 ~~approved test method is sold to the public. The letters on the notice shall~~
31 ~~be at least 1/2 inch in height and 1/16 inch stroke (width of type). The notice~~
32 ~~shall be conspicuously displayed on the upper 50% of the dispenser front~~
33 ~~panel in a position clear and conspicuous from the driver's position.~~

34 ~~(e) (d) Determination of the volume percentage of MTBE in motor-~~
35 ~~vehicle fuel shall be by one or more test methods approved by the sec-~~
36 ~~retary of agriculture.~~

37 ~~(f) (e) In no event shall the provisions of this section be interpreted~~
38 ~~to authorize quantities of MTBE in motor-vehicle fuels to exceed those~~
39 ~~specified in any applicable Kansas or federal statute.~~

40 ~~(g) (f) The secretary of health and environment or the director of the~~
41 ~~division of environment, upon a finding that a person knowingly and will-~~
42 ~~fully has violated this section, may impose a penalty not to exceed \$10,000~~
43 ~~which shall constitute an actual and substantial economic deterrent to the~~

(a) As used in this section, terms have the meanings provided by K.S.A. 79-3401, and amendments thereto.

(b) On and after July 1, 2004, no person shall sell or deliver to any distributor within Kansas or import into Kansas for sale in this state any motor-vehicle fuel containing methyl tertiary-butyl ether (MTBE) in quantities greater than 0.5% by volume.

distributor

1-2

1 violation for which it is assessed. In the case of a continuing violation,
 2 every day such violation continues shall be deemed a separate violation.
 3 No such penalty shall be imposed except after notice of violation and
 4 opportunity for hearing upon the written order of the secretary or the
 5 director of the division of environment issued to the person who com-
 6 mitted the violation. The order shall state the violation, the penalty to be
 7 imposed and the right to request a hearing thereon. The request for
 8 hearing shall be in writing, directed to the secretary and filed with the
 9 secretary within 15 days after service of the order. The hearings shall be
 10 conducted in accordance with the Kansas administrative procedure act.

11 (h) (g) Nothing in this section shall be construed to abridge, limit or
 12 otherwise impair the right of any person to damages or other relief on
 13 account of injury to persons or property and to maintain any action or
 14 other appropriate proceeding therefor.

15 (i) ~~(h) The provisions of this section shall not take effect until the~~
 16 ~~United States environmental protection agency grants a waiver allowing~~
 17 ~~the state of Kansas to control or prohibit the use of MFBEE in motor~~
 18 ~~vehicle fuels.]~~

— strike

19 Sec. 2. This act shall take effect and be in force from and after its
 20 publication in the statute book.



TOPEKA

SENATE CHAMBER

Committee Assignments

AGRICULTURE, VICE CHAIRMAN
 ELECTIONS & LOCAL GOVERNMENT
 INFORMATION TECH., VICE CHAIRMAN
 NATURAL RESOURCES
 REAPPORTIONMENT
 WAYS & MEANS

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 Senator, 38th District
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State Capitol-128-S
 Topeka, KS 66612-1504
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HOUSE ENVIRONMENT COMMITTEE

Testimony on Senate Bill 237: Flex Accounts
 Senator Tim Huelskamp

March 6, 2001

Madam Chairman and members of the House Environment Committee: It is a pleasure to testify this afternoon on SB 237.

The last few months have involved much discussion of water quantity issues. Beginning with the Governor's Task Force, a zero-depletion proposal, a two-pool and a three-pool approach, numerous ideas have been floated to address concerns about the declining groundwater aquifers. While these proposals have elicited much debate, they provide little policy direction. SB 237 is different – it provides a clear policy direction, elimination of the state's "use-it-or-lose-it" policy.

Currently policy dictates that, at the end of each year, any water not used by a water-right holder is forever lost to that user. Thus, an individual water right holder has little or no direct incentive to conserve water – there is no possibility to save that water for later use (i.e., "use-it-or-lose-it"). No direct incentive to conserve, no flexibility year-to-year. SB 237, if implemented, will change this by allowing multi-year water appropriations to provide a direct incentive to conserve water in anticipation of future needs. Here's how:

- SB 237 would allow water right holders, **at their option only**, to deposit their water right in a multi-year flex account.
- The water user would then be issued a term permit that would allow maximum time flexibility in water usage over the next five years.
- In exchange, the user is permitted to use only 90% of his historical water usage during that time period, thus guaranteeing a 10% conservation element.

*House Environment
 3-6-01
 Attachment 2*

This bill provides the best of both worlds. It gives users maximum time flexibility as an incentive and provides for a net reduction in water usage in return. While other water proposals talk about conservation and planning for the future, this actually accomplishes it.

For many years, I have heard from my constituents who want more water use flexibility. And for good reason. For farmers and ranchers, SB 237 would allow them to plan ahead, rotate more and different crops into their farms. For municipalities, it also would facilitate long-term planning by permitting greater usage in dry years and less usage in wet years. Last, this bill provides the needed flexibility to respond to what looks like great variability in future energy prices. Current quoted natural gas prices to our farm for this summer are double what they were a year ago – and they might be even higher next year. Or they might be lower. Nonetheless, the use flexibility of SB 237 would allow a user the option to pump water in the year when energy prices are lower, rather than being constrained by artificial time limits.

Lastly, I have two suggested amendments to this bill. First, I believe the Senate floor amendment may need to be corrected. This amendment makes this policy fully fee-funded (thus eliminating the original fiscal note) – and the Department of Agriculture agrees that the \$400 one-time term permit fee does this. However, upon closer examination of the amendment yesterday, I believe it mistakenly allows the \$400 fee for all water permits – certainly not my intent or the Department’s. That should be changed.

Second, the Chief Engineer and others have suggested that the “base average usage” definition penalizes water users who have made conservation investments and already reduced usage far below their permitted amount. This is true, and it is an issue I struggled with in drafting this initiative. If desired, the committee might consider adding a second **either/or option** for “base average usage” of 80% of the traditional 24-inch or 18-inch appropriation (depending on your region). This would allow the user to choose either option, thus eliminating the penalty for those who already conserve. But I would encourage you to keep this simple concept as simple as possible.

In conclusion, I believe SB 237 is a win-win bill. It is a winner for those users who choose the flexibility offered in these term permits. And it is a winner for our groundwater supplies, because it guarantees a reduction in water usage. Elimination of the “use-it-or-lose-it” policy is good for Kansas, good for water users, and good for the aquifer. I encourage your support of this bill.

Thank you. I will stand for questions.



Since 1894

To: The House Environment Committee
Representative Joann Freeborn, Chairperson

From: Mike Beam, Executive Secretary, Cow-Calf/Stocker Division

Subject: Testimony in Support of SB 237 – Water “Flex Accounts”

Date: March 6, 2001

On behalf of the Kansas Livestock Association, I’m pleased to appear this afternoon in support of Senate Bill 237. I was excited when I first read the bill and I applaud Senator Huelskamp for introducing this legislation.

Summary of SB 237

This bill would allow any groundwater right holder to establish a “flex account” and deposit, in advance, water from a water right for any five consecutive calendar years. The amount of water that shall be deposited in the account shall be 90% of the amount of the holder’s “base average usage”, times five. Base average usage means the average amount of water actually used during calendar years 1998, 1999, and 2000. DWR would provide term permits to groundwater right holders who have established flex accounts. The permits would authorize the use of water in a flex account at any time during the five consecutive calendar years without annual limits on usage.

Many of you remember we have actively supported other proposals, such as water banking, that would give water users more flexibility in using their appropriated water rights. While we continue to support HB 2047, we believe it is important to adopt SB 237 as a complementary measure to water banking. The House position on HB 2047 will significantly limit the participation by water users because of the provision authorizing only two banks over a two-year period. Water banking is an important tool for an organization to manage and conserve water within a hydrologic unit.

SB 237 has a similar conservation requirement, but its only limitations are that it applies only to ground water and that each five-year term permit is subject to authorization by the Division of Water Resources.

It appears SB 237 is a simple and inexpensive step the state can do to give our state's producers more flexibility to manage their businesses while still protecting our water resources. I'm hopeful this bill will receive favorable consideration by this committee and become law this year.

I'd be happy to respond to any questions or comments at the appropriate time.

Thank you.

STATE OF KANSAS

BILL GRAVES, GOVERNOR

Jamie Clover Adams, Secretary of Agriculture
109 SW 9th Street
Topeka, Kansas 66612-1280
(785) 296-3556
FAX: (785) 296-8389



KANSAS DEPARTMENT OF AGRICULTURE
House Environment Committee

S.B. 237

March 6, 2001

Jamie Clover Adams, Secretary

Madam Chairperson and members of the committee, I am Jamie Clover Adams, Kansas Secretary of Agriculture. I appear today to offer qualified support for Senate Bill 237 and to support the testimony of David Pope.

As you are aware, the Kansas water resource is a mature resource and as such, requires a different set of regulatory tools than were necessary fifty years ago. We need to look for new and innovative ways to give flexibility to individual water right holders while still providing adequate administrative control over the appropriation of water to prevent injury to established uses and the underlying source of water supply. I believe S.B. 237, with the modifications outlined in David Pope's testimony meets this criteria and deserves your careful consideration.

On a practical note, KDA will need additional resources to implement both the administrative and enforcement tasks of the five-year allocation system set out in SB 237. To meet this need, we worked with the bill's sponsor to amend K.S.A. 82a-708a found in Section 2 so activities associated with implementation of SB 237 will be funded with user fees. However, as I am sure you are aware, we face stagnate resources and frankly, do not have existing resources to even begin work. To that end, we also worked with the bill's sponsor to craft New Section 1 (d) which contemplates start up funds from a source other than fees that can be repaid when fee funds are received.

I appreciate the opportunity to discuss S.B. 237. I would be glad to answer any questions you may have at the appropriate time.

STATE OF KANSAS

BILL GRAVES, GOVERNOR
Jamie Clover Adams, Secretary of Agriculture
109 SW 9th Street
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(785) 296-3558
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Division of Water Resources
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KANSAS DEPARTMENT OF AGRICULTURE

House Environment Committee

March 6, 2001

Testimony Regarding Senate Bill 237

David L. Pope, Chief Engineer

Division of Water Resources, Kansas Department of Agriculture

Madam Chairman and members of the committee, thank you for the opportunity to present testimony in qualified support of Senate Bill 237. My name is David L. Pope, and I appear on behalf of the Kansas Department of Agriculture.

Implementing this bill will affect the division of water resources and its duties relating to the administration of the Kansas Water Appropriation Act. This bill would allow a groundwater water right holder to establish a five-year flex account subject to certain conditions. The amount of water that may be deposited into an account would be equal to 90 percent of five times the average annual amount of water used between 1998 through 2000. The 10 percent reduction in the amount of groundwater used is based on historical data and it is requested in exchange for the flexibility that allows an annual diversion amount to exceed what is currently authorized. The bill requires the chief engineer to issue term permits to authorize diversion of the water any time during the five-year term of the permit.

One positive aspect of the bill is the 10 percent reduction in water use it requires. However, I believe that the three year base average usage calculated using data from 1998, 1999 and 2000 would not adequately characterize water use. I suggest using a 5-year average to calculate the base average usage and more accurately characterize water use.

I assume the bill is not intended to provide for water use in addition to a current water right, but it does not explicitly provide limits. Once the flex account under the term permit is exhausted, the water user should not be allowed to continue to divert water under the existing water right, even when no water remains for year four or five. As with all permits authorized by the Water Appropriation Act, it is presumed that the priority for the term permit is the date on which the application is filed, which makes it junior to all existing water rights as of that date. This provides some legal remedy if exercising the term permit causes impairment to more senior rights. Also, the authorized place of use for the term permit should be the same as the current water right, so it serves the same basic function.

Flexibility to use more water in any given year than has been authorized in the past is recognized as a benefit to some individual water users. As water supplies decline, appropriators

*House Environment
3-6-01
Attachment 5*

will seek ways to use existing water sources more effectively. It is useful to consider options that allow water users to adapt to these changes in the hydrologic system. However, the Water Appropriation Act imposes limits on a water right to protect more senior water rights from the impairment that could result from an excessive decline in the water table. It is essential to consider how this bill will structure the protections necessary to maintain the water supply for the future.

It is possible, under certain circumstances, that much more water could be diverted than has been used under an existing appropriation. Some water rights have a large authorized acreage, or a greater need for water, than their authorized annual quantities allow compared to the average. Water rights with these extra acres, or water needs for some other use, could reasonably pump greater quantities in any given year. In some cases, other water rights, through overlapping places of use and wells, have multiple wells authorized on large parcels of irrigated land. These overlapping authorizations, combined with the flexibility provided by this bill, could create annual pumping centers that will divert quantities greater than ever before. These large pumping centers are more likely to occur in a dry year, when all surrounding wells are also pumping more than average, which could cause or compound impairment problems. There are no provisions in the bill to limit the concentration of wells with term permits in a small area, or to limit the collective magnitude of pumping centers that might develop as a result of the flexibility the bill provides. It is not clear how this bill will affect existing spacing criteria that help protect adjacent wells from interfering with one another.

If the division of water resources is to provide both the flexibility envisioned and ensure adequate protection of senior water rights and the public interest, I respectfully request serious consideration of the following concepts which are incorporated in the attached balloon:

- Use a 5-year period to calculate the base average usage.
- The original water right must be limited so that no use can occur once the total amount authorized by the five-year term permit has been used.
- Term permits must be junior to existing water rights and, if impairment occurs as a result of use under the term permit, water use must revert back to the priority and limitations of the original water right, limited by the quantity already diverted during the period of the term permit.
- Term permits must relate to an individual well, instead of a whole water right when there are multiple wells, or it must contain some other limit to avoid creating large pumping centers at better yielding areas within the aquifer.
- The authorized place of use should not be increased because it could allow additional uses and impact other users due to the flexibility of the term permit.
- Limit participation to those areas not included in a bank as chartered under the provisions of House Bill 2047.
- It should include a provision for reporting to the legislature on the results of these new provisions of the law so the legislature may review and modify it if necessary.

Finally, while unrelated to the primary purpose of this bill, we suggest a minor change to the fee schedule under current law, as shown on page 3, line 10, of the bill. We propose to include "dewatering purposes" in the same category as "water power." For example, some large dewatering projects remove large amounts of water for short periods of time to allow construction projects or maintenance of levees where a shallow water table exists, and the current fee results in a large fee that we think is unnecessarily high.

Our balloon also cleans up an error in the Senate amendments in the fee language of the bill.

Thank you for opportunity to testify on this matter. I will be glad to answer your questions at the appropriate time.

1 *[As Amended by Senate Committee of the Whole]*
2 *Session of 2001*

3 **SENATE BILL No. 237**

4 By Senator Huelskamp

5 2-6

6
7
8
9
10 AN ACT supplementing the Kansas water appropriation act; providing
11 for certain accounts for deposit of certain water under a water right;
12 providing for term permits for use of such water, less a conservation
13 element[; *amending K.S.A. 82a-708a and repealing the existing*
14 *section*].

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 *[New]* Section 1. (a) As used in this section:

18 (1) "Base average usage" means the average amount of water actually
19 used for a beneficial use under a groundwater water right during calendar
20 years ~~1998, 1999 and 2000~~, excluding any amount used in any such year
21 in excess of the amount authorized by such water right.

1996 through 2000

22 (2) "Chief engineer" means the chief engineer of the division of water
23 resources of the department of agriculture.

24 (b) Any holder of a groundwater water right may establish a flex ac-count
25 where the holder may deposit, in advance, water from such water
26 right for any five consecutive calendar years, subject to the following:

not located in an area under a water bank charter

27 (1) The water right must be vested or shall have been issued a cer-tificate
28 of appropriation;

29 (2) the water right shall not have been abandoned and shall be in
30 good standing, based on past water usage and compliance with the terms
31 of the holder's permit and all applicable provisions of law and orders of
32 the chief engineer; and

33 (3) the amount of water that shall be deposited in the account shall
34 be 90% of the amount of the holder's base average usage times five.

35 (c) The chief engineer shall provide for the issuance of term permits
36 to holders of groundwater water rights who have established flex accounts
37 in accordance with this section. Such term permits shall authorize the use
38 of water in a flex account at any time during the five consecutive calendar
39 years for which the application for the term permit is made, without
40 annual limits on such use. ~~Application for any such term permit shall be~~
41 filed not later than October 10, of the year preceding the first year for
42 which the application is made.
43

Term permits shall be subject to the following criteria:

- (1) A separate term permit establishing the maximum combined water allocation shall be required for each point of diversion using the base average usage for that point of diversion. All other requirements of this act shall apply to such term permit and the total water right, except for the annual appropriation amount which is replaced by the maximum combined allocation for the term of the permit.
- (2) The authorized place of use for the term permit shall not be greater than that authorized by the existing groundwater right or rights that authorize the point of diversion.
- (3) The total diversion of water from the point of diversion authorized pursuant to all water rights shall be limited to the quantity authorized by the term permit for the five-year period of the permit.
- (4) The chief engineer may adopt rules and regulations to define criteria for term permits when a water right authorizes multiple points of diversion or multiple water rights authorizing a point of diversion or overlapping places of use.
- (5) The priority of the term permit shall be the date the application is received.
- (6) Except as explicitly provided for by this section, term permits shall be subject to all provisions of the Kansas water appropriation act and rules and regulations adopted for such act, and nothing herein shall authorize impairment

5-5

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(d) [All costs of administration of this section shall be paid from fees for term permits provided for by this section. Any appropriation or transfer from any fund other than the water appropriation certification fund for the purpose of paying such costs shall be re-paid to the fund from which such appropriation or transfer is made. At the time of repayment, the secretary of agriculture shall certify to the director of accounts and reports the amount to be repaid and the fund to be repaid. Upon receipt of such certification, the director of accounts and reports shall promptly transfer the amount certified to the specified fund.

(e)] This section shall be part of and supplemental to the Kansas water appropriation act. _____ →

[Sec. 2. K.S.A. 82a-708a is hereby amended to read as follows: 82a-708a. (a) Any person may apply for a permit to appropriate water to a beneficial use, notwithstanding that the application pertains to the use of water by another, or upon or in connection with the lands of another. Any rights to the beneficial use of water perfected under such application shall attach to the lands on or in connection with which the water is used and shall remain subject to the control of the owners of the lands as in other cases provided by law.

[(b) Except as otherwise provided in subsections (d) and ~~(e)~~, (e) and (f), each application for a permit to appropriate water, except applications for permits for domestic use, shall be accompanied by an application fee fixed by this section for the appropriate category of acre feet in accordance with the following:

[Acre Feet Fee

<i>[0 to 100</i>	<i>\$100</i>
<i>[101 to 320</i>	<i>\$150</i>
<i>[More than 320.....</i>	<i>\$150 + \$10</i>

*for each additional 100
acre feet or any part thereof*

[(c) Except as otherwise provided in subsections ~~(d)~~ and ~~(e)~~, (e) and (f), each application for a permit to appropriate water for storage, except applications for permits for domestic use, shall be accompanied by an application fee fixed by this section for the appropriate category of storage-acre feet in accordance with the following:

[Storage-Acre Feet Fee

<i>[0 to 250</i>	<i>\$100</i>
<i>[More than 250.....</i>	<i>\$100 + \$10</i>

*for each additional 250
storage-acre feet or any part thereof*

[(d) Each application for a term permit pursuant to section 1, and

of any vested right or prior appropriation right, by the exercise of a term permit authorized by this act.

(f)] the chief engineer shall provide a written report on the implementation of section 1 to the house environment and the senate natural resources committee by February 1 of each year.

1 amendments thereto, shall be accompanied by an application fee established
2 by rules and regulations of the chief engineer in an amount not to
3 exceed \$400 for the five-year period covered by the permit.

4 ~~[(e) For any application for a permit to appropriate water, except~~
5 ~~applications for permits for domestic use, which proposes to~~
6 ~~appropriate by both direct flow and storage, the fee charged shall~~
7 ~~be only one fee and shall be the fee under subsection (b) or subsection~~
8 ~~(c), (e) or (d), whichever is larger, but not both fees largest.~~

9 ~~[(e) (f) Each application for a permit to appropriate water for~~
10 ~~water power~~ purposes shall be accompanied by an application fee

or dewatering

11 of \$100 plus \$200 for each 100 cubic feet per second, or part
12 thereof, of the diversion rate requested in the application for the
13 proposed project.

14 ~~[(g) All fees collected by the chief engineer pursuant to this~~
15 ~~section shall be remitted to the state treasurer as provided in K.S.A.~~
16 ~~82a-731 and amendments thereto.~~

17 ~~[Sec. 3. K.S.A. 82a-708a is hereby repealed.]~~

18 ~~Sec. 2: [4] This act shall take effect and be in force from and after~~
19 ~~its publication in the statute book.~~

20



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON ENVIRONMENT

RE: SB 237 – Supplements the Kansas Water Appropriation Act.

**March 6, 2001
Topeka, Kansas**

**Presented by:
Leslie J. Kaufman, Associate Director
Public Policy Division
Kansas Farm Bureau**

Chair Freeborn and members of the House Environment Committee, we appreciate this opportunity to express Farm Bureau support for SB 237.

My name is Leslie Kaufman. I am an Associate Director of the Public Policy Division for Kansas Farm Bureau.

SB 237 authorizes any holder of a groundwater water right the opportunity to establish a flex account where the holder may deposit, in advance, water from such water right for any five consecutive calendar years. The Chief Engineer of the Division of Water Resources at the Kansas Department of Agriculture shall provide for the issuance of term permits to holders of groundwater water rights who have established flex accounts and authorize the use of water in a flex account at any time during the five consecutive calendar years without annual limits on such use.

SB 237 provides water right holders flexibility in managing their water right. For example, a producer could utilize five years of water allocation in three or four years in producing irrigated corn, then grow dry-land wheat or grain sorghum during the balance of the 5-year period.

SB 237 includes a water conservation component. The amount of water that is deposited in the account shall be 90% of the amount of the holder's base average usage times five.

*House Environment
3-6-01
Attachment 6*

A number of policy statements relating to water appropriation and water conservation can be found in resolutions adopted or reaffirmed by the 435 farmers and ranchers serving as Voting Delegates for the 105 county Farm Bureaus at the 82nd Annual Meeting of Kansas Farm Bureau in Wichita November 17-18, 2000.

Examples include:

- *“The State Water Plan should promote conservation of water by all users.”*
- *“We support legislation that encourages groundwater conservation through conservation reserve incentives offered to landowners that convert to dry land farming and defer irrigation pumping during periods of commodity surplus.”*
- *“ Water permits should not be jeopardized even if the water allocation authorized is not fully utilized by the permittee.”*

SB 237 is designed to conserve water while allowing irrigators more flexibility in managing their water right. We respectfully encourage the committee to recommend the bill favorable for passage and advance the measure to the full Senate.

Thank you!

STATEMENT OF
SOUTHWEST KANSAS GROUNDWATER MANAGEMENT DISTRICT 3
TO THE HOUSE ENVIRONMENT COMMITTEE
REPRESENTATIVE JOANN FREEBORN, CHAIR

MARCH 6, 2001

REGARDING S.B. 237

Madam Chair and Members of the Committee, I am Chris Wilson, legislative liaison for Southwest Kansas Groundwater Management District 3. I am here today to support S.B. 237. We support this effort to bring additional flexibility to water right holders and encourage water conservation. This bill would allow water users to hold water appropriations in reserve for greatest times of need, and not feel they have to "use it or lose it."

Potential benefits of this approach would include:

1. Conservation benefits would apply not just to irrigation. It applies as well to other beneficial uses, such as municipal, stockwatering, and industrial uses.
2. SB 237 would allow for more efficient use of water in times of greater demand.
3. This bill allows for drought preparedness. It may help prevent unintentional over-pumping of permitted quantities when drought hits, such as last year.
4. SB 237 creates the opportunity to provide amnesty for illegal overpumping that may have caused people to become victims of circumstance. The best well may have the least amount of water. The well with the largest quantity may not be able to produce it efficiently because of low capacity, high gas prices, or no gas available.
5. It allows senior water right holders to compensate for problems that may have resulted from impairment by junior rights. Senior right holders will be most likely in favor of this act, since they are more restricted than junior rights. Junior rights may already have more flexibility, especially if they are still being developed. In contrast, senior right become locked-in-time and often get strangled by surrounding junior permits. Their only hope is to claim impairment, which could bankrupt Southwest Kansas if impairment claims got out of hand.
6. SB 237 may help buy time while we address "zero depletion." Before any decisions can be made on intense groundwater rationing we need more factual information. Current criteria uses estimates based upon only 17% fact.

SB 237 would provide greater flexibility and another tool in the toolbox for water right holders. We appreciate your consideration of this legislation and encourage your favorable recommendation.

*House Environment
3-6-01
Attachment 7*

Population	124,007
Over 65	13,629
School Enrollment	28,101
Employed	62,047
Farm	7,660
Ag Services	1,421
Mining	2,769
Construction	4,025
Manufacturing	13,325
Transportation	4,222
Wholesale	4,070
Retail	12,671
Financial Services	3,011
Services	15,323
Government	12,942
Land Area	6,428,160
Farm Land	5,958,160
Cropland	4,611,732
Harvested Cropland	2,855,073
Irrigated	1,361,511
Livestock	
Cattle and calves	1,569,651
Cattle and calves sold	3,051,885
Hogs and pigs *	5,928
Hogs and pigs sold *	9,455
Total Personal Income	2,632,232,000
Wages & Salaries	1,378,699,000
Farm Income	227,473,000
Proprietors	250,329,000
Dividends,Interest,Rent	449,267,000
Transfer Payments	346,757,000
Economic Sectors	
Farm	320,040,000
Ag Services	27,925,000
Mining	89,509,000
Construction	131,895,000
Manufacturing	378,077,000
Transportation	176,237,000
Wholesale	131,713,000
Retail	189,637,000
Financial Services	71,758,000
Services	324,539,000
Government	298,645,000

* This data is suppressed for most counties.

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Classification of Property	SWKGMD
Residential Real*	2,277,794,651
Agricultural Land**	525,880,757
Vacant Lots	33,780,441
Not-For-Profit	4,392,751
Com/Ind Real	923,751,420
Ag Improvements	58,490,268
All Other	27,109,353
<u>Total Real Property</u>	<u>3,851,199,641</u>
Res Mobile Homes	76,743,131
Oil Leasehold	83,579,813
Gas Leasehold	2,900,421,699
Motor Vehicle***	33,115,419
C/I Mach/Equip****	297,604,392
Watercraft^	6,775,764
All Other	11,048,894
Filing Penalties	-
<u>Total Personal Property</u>	<u>3,409,289,112</u>
Public Utility - Real^^	80,168,259
Public Utility - Other^^	943,345,471
<u>Total St. Appr. Public Utility</u>	<u>1,023,513,730</u>
<u>Total - All Property</u>	<u>8,284,002,483</u>

* Includes Farm Homesites

** Appraised at Use Value, Not Market Value

*** Only Non-Highway or Local/Private Over 20,000 lbs

**** Appraised at Retail Cost New Less Depreciation

^ Represents Boat, Marine and Boat Trailers

^^ Appraised at an Allocated Value, Not Necessarily Market Value

Note: There are some slight rounding errors due to the suppression of cents.

House Committee on Environment
March 5, 2001

Testimony on Senate Bill No. 147
Steve Williams, Secretary
Department of Wildlife and Parks

Thank you for the opportunity to appear before the committee to discuss SB 147, an act related to the Department of Wildlife and Parks' fees.

As this committee is aware, the department relies heavily on user fees to finance the programs and operations of the department. During FY2001, user fees financed approximately 88 percent of our expenditures. The State General Fund comprised the balance. Our Fish and Wildlife and Law Enforcement Divisions are almost 100 percent funded through user fees and federal trust funds (Sportfish and Wildlife Restoration Act).

As background, these statutes establish minimum and maximum fee ranges for certain issuances of the department related to wildlife and boating. The last legislative action on this issue occurred in 1989 when the Game and Fish Commission merged with the Parks Authority. Since 1989 and the present, the Wildlife and Parks Commission has set actual fees by regulation within the statutorily defined ranges. The last such fee increase for these wildlife and boating fees was enacted by the Commission in 1995, becoming effective January 1, 1996.

I appear before you today to ask for your consideration to redefine selected fee ranges. Since 1996, the department has provided the public with numerous innovative programs and services. These activities include:

- Walk-in Hunting Areas program (700,000 WIHA acres in 2000),
- Fish Impoundment and Stream Habitat program (FISH),
- shooting range development grants to communities,
- community lake assistance grants to communities,
- state fishing lake dam repairs,
- incentive-based upland bird habitat enhancement projects on private land,
- ADA renovation work at state fishing lakes and wildlife areas, and
- motor boat access facilities.

In addition to these new programs, the department has experienced increased salaries, wages, benefits, operations, maintenance, and capital outlay expenses. We are proud to have met those challenges and opportunities without increasing the fees charged to the sportsmen and women of Kansas. However, revenue and expenditure projections for the next two years indicate a serious decline in our Wildlife Fee Fund balance by FY2003. The Wildlife and Parks Commission and the department ask for your help in addressing this financial concern.

The attached information provides additional information for your consideration and discussion. The department has recommended changes to 20 of its license or permit issuances summarized below:

*House Environment
3-6-01
Attachment 8*

Summary of Senate Bill No. 147

Issue	Current Fee	Proposed Minimum	Proposed Maximum
Elk Permit	\$30-100	\$30	\$350
Combination License			
Resident	\$30	\$30	\$50
Lifetime	\$440	\$440	\$1,000
Nonresident	\$90	\$100	\$200
Commercial Guide			
Resident	\$50	none	\$100
Nonresident	\$50	none	\$250
Fishing License			
Resident	\$15	\$15	\$25
Lifetime	\$240	\$240	\$500
Nonresident	\$35	\$35	\$75
5-day NR	\$15	\$15	\$25
24-hour	\$3	none	\$10
Furharvester License			
Resident	\$15	\$15	\$25
Lifetime	\$240	\$240	\$500
Hunting License			
Resident	\$15	\$15	\$25
Lifetime	\$240	\$240	\$500
Nonresident (16+)	\$65	\$65	\$125
Nonresident (<16)	\$65	\$30	\$75
Controlled Shooting	\$13	\$13	\$25
Waterfowl Stamp	\$3	\$3	\$8
Boat Registration			
(<16 ft)	\$15	\$9	\$30
(16+ ft)	\$18	\$9	\$30

The table below presents the current and proposed license and registration issuances included in SB 147, as amended. The proposed fees would be presented at Wildlife and Parks Commission meetings for public discussion and Commission consideration.

Issue	# Sold in 1999	Current Fee	2002 Proposed Fee
Combination Licenses			
Resident	44,391	\$30	\$36
Lifetime	1,143	\$440	\$600
Nonresident	n/a	\$90	\$100
Commercial Guides			
Resident	125	\$50	\$100
Nonresident	32	\$50	\$250
Fishing Licenses			
Resident	190,481	\$15	\$18
Lifetime	273	\$240	\$300
Nonresident	8,956	\$35	\$40
5-day Nonresident	4,918	\$15	\$20
24-hour	89,411	\$3	\$5
Furharvester Licenses			
Resident	4,114	\$15	\$18
Lifetime	13	\$240	\$300
Hunting Licenses			
Resident	94,161	\$15	\$18
Lifetime	1,119	\$240	\$300
Nonresident 16+ yrs	48,897	\$65	\$70
Nonresident <16 yrs	1,739	\$30	\$35
Controlled Shooting Area			
Waterfowl Stamp	29,407	\$3	\$5
Boat Registration			
<16 ft in length	18,606	\$15	\$20
16+ ft in length	18,663	\$18	\$25

3-6-2001

Statement of Ron Klataske
Executive Director, Audubon of Kansas, Inc.
to the
Kansas House of Representatives,
Committee on Environment
In Support of Senate Bill 147

My name is Ron Klataske. I live in Manhattan and serve as Executive Director of Audubon of Kansas, Inc. I am a native of Kansas and have been involved in wildlife conservation since receiving a Bachelors Degree in Wildlife Biology at Kansas State University and a Masters Degree at the University of Maine.

I am here today on behalf of Audubon of Kansas. Audubon of Kansas represents 5,000 members of eleven chapters and our statewide organization in Kansas. We thank you for this opportunity. Audubon members, like most residents, enjoy the wildlife and other natural resources of the state. Hunting, wildlife watching, fishing and other forms of outdoor recreation and nature appreciation are of great importance to the quality of life of Kansans and to the State of Kansas.

The economies of communities throughout the state benefit from the recreation associated with hunting, fishing, boating, wildlife watching and other activities. Wildlife and other natural resources, and the uses of these resources, require professional personnel and management at the state level. In order to keep pace with the challenges of changing circumstances and to keep financial resources within the framework of inflationary factors, the Kansas Department of Wildlife and Parks, under the guidance of the Commission, needs to have the ability to modestly adjust the fee structure as outlined in Senate Bill 147.

Sportsmen and sportswomen who engage in hunting and fishing have a leadership legacy of financial support for fish and wildlife conservation programs extending back through most of the last century. Because of the close tie between the agency and the constituency of residents and nonresidents who enjoy hunting, fishing and boating I think we can all be assured that the agency will not excessively raise fees beyond levels that are needed to fund appropriate programs and levels that are consistent with market demands within Kansas and nearby states. The statutory limits on fees has not been raised since 1989. The agency relies heavily on user fees to fund programs and operations for the Department.

Audubon of Kansas has a stated goal of "working in partnership with hunters, anglers, and others interested in Kansas wildlife". The percentage of Audubon members who hunt and/or fish is probably similar to the state average. However, almost all Audubon members are keenly interested in wildlife and the natural environment and support wildlife conservation programs. As you know, we also supported House Bill 2471 before your committee. We are hopeful that additional opportunities will be created for all residents to provide financial support for wildlife and natural resource programs within the six listed agencies that would be a part of the Kansas Natural Resource Legacy Alliance..

House Environment
3-6-01
Attachment 9



MID-AMERICA LUMBERMENS ASSOCIATION

TESTIMONY

HOUSE ENVIRONMENT COMMITTEE

March 6, 2001 Senate Bill No. 254 Room No. 231-N

Madam Chair and members of the committee; It is my pleasure to visit with you today as a proponent of Senate Bill No. 254. My name is Art Brown and I represent the retail lumber and building material dealers in the State of Kansas as well as the Hardware stores of the Western Association.

The bill would allow a reduction of the fee paid to the Kansas Remediation fund that was created by the Legislature during the 2000 session to a segment of our smaller businesses. The bill would lower these fees from the current \$80.00 paid to the fund to a fee payment of \$5.00. This payment would be based on the first \$2500.00 of sales of such pesticides defined by current Kansas law. Sales beyond the \$2500.00 threshold would continue to pay the current \$100.00 fee. The \$20.00 pesticide license fee paid to the Kansas Dept. of Ag. is not impacted by this change. Dealers, applicators and distributors as defined under current Kansas law all pay a scheduled fee to the Dept. of Ag. to provide financial

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800-747-6529; 816-561-5323 • Fax: 816-561-1991 • E-Mail: mail@TheMLA.com

A PROUD MEMBER OF THE NATIONAL LUMBER AND BUILDING MATERIAL DEALERS ASSOCIATION

*House Environment
3-6-01
Attachment 10*

resources to the Kansas remediation fund. Farmers are exempted from paying a fee to this fund.

Let me state for the record and in all seriousness that we certainly like to drink clean water. We do not come before this committee looking for any exclusion from paying a fee to this fund. We are in concert with the objective of the remediation Board and what they are trying to accomplish. Rather, we look for equity for some of our smaller members who sell these products in their community. For this reason, I would like for the committee to indulge me for a minute as to the type of operation we are talking about that seeks this reduction in their portion of pesticide license fees paid into this fund.

We are talking about operations in towns that carry the basic needs for the communities they serve in the area of building materials to help residents keep their property, businesses and dwellings in good, safe condition. Unlike urban centers that have a Home Depot or a Lowe's or some of our larger operations in Kansas, you won't find Mr. Magoo night-lights, or Tonka toys at these locations. You will find lumber, paint, fasteners, wallpaper, hardware, some tools and yes, some lawn and garden products along with other miscellaneous items. Almost all of you have such an operation in your district. These operations were set up before the explosion of retail sales dominated our industry. As you know by visiting these operations, the floor space for retail sales is limited. So why do these businesses even sell lawn and garden products? Quite simply, the citizens in these communities expect these businesses to handle such products. No one else will or can carry these products in a manner that is as conveniently packaged for residential usage or economically feasible for purchase for the consumers use in that community.

Our larger members can sustain such an increase in the costs of doing business by passing on these costs through a larger inventory with more stock-keeping units (SKU) than our smaller members can. Last year in a one step process, pesticide license fees were raised from \$20.00 to \$100.00; with the \$80.00 increase dedicated for funding of the new remediation fund. That is a 400% increase. It is very difficult to envision the size of the businesses mentioned in the earlier part of my testimony being able to absorb or pass on that kind of an increase. Simply stated, they will be working for the government, as the profits for seasonal sales of these products with such limited retail floor space may not even pay the \$100.00 fee itself. You constantly hear of this type of situation in your district from your smaller retailers; the smaller merchant trying to maintain products and services to keep people from shopping in larger markets. They do not want to take the backward step of reducing inventory and services and lose that business to larger urban markets.

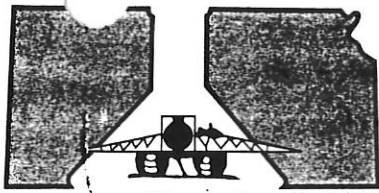
I have found that over the last 12 years, that when a law was passed that resulted in unintended and unduly harmful consequences to the citizens or businesses in our State, that the Legislature was quick to remedy the situation. No one intended for this action taken last year to impact our small businesses the way it did. It is unfortunate that it happened. I have attached a letter, dated Dec. 1, 2000, from Doug Wareham, Vice President of Government Affairs for the Kansas Grain & Feed Association (KGFA) and the Kansas Fertilizer and Chemical Association (KFCA) stating that these Boards agree with our position and are supportive of this action. As many of you know, KGFA is contracted to administer various administrative support services for the newly formed

remediation Board. I have also attached documentation from both Duane Goossen, Budget Director, and Jamie Clover Adams, Secretary Of Agriculture, stating that there is a negligible fiscal impact to the remediation fund should this action be taken. I would also note that we are supportive of the amendments the remediation Board brought before the Senate Committee and urge passage of same along with our fee proposal in the bill.

This is pretty close to a no foul; no harm situation provided that expedient corrective action is taken. This bill gives the Legislature just such an opportunity to correct this unintended hardship to the impacted small businesses in our State. Quick corrective action, such as the Senate took with their 40-0 vote on this bill, helps create a short memory span for those impacted. I can assure you that these impacted small business people in your community will be grateful for your positive action in correcting this matter.

We are as hopeful that the Kansas House also sees this need for the same expedient corrective action and passes this bill in a similar manner. The next significant step comes from this Committee. It is therefore our hope that this Committee moves to pass SB 254 out favorably for passage.

I will stand for any comments or questions you may have regarding my testimony.



December 1, 2000

KANSAS FERTILIZER AND CHEMICAL ASSOCIATION, INC.

Phone 785-234-0463

816 S.W. Tyler St., Topeka, KS 66612

Fax 785-234-2930

(Mailing Address) P.O. Box 1517, Topeka, KS 66601-1517

Art Brown
Kansas Regional Manager
Mid-America Lumbermens Association
92 Pepper Tree Lane
Topeka, Kansas 66611

Dear Mr. Brown:

I am writing in response to your "Overview of Pesticide Licensing Fee Schedules in the State of Kansas" and the proposed solution you suggest as an equitable way to remedy your industry's concerns regarding the current environmental remediation fees paid by pesticide dealers in Kansas. I do appreciate the information you have provided and have shared that information with our respective Legislative Committees, as well as representatives of the Kansas Corn Growers Association and Kansas Grain Sorghum Producers Association. These associations were also instrumental in supporting the establishment of an environmental remediation fund to address contamination caused by agricultural and specialty (urban) chemicals in Kansas.

After conferring with our respective legislative committees and receiving feedback from the two aforesaid agricultural producer organizations, we are willing to consider a tiered approach for the special environmental remediation assessment paid by registered pesticide dealers based on gross annual sales. However, it is our collective opinion that the gross sales thresholds included in your proposal would have a significant impact on the current environmental remediation program's revenue base and the ability of the program to provide financial assistance to individuals and Kansas businesses faced with exorbitant remediation costs. Therefore, it is our hope that a more appropriate gross annual sales threshold can be agreed to and mutually support by all interested parties.

At this time, I wish to convey on behalf of Kansas Grain and Feed Association and Kansas Fertilizer and Chemical Association that we would support a two-tiered environmental remediation fund assessment for pesticide dealers in Kansas. That two-tiered approach would in general terms mean:

- Pesticide Dealers with gross annual sales from \$0 to \$2500 would pay an annual \$5 assessment to the environmental remediation fund. (This \$5 assessment would be in addition to the current \$20 pesticide dealer registration fee, which was in place prior to the passage of the Agricultural and Specialty Chemical Remediation Act last spring.)

10-5

F - December 1, 2000

- Pesticide Dealers with gross annual sales above the \$2,500 threshold would continue to pay the \$80 assessment to the environmental remediation fund. (Once again, these dealers would also be required to pay the current \$20 pesticide dealer registration amount as well.)

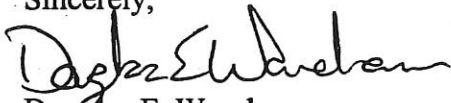
Following a lengthy discussion on this issue, I can report that both KGFA and KFCA would support a legislative effort to amend the Agricultural and Specialty Chemical Remediation Act to accomplish the objective highlighted above. However, I must point out that while our industry leaders that serve on our respective legislative committees appreciate your desire to achieve some level of equitability on pesticide dealer fees, many of those same individuals are required to pay a combination of fees into the Kansas Agricultural Remediation Fund, including the Licensed Pesticide Dealers Fee, Custom Fertilizer Blenders Fee, Registered Fertilizer Product Fee and a Licensed Grain Warehouse Fee. Several Kansas agribusinesses will annually be assessed thousands of dollars based on the existing assessments for this much-needed environmental remediation program.

Our association's leaders certainly understand the impact fees can have on the bottom line. However, we also appreciate the importance of the entire agricultural and specialty (urban) chemical industry working together to address environmental contamination when and where it exists. It is our hope your organization will see our response as a workable compromise that will provide relief to small retail operations that in many cases provide pesticide products to their customers as a local service, while at the same time protecting the integrity of this environmental remediation program.

I must also point out that our respective organization's willingness to support a legislative effort to address the special environmental remediation assessment for registered pesticide dealers is contingent upon this being the sole attempt to alter the established fees for the environmental remediation fund. Should another party or parties attempt to alter other environmental remediation program fees or exempt themselves from any of the fees associated with the Agricultural and Specialty Remediation Act, we would be forced to aggressively defend against those efforts.

Thank you for your time and consideration and I look forward to hearing from you.

Sincerely,



Douglas E. Wareham
Vice President, Government Affairs

DEW:jj



Kansas Agricultural Remediation Board

Board Members:

CHAIR
Agricultural Producer
LINDA PETERSON
Burdick

VICE CHAIR
Specialty Chemical
Distributor

LARRY SHIVERS
Van Diest Supply
Salina

Grain Processor
KAMYAR MANESH
Farmland Industries
Olathe

Agricultural Retailer
LAURA PEARL
J.B. Pearl Sales &
Service
St. Marys

Ag & Specialty
Chemical Registrant
ROGER LONG
Syngenta Crop Protection
Great Bend

Ex Officio Members:

RICK BEAN
Remediation Section Chief
KS Department of Health &
Environment, Topeka

GARY MEYER
Fertilizer & Pesticide
Program Director
KS Department of Agriculture,
Topeka

Program Administrator

MARY JANE STATTELMAN
Topeka

TESTIMONY ON BEHALF OF THE

KANSAS AGRICULTURE REMEDIATION BOARD

BY

MARY JANE STATTELMAN, ADMINISTRATOR

BEFORE THE

HOUSE ENVIRONMENT COMMITTEE

MARCH 6, 2001

SB 254

*House Environment
3-6-01
Attachment II*

Good afternoon, Chairperson Freeborn and members of the House Environment Committee. I am Mary Jane Stattelmann and I am the administrator of the Kansas Agriculture Remediation Board and I appear before you today regarding SB 254.

The Remediation Board is supportive of SB 254 as drafted. We think a number of the amendments that have been made will strengthen the law. As we have begun to work with the current law we discovered a few items that caused the Board concern and SB 254 addresses these concerns. However, the reality is we are not sure that we have discovered all of the clarifications that may need to be made so that the law functions in a reasonable and rational manner.

1. Enforcement authority - Currently, there is no enforcement provision if a person refuses to pay the remediation assessment. The grain storage section addresses this problem by giving the secretary of agriculture the authority to adopt rules and regulations regarding the procedure for payment and collection of the assessment. The amendment on page 2 lines 11-13, authorize the Kansas Secretary of Agriculture to adopt rules and regulations regarding the enforcement of the assessments.
2. Refund or reimbursement authority - Since individuals and companies are paying this fee at the same time that they are paying their licensing or registration fee, there is the opportunity for a mathematical error to occur. If the person or company overpays to KDA, the Secretary has no authority to refund or reimburse the person. The amendment on page 2, lines 14-16 enables the Secretary to refund any overpayments and thus avoid a potentially awkward situation.
3. Section 2 on Page 2:
 - Paid assessments - The law currently allows people that “are required to pay an assessment” to be eligible for the maximum reimbursement amount. Once again, I do not think the legislature intended to allow people who have not paid into the fund but are required to pay into the fund to be eligible for the maximum amount of reimbursement. Therefore, subsection (b)(1) on line 29 has been amended to address this issue.
 - Release v. site - Subsection (1) refers to reimbursement on a per site basis, but subsection (2) refers to reimbursement on a per “release” basis. The amendment replaces the word release with the word site on line 42 so that the law is consistent.
 - Site cap – Currently the linked deposit loan program, under the State Treasurers office, is capped on a per site basis, but the reimbursement part of the law caps the reimbursement amount on a per person per site basis. The difference between these two methods is that in the reimbursement program multiple owners of a piece of property could file separate claims for the same site. For example, if there are 5 joint owners of a piece of property, each person could apply and be eligible to receive \$170,000 for a grand total of \$850,000. We also want to dissuade people from being able

to make a claim every year or so for a release that could have been prevented if they had taken appropriate corrective action after the first release. We want to be fair, but we do not want to reimburse people when their problem is caused by a lack of effort on their part. The amendment on page 2, lines 34-37, establishes a cap of \$200,000 per site that occurs within a 5 year time frame.

4. Reimbursement rate for businesses covered by this bill - While Mr. Brown states that his members cannot afford the \$80 a year, I would claim this is a fairly good rate that allows his members to receive \$170,000. I would assert that they cannot find environmental insurance coverage for \$80 a year.

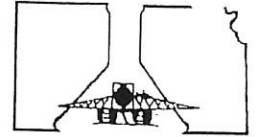
The Kansas Corn Growers Association and the Remediation Board have requested the amended language that you find in on page 2, Section 2, subsection (2) starting on line 40. This language amends the reimbursement tier so that pesticide dealers that pay only \$5 per year may be reimbursed only up to \$10,000. The Board believes capping their reimbursement amount at \$10,000 is fair since the proponents are requesting to only pay approximately 6.25% of what they are currently assessed we recommend that they only be eligible to receive approximately 6.25% of what they are currently eligible, which is approximately \$10,000. Otherwise we have a system in which someone can pay at the lowest rate possible but they are still eligible for the maximum reimbursement amount. This amendment is also supported by the MidAmerica Lumberman's Association.

It should be noted that during the Senate hearings, it was discussed that some pesticide dealers may want to continue to pay \$80 instead of the \$5 so that they are eligible for the higher reimbursement rate. Under the provisions in this bill, it is totally within the discretion of the small pesticide dealer as to whether they pay the higher fee or the reduced fee.

For your information, we are unsure what impact this reduction in the fee structure will have on the remediation fund since the Kansas Department of Agriculture has not tracked or had a reason to track the number of pesticide dealers that have annual gross sales under \$2500. However, the numbers that KDA does have may suggest that the impact to the fund may be out of proportion to the number of businessmen that are complaining. KDA has informed the Board that there were 213 pesticide dealers that did not renew their registration this past year, but out of that number 139 businesses closed. Therefore, for argument sake, you could say that 74 failed to re-register due to the remediation fee. However, the total number of registered pesticide dealers increased by 59 to a grand total of 1646. These numbers would seem to indicate that there is not a huge outcry by the affected people. Furthermore, our fees are not out of line with other states. In Minnesota, pesticide dealers pay \$150 into the remediation fund and in Wisconsin the fee is \$40.

Once again, let me reiterate that while the Board believes the above outlined amendments are needed, we are not sure we have discovered all of the items that need to

be amended or clarified. Only time and actually working through the process will highlight if there are other problems in the law. Thank you for your time and attention. Either the Board members or I would be glad to answer any questions you may have at this time.



STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION
AND THE
KANSAS FERTILIZER & CHEMICAL ASSOCIATION
PRESENTED TO
HOUSE ENVIRONMENT COMMITTEE
REGARDING SENATE BILL 254
REP. JOANN FREEBORN, CHAIR
MARCH 6, 2001

KGFA & KFCA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTEGRAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

816 SW Tyler, Topeka KS 66612 - 785-234-0461 - Fax: 785-234-2930

*House Environment
3-6-01
Attachment 12*

Madam Chair and members of the committee, I am Doug Wareham appearing today on behalf of both the Kansas Fertilizer and Chemical Association (KFCA) and the Kansas Grain and Feed Association (KGFA). KFCA's over 550 members are primarily plant nutrient and crop protection retail dealers with a proven record of supporting Kansas producers by providing the latest crop protection products and services. KGFA is comprised of more than 1100 member firms including country elevators -- both independent and cooperative -- terminal elevators, grain merchandisers, feed manufacturers and associated businesses. KGFA's membership represents 99% of the over 860 million bushels of commercially licensed grain storage space in the state of Kansas.

I want to express our support for Senate Bill 254, which adjusts the annual assessment paid by small volume pesticide dealers to the Kansas Agricultural Remediation Fund. The agribusiness member companies of our respective organizations certainly understand the impact fees can have on the bottom line and have an appreciation for small businesses that are required to maintain a pesticide dealers license in order to stock and provide small-packaged pesticide products to their customers.

I am happy to report that following meetings and correspondence between our organizations and the Mid-America Lumbermen's Association, that an agreement was reached to collectively support the language contained in Senate Bill 254 which reduces the environmental remediation fund assessment paid by licensed pesticide dealers that sell less than \$2,500 of gross pesticide sales annually from the current level of \$80 to \$5. This adjustment will provide significant financial relief to many small businesses that sell only small quantities of pesticide products each year.

I want to also express our support for amendments that were adopted by the Senate Natural Resources Committee and Senate Committee of the Whole that enable the Secretary of Agriculture to adopt rules and regulations concerning the collection of fees associated with the agricultural remediation program and specifically the provision that enables the Department to reimburse those businesses that have overpaid any fee.

In closing, I do want to express our appreciation to the Mid-America Lumbermen's Association for bringing their concerns to our attention well ahead of the current legislative session. As I stated earlier, we appreciate their desire for fairness when it comes to government fees and we believe Senate Bill 254 will accomplish that goal with respect to pesticide dealers in Kansas. Thank you for the opportunity to appear in support of this bill and I would be happy to stand for questions.

STATE OF KANSAS

BILL GRAVES, GOVERNOR

Jamie Clover Adams, Secretary of Agriculture
109 SW 9th Street
Topeka, Kansas 66612-1280
(785) 296-3556
FAX: (785) 296-8389



KANSAS DEPARTMENT OF AGRICULTURE
House Environment Committee

March 6, 2001

Testimony Regarding Senate Bill 254

Jamie Clover Adams, Secretary of Agriculture

Good afternoon Chairman Freeborn and members of the committee. I am Jamie Clover Adams, Secretary of the Kansas Department of Agriculture. I appear before you today in support of Senate Bill 254, which amends current environmental remediation law.

Background

As many of you remember, SB 501, which established the Agricultural and Specialty Chemical Remediation Board, was passed and signed into law last year. The board is responsible for administering the remediation fund and for approving projects for application of the remediation link deposit loans.

The five-member board includes representatives from agricultural retailers, producers and processors, and specialty chemical distributors and registrants. It also includes ex officio representatives from the Kansas Department of Agriculture and the Kansas Department of Health and Environment.

Funding for the remediation program is achieved through several mechanisms outlined below and accompanied by an estimate of the revenue each item might generate.

Registered Pesticide Assessment	\$ 351,840
Commercial Grain Assessment	430,000
Registered Pesticide Dealer Assessment	140,000
Registered Fertilizer Product Assessment	71,900
Licensed Custom Fertilizer Blenders Assessment	<u>41,500</u>
Total Estimated Annual Revenue	\$1,035,240

*House Environment
3-6-01
Attachment 13*

Proposed Changes

The proposed amendment allows small businesses with annual sales of less than \$2,500 to pay a lower annual assessment of \$5 instead of the \$80 the current statute requires. It seems reasonable since the potential risk may be lower because these business have a smaller amount of pesticides in stock. KDA attempted to address this issue administratively, but determined that legislation is necessary to accomplish this task. KDA also supports amendments added on the Senate floor giving the Department the authority to take enforcement action to collect the assessments and make refunds when necessary.

Fiscal Impact

As currently written, this bill will not have a fiscal impact on the Kansas Department of Agriculture because the proposed changes impact fees that are forwarded to the Kansas Remediation Board for administration.

Thank for you for the opportunity to appear before you today. I will answer your questions at the appropriate time.

3-6-2001

Statement of Ron Klataske
Executive Director, Audubon of Kansas
to the Kansas House of Representatives,
Committee on Environment
In Support of House Bill 2470

My name is Ron Klataske and I live in Manhattan. I am a native of Kansas and have been involved in farming and ranching most of my life. I am responsible for management of approximately 1,100 acres of family-owned grazing land, cropland and property devoted to wildlife habitat enhancement. I have a Bachelor's degree in wildlife biology from Kansas State University and a Master's degree from the University of Maine

I am here today on behalf of Audubon of Kansas. Audubon of Kansas represents approximately 5,000 Audubon members throughout the state and eleven community/regional Audubon chapters. Audubon members enjoy the wildlife resources of our state and support professional wildlife management. They are also dedicated to principles of good land stewardship and natural resource conservation. Our state Board of Trustees consists of 28 prominent conservation and community leaders. Fourteen of them own/operate rural farm or ranch land and several others have an agricultural background or are involved in land management in other ways. Thus, we welcome this opportunity to work with your committee to create a more accommodating statutory environment for native wildlife in Kansas and the rights of landowners who choose to have prairie dog colonies and other native wildlife on their own property.

We are particularly pleased that the Environment Committee includes leaders of the Agriculture Committee and that collectively you are in a position to provide leadership on this issue. Advancement and approval of House Bill 2470 during the next twelve months will reflect progressive legislative leadership, and help to project a positive image of wildlife conservation and agricultural leaders working in partnership for complementary purposes.

Eleven Great Plains and western states and several federal agencies have been working for the past two years in a dedicated effort to develop a Conservation Strategy to keep this species from slipping to the point where it would become a threatened species--both biologically across much of its range, and legally under the Federal Endangered Species Act. Removing statutes that mandate that landowners must eradicate prairie dogs is one of the most important and progressive ways that the State of Kansas can provide leadership.

You will note that House Bill 2470 proposes to transform the 1901-03 statutes into language recognizing that a combination of management and control strategies now needs to be employed. It also proposes to replace potential eradication mandates imposed on landowners with a framework for voluntary partnerships and assistance programs dedicated to the conservation, management and/or control of prairie dogs. Complete elimination of prairie dogs on one's own land would remain a prerogative of the landowner.

Approval of House Bill 2470 will be particularly valuable because of the determination by the U.S. Fish and Wildlife Service that classified the black-tailed prairie dog as a candidate species, ("*warranted but precluded*" for designation as a threatened species) under the Federal Endangered Species Act. The advantage of this designation is that it gave states more time, subject to annual reviews, to respond in favorable ways such as with revision of these statutes and development of conservation plans before any final decision will be made on whether or not to designate the species as "threatened".

House Environment
3-6-01
Attachment 14

One of the best ways to minimize the need for listing will be for agencies, organizations and landowners to work together with voluntary programs that will provide for prairie dog conservation on specific lands. Some landowners--both of small acreages and large ranches--throughout parts of central and western Kansas will elect to accommodate one or more prairie dog colonies on their land and that alone may help to keep the species from being imperiled. A few landowners are presently incorporating prairie dog management into their wildlife conservation/stewardship plans. Many owners of ranch and farm land enjoy having a diversity of wildlife on their land and many implement practices to provide habitat. Some accommodate small colonies of prairie dogs on their land, and a few others with large holdings are interested in the possibility of having larger colonies to enhance the prospect of having burrowing owls, black-footed ferrets, swift foxes, golden eagles, ferruginous hawks, mountain plovers and other species that are often dependent upon or associated with prairie dog colonies.

If colonies of prairie dogs are allowed to thrive in a number of locations the species is less likely to require federal or state listing as a threatened species. Success with initiatives of this nature could conceivably reduce the need for possible future restrictions on the control of prairie dogs on other lands.

I believe that repeal and revision of 80-1201 to 80-1208 in the manner outlined in House Bill 2470 will help advance conservation of this federal *candidate species* in a way that will be in the interests of both wildlife enthusiasts and ranchers--even those who want to control or completely eradicate prairie dogs on their land. We acknowledge that most ranchers and farmers do not want prairie dogs colonies on their land because the presence of prairie dogs does not always complement other stewardship or production objectives. They can be detrimental to rangelands and sometimes encroach on the edge of croplands.

Based on conversations last year with local county officials and Mr. Mike Heim, an authority on Home Rule in the Office of Legislative Research, it is my understanding that under "*Home Rule authority*" counties would continue to have authority to conduct prairie dog control programs even if these statutes were completely repealed, as proposed in House Bill 2866 introduced in the 2000 Legislative Session. However, with repeal of these outdated statutes or progressive revision as proposed in House Bill 2470, programs will appropriately need to be designed more as cooperative services available to landowners requesting assistance. Property rights will be restored and landowners will have a voice in the decision making process.

For all of these and additional reasons offered by other witnesses, we urge the Committee to work with the state Workgroup during the next twelve months to build public understanding for the need to revise the antiquated statutes and build support for approval for House Bill 2470 in the 2002 legislative session.

Regarding a typographical error that occurred during the printing of the bill, it was intended that House Bill 2470 would have a line through the existing language contained in lines 30 thru 41 on page 2, thus repealing that portion of K.S.A. 80-1202.

We thank you for the opportunity to testify at this special hearing.



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612-1233
785/296-2281 FAX 785/296-6953



HOUSE BILL NO. 2470
Testimony Provided to
House Committee on Environment
March 5, 2001

House Bill No. 2470 would amend certain laws addressing black-tailed prairie dogs. Although the bill explicitly allows anyone to voluntarily eliminate prairie dogs from their own land, the bill also establishes an alternative to extermination of the prairie dogs.

First, the bill describes steps that may be taken by the Department of Wildlife and Parks or other agencies to assist landowners in management of prairie dog colonies. More important, if a prairie dog colony is determined to pose a threat of destructive, injurious or detrimental effect upon a neighboring landowner's property, the bill would require public notice be given to the landowner where the colony is established, and that landowner would have opportunity to adopt and implement an approved management and control plan. Only if the landowner fails to do so may the county or township enter onto that landowner's property, implement control measures, and charge the landowner for the cost of those measures.

For the Committee's background information, two years ago the U.S. Fish and Wildlife Service (USFWS) received a petition to list the black-tailed prairie dog on the federal threatened and endangered species list. At that time, based on our knowledge of prairie dog habitat and populations status in Kansas, the department joined other states in opposing this listing. Last year, the USFWS ruled that the listing status of the prairie dog is "warranted but precluded." In essence, this ruling states that the prairie dog is a candidate for listing but because of higher priority species and funding limitations, it would not be listed at this time. The species status will be evaluated on an annual basis, however, and state actions may be required to keep the species from future listing actions.

Since then, the department has taken a number of steps. In addition to working with other states to develop a regional conservation plan for the prairie dog within its historical range, the department also held workshops in western Kansas last summer to discuss development of a conservation plan for Kansas. A working group was created, with representation from conservation organizations, agricultural interests, and individual landowners.

HB 2470 incorporates many of the ideas developed by that working group, although more time is required for opportunity for discussion and public comment, which should take place this summer. Nonetheless, we hope that HB 2470, or something similar to it, will receive the full endorsement of the working group for the 2002 Legislative Session. Without evidence of positive efforts by the state to address prairie dog status, federal listing of the species becomes more likely. The department believes that legislation such as HB 2470 is important for western Kansas landowners and for protection of our natural resources.

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*House Environment
3-6-01
Attachment 15*

U.S. FISH AND WILDLIFE SERVICE - KANSAS FIELD OFFICE STATEMENT AT THE
INFORMATIONAL HEARING FOR HOUSE BILL 2470 - ENVIRONMENT COMMITTEE-
MARCH 6, 2001

In August of 1998 the U.S. Fish and Wildlife Service (FWS) received a petition from the National Wildlife Federation and others to list the black-tailed prairie dog (btp) as a threatened species under the Endangered Species Act. After a review of the information submitted with the petition and available information, FWS found on February 3, 2000 that there was sufficient information to warrant listing under the Endangered species Act, however, higher priority listing activities preclude it from being listed at this time. The FWS will review this finding on an annual basis until such time that the priority changes or threats are removed so that listing is no longer warranted.

Since 1900 the amount of occupied habitat in North America has dropped from 100,000,000 acres to about 800,000 acres in 2000. This represents a reduction of about 99% over the range of the btp. Since the finding of warranted but precluded by the Fish and Wildlife Service, several states including Kansas, within the 11 state range of the btp have begun to work together to develop and implement plans to manage and conserve btps in order to eliminate some of the threats and improve the population trends of the species in order to prevent a listing.

One of the keys to preventing a listing at this time is the removal of threats to the btp. State laws which call for the mandatory eradication of btps on private lands are identified in the finding by the FWS as a threat to the btp. House Bill 2470 as currently proposed would address one of the threats which currently exists. Enactment of HB 2470 would clear the way for Kansas Department of Wildlife and Parks (KDWP) and others to work with willing landowners in developing management plans for maintaining btp on private property while still maintaining an element of control for those landowners who feel that control is needed on their property. The KDWP has established a constituents working group which is working together on the development of a state management plan for the btp. This group consists of members representing the ranching and farming communities as well as environmental organizations. Without enactment of HB 2470 or similar legislation, implementation of any state management plan for btps would be hindered, thereby making listing the species much more likely.

If you have any questions or require additional information, you may contact me at:

William H. Gill
U.S. Fish and Wildlife Service
315 Houston St. - Suite E
Manhattan, KS 66502

Phone: 785/539-3474 ext. 105

*House Environment
3-6-01
Attachment 16*

House Bill No. 2470 – Testimony in favor of enactment

Alan J. Pollom, Vice President and Kansas Director of The Nature Conservancy

Ms. Chairman and members of the committee, I am here to offer testimony as a representative of The Nature Conservancy and its 8,000 Kansas members. The Nature Conservancy is a non-profit conservation organization that operates the world's largest system of privately owned natural areas. Our status is perhaps unique among those parties appearing before you today because we are a large private landowner with prairie dogs occurring on various lands that we manage. We recognize that many land managers have historically considered prairie dogs a nuisance animal. The focus of our management, however, is the promotion of healthy populations of our native wildlife in their natural habitat.

In order to accomplish our goals, we feel strongly that we should have the latitude to undertake management of the wildlife occurring on our land without undo interference of mandatory regulations. In the same manner, we feel that other landowners should have a wide range of options available to them in terms of prairie dog management. That management flexibility would be severely limited if the black-tailed prairie dog becomes listed under the Endangered Species Act. Presently, the U.S. Fish and Wildlife Service has determined that listing is warranted but has delayed a listing proposal while addressing other high priority listing actions. With the vast proportion of prairie dog habitat in Kansas privately owned, it may be especially important for private landowners to have the option of voluntarily assisting in the conservation of sufficient prairie dog populations to avoid the possibility of a listing under the federal act.

I would also point out that a large number of other prairie species are closely tied to prairie dog towns for the unique habitat that they offer or the prey base provide. A strong argument can be made that by preserving adequate prairie dog populations we are taking preemptive action that significantly lessens the chance that these other associated prairie species will become future candidates for "endangered" status.

The Conservancy is a member of the Kansas Black-tailed Prairie Dog Working Group, a diverse set of stakeholders brought together by the Kansas Department of Wildlife and Parks to help develop a conservation plan for the prairie dog - a plan that makes sense for the citizens of our state rather than waiting for federal mandates to be imposed. H. B. 2470 is consistent with the recommendation of the Working Group to revise statutes so that they emphasize management and control of prairie dogs, rather than eradication. I believe it strikes a reasonable balance that allows for conservation, while recognizing that control of colonies is sometimes warranted. It provides a process for addressing conflicting management objectives of neighboring landowners and it wisely promotes the use of voluntary incentives and direct and technical assistance to affected landowners. Importantly, it sets the stage for public-private partnerships to take advantage of emerging potential funding sources aimed at addressing declining prairie species.

For a voluntary Kansas plan to be successful it is absolutely necessary that contradictory statutes enacted nearly 100 years ago be remedied. We therefore support House Bill 2470 and request that the committee take favorable action to enact it when it is considered.

(March 6, 2001)

House Environment
3-6-01
Attachment 17



PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON ENVIRONMENT

RE: HB 2470 – Providing for the management and control of prairie dogs.

**March 6, 2001
Topeka, Kansas**

**Presented by:
Leslie Kaufman, Associate Director
Public Policy Division
Kansas Farm Bureau**

Representative Freeborn and members of the House Committee on Environment, my name is Leslie Kaufman. I am the Associate Director of the Public Policy Division for Kansas Farm Bureau. Thank you for the opportunity to appear before you today in conceptual support of HB 2470, providing for the management and control of prairie dogs.

At countless Farm Bureau meetings, over years and years, our members have discussed ways to address prairie dogs. Obviously, concerns are more abundant in some areas of the state than others. Nevertheless, they are evidence, again, that small creatures can create extensive discussions.

More recently, Kansas Farm Bureau has been a participant in meetings between producer groups, environmental groups, the Kansas Dept. of Wildlife and Parks and the U.S. Fish and Wildlife Service regarding a change in state policy away from eradication of the prairie dog to management and control of the animals. This change in policy, at least in part, is an attempt to discourage the U.S. Fish and Wildlife Service from placing the animal on the federal threatened

*House Environment
3-6-01
Attachment 18*

and endangered species list. The discussions have led to the introduction of the bill before you today, HB 2470. Farm Bureau policy contains several points relative to today's discussion. Our farmer and rancher members articulated their positions on conservation management plans and wildlife control with the following policy statements.

As an alternative to placing species on threatened or endangered lists, we support the development of Conservation Management Plans that will:

- ✓ **Increase the population and make listing unnecessary;**
- ✓ **Be the result of cooperative efforts by landowners, agricultural producers, wildlife managers, conservation technicians and the appropriate federal agencies;**
- ✓ **Be voluntary;**
- ✓ **Provide incentives to private landowners for protecting or enhancing habitat for species needing protection; and**
- ✓ **Maintain an agricultural producers option of using all reasonable means of controlling damaging wildlife on his/her privately owned land.**

HB 2470 provides a starting point to take the discussions regarding prairie dog control before the people of Kansas and it contains several provisions we can lend conceptual support to. The bill does represent a significant departure from current, long-standing state policy. As such, we encourage the legislature to hold the bill over until next session, allowing it to become a vehicle for debate "out in the county" during the 2001 interim. For years, the people of Kansas have waged war on the prairie dog. We encourage the legislature to give these same constituents time to adapt to the concept of management and control. Thank you!

Testimony on HB 2470
Charles D. Lee
Extension Specialist, Wildlife
K-State Research and Extension

Black-tailed Prairie Dog Issues

The U.S. Fish and Wildlife Service (FWS) was petitioned by several groups to list the black-tailed prairie dog as a threatened species under the Endangered Species Act (ESA). The FWS ruled in February 2000 that the black-tailed prairie dog warranted listing under the ESA but precluded it from listing because other species have a higher priority. This action has caused considerable uncertainty and fear among landowners. The Kansas Department of Wildlife and Parks (KDWP) has organized a state work group to help them develop a state management plan for prairie dogs. KDWP does not want to have the species listed as threatened but realize some threats to the species future must be reduced or eliminated. Old statutes can be interpreted as requiring the eradication of all prairie dogs, pocket gophers and moles. Current attitudes and philosophy would suggest management and control are more important for the species survival than a required eradication. I have provided the following article to help answer questions about black-tailed prairie dogs.

Prairie dogs have been controlled on rangelands for many years. Estimates of the acreage occupied by prairie dogs has been reduced from 95-99% from historic times. Most control efforts occurred because of perceived competition between domestic livestock and prairie dogs for range forage. Prairie dogs feed on many of the same grasses and forbs that livestock do. Annual dietary overlap has been estimated from 64% to 90%. The first published estimates of prairie dog damage were those of C. Hart Merriam of the U.S. Biological Survey. Merriam (1901) estimated that 32 prairie dogs would eat as much as one sheep and 256 prairie dogs would eat as much as one cow, and that prairie dogs can reduce the productive capacity of the land 50 to 75 percent. That 50 to 75 percent loss figure was repeated by numerous later writers but not all attributed the estimate directly to Merriam. Bonham and Lerwick (1976) have presented information from studies in eastern Colorado which tends to dispute earlier claims of extensive damage caused by prairie dogs. They concluded that "since both perennial grasses and forbs have increased as a result of prairie dog activities and are useful as livestock forage, it cannot be said that prairie dogs are always destructive to rangelands. Klatt and Hein (1978) came to the conclusion that 'eradication of prairie dogs would not significantly improve shortgrass prairie for cattle during the first few years following abandonment of the towns. It is important to know that neither of these studies attempted to measure actual productivity of the rangeland and that percent cover is not strictly analogous to production (Bjugstad and Whitman 1970). O'Melia et al. (1982) found no differences in forb production on pastures with steers only and with steers plus prairie dogs. However availability of blue grama (*Bouteloua gracilis*) and sand dropseed (*Sporobolus cryptandrus*) and other grass species was significantly reduced on pastures with prairie dogs. More recently authors have concluded that although some degree of grazing competition may exist between livestock and prairie dogs, that competition is offset by increased nutrient content of clipped forage and regrowth (Barko 1997, Coppock et al. 1983, Detling, 1998).

House Environment
3-6-01
Attachment 19

Control

It is important for land managers to recognize the positive and negative effects of prairie dogs on rangeland and on other species. Before developing a comprehensive management program, land managers should answer several questions. For example, what is the primary use of the rangeland: livestock, wildlife or both? Do you care that the prairie dog colonies of concern are important for other wildlife species? What level of prairie dog density will be tolerated? Is the rangeland in good or poor condition? What is the purpose of the proposed management plan: increase, decrease or maintain current colony sizes?

Traditional management techniques focused almost exclusively on reducing prairie dog numbers. The most widely used techniques include shooting and the use of toxicants. Intensive shooting may successfully control prairie dog numbers by disrupting reproductive activities and removing individual animals (Andelt 1984). Toxicants that are legal for prairie dog control include poison grain and burrow fumigants. 2% zinc phosphide grain bait is most frequently used to decrease or maintain colony size. Use of that product typically results in a 65-75% reduction in the population. Aluminum phosphide burrow fumigants usually result in 85-95% reduction. The use of visual barriers and deferred grazing management have also been used to reduce or eliminate prairie dogs (Snell 1985).

Several researchers have concluded that it is not economically feasible to treat prairie dogs on shortgrass rangeland with zinc phosphide in South Dakota because the cost of annual control exceeds the value of forage gained (Collins et al. 1984, Uresk 1985). The cost-effectiveness of prairie dog control depends greatly on the age, density and size of the prairie dog colony; soil and grassland type; rainfall; and control method employed (Hygnstrom and Virchow 1994).

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Since 1894

To: The House Environment Committee
Rep. Joann Freeborn, Chairperson

From: Mike Beam, Executive Secretary, Cow-Calf/Stocker Division

Date: March 6, 2001

Subj: **House Bill 2470** – Management and Control of Prairie Dogs

The Kansas Livestock Association appears today as neither an opponent nor proponent of the legislation. However, we do want to offer a few comments because any modification of state laws governing the control of prairie dogs is an important issue to western Kansas' ranchers.

Background

On February 2, 2000, the U.S. Fish and Wildlife Service (USFWS) announced its response to a petition by the National Wildlife Federation to list the black-tailed prairie dog as an endangered species under the Endangered Species Act. The USFWS stated in their news release ... *"After an extensive biological review, the U.S. Fish and Wildlife Service has determined that the black-tailed prairie dog warrants listing under the Endangered Species Act. However, because there are other species also awaiting listing that are in greater need of protection, the Service is not proposing to list the species at this time."* (The black-tailed prairie dog is the species commonly found in the western half of Kansas.)

USFWS cited a significant decline in habitat and state laws authorizing mandatory control of the species as key factors in their concern about the future of the prairie dog.

On February 21, 2000, the Kansas House Agriculture Committee held a hearing on HB 2866. This legislation simply repealed the sections of state law giving townships and counties the authority to conduct prairie dog eradication programs. The bill was killed by the committee following the hearing.

*House Environment
3-6-01
Attachment 20*

KLA Participates in KDWP Work Group

On March 1, 2000, KLA was invited by the Kansas Department of Wildlife and Parks to submit a nomination for their Prairie Dog Work Group. The purpose of the Work Group was to involve most stakeholders in developing a management plan to conserve the species and divert a listing by USFWS. Mark Smith, a rancher from Wallace County, eventually was appointed to this group to represent KLA. One of the first tasks of the Work Group was to appoint a subcommittee to consider a recommendation to address the Kansas statutes (KSA 80-1201 to 80-1208) identified as a concern by the USFWS. Mr. Smith has led this group in several meetings.

One of the first recommendations was to not seek legislation that repealed the Kansas prairie dog laws. Instead, the group determined it was best to look at other states' laws and to craft amendments that would give local ranchers authority to control prairie dogs, while preserving the right of landowners to harbor the species if it were their preference.

Developing such a bill is not an easy task. The subcommittee was not in agreement on specific language and concluded on November 8, 2000, that it would be best to not push for legislation during the 2001 Kansas Legislative Session.

KLA supported this decision. We offered to take potential legislation to our members and local elected officials during 2001 and seek agreement for a final bill in early 2002.

KLA's Future Plans

We intend to schedule several meetings in western Kansas this summer and fall to discuss the prospects for listing the prairie dog, learn more about the prairie dog survey conducted this spring, and analyze HB 2470. KDWP and USFWS officials have offered to participate in these meetings. It's obvious to us that many of our members located in prairie dog country are uneasy about this bill and any efforts to preserve and protect this species. If you think about it, this is a species unlike most other animals targeted for protection by the USFWS. Most ranchers who care for well-managed grazing lands absolutely detest the presence of a creature that burrows holes in the prairie and eats the grass and plants right into the ground.

It's our challenge to present the facts about this issue, recognize that some see the prairie dog as an integral part of the short grass prairie ecosystem, and come to terms with legislation that hopefully will be noncontroversial during the 2002

Kansas Legislative Session. Our number one objective is to avoid a listing of the black-tailed prairie dog as a threatened or endangered species. If that were to occur, our ranchers would find it difficult, if not impossible, to control unwanted prairie dogs in the future.

Conclusion

We'll continue to address this issue. I'm pleased the House Environment Committee is learning more about this matter and will wait a year before passing this legislation. Thank you.

**Testimony to the House Environment Committee
March 6, 2001**

by
Bob Bolen
Supervisor, Wallace County
Noxious Weed and Prairie Dog Control

Madam Chairman and members of the Committee:

I am Bob Bolen, Wallace County Noxious Weed and Prairie Dog Supervisor. I have held this position for the past 20 years. I also rent pasture and run cattle on ground that has been infested with prairie dogs. I am also a member of the Kansas State Prairie Dog Work Group.

Regarding **HB 2470**, it appears to me that the bill is putting the cart before the horse.

As of today, I do not think we have enough information to go forward with this bill. We do not have an exact number of infested acres in Kansas. Until we have these figures, we cannot propose legislation that is effective.

In 1956 there were a total of 57,045 acres of prairie dogs in Kansas. We believe that today prairie dog acres will show an increased number of prairie dogs for the same number of acres of grass. We have seen what will happen if there are no control measures. But to date we don't know any accurate numbers.

Another consideration is the cost. Where is the money coming from to fund the incentive program?

Further, we need to keep counties in control of what's happening in their respective counties. The landowners who pay the taxes ought to have more input either for or against this bill. And we need to protect adjacent landowners if they don't want prairie dogs. So we think this bill needs a lot of work before it goes any further. We would appreciate it if this bill did not go any further until the problems are worked out.

Thank you for your consideration.

*House Environment
3-6-01
Attachment 21*