

Approved: February 12, 2002  
Date

MINUTES OF THE SENATE AGRICULTURE COMMITTEE.

The meeting was called to order by Chairperson Derek Schmidt at 8:30 a.m. on January 29, 2002 in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Gordon Self, Revisor of Statutes  
Betty Bomar, Secretary

Conferees appearing before the committee:

Jamie Clover Adams, Secretary, Kansas Department of Agriculture  
Greg Foley, Assistant Secretary, Kansas Department of Agriculture  
Rebecca Reed, Special Assistant to the Secretary, Kansas Department of  
Agriculture  
Frances Kastner, Kansas Food Dealers Association  
Jim Herynk, Kansas Landscape and Nursery Association

Others attending: See attached list

**SB 395 - State of emergency disaster and unlawful acts involving contagious or infectious diseases of plants or animals**

Gordon Self, Revisor of Statutes, distributed a balloon setting forth amendments. (Attachment 1) The amendment strikes existing "New Section 1" in its entirety, inserts a new section relating to endangering the food supply and enlarges the definition.. Section 2, sets out a criminal penalty for endangering the food supply, and repeals KSA 2001 Supp. 47-623.

**Senator Umbarger moved, seconded by Senator Lee, that SB 395 be amended by incorporating the amendments contained in the above referenced balloon, conceptually incorporate the list of diseases presently set out in rules and regulations, and incorporates FDA definitions. A voice vote was in favor of the motion.**

**Senator Corbin moved, seconded by Senator Umbarger that SB 395 be recommended favorable for passage as amended. The vote was in favor of the motion.**

The Committee commenced its hearing on:

**SB 435 - Repealing regulation of livestock remedies**

**SB 436 - Fees and inspection of dams, levees and other water obstructions**

**SB 437 - Regulation of plant pests, plants and plant products and plant dealers and certain agriculture commodities**

**SB 438 - Powers, duties and responsibilities of secretary of agriculture related to fees and penalties**

Jamie Clover Adams, Secretary, Kansas Department of Agriculture (KDA), stated the Department is proposing these four bills which creates new fees and increases some existing fees, while others remain at current levels. The feed inspection fee will be reduced and KDA proposes to repeal three existing statutes.

Ms. Adams stated that in reviewing the agency's budget history and analyzing future budgets, she concluded that KDA would erode to the point of irrelevancy if new revenue is not found. KDA faces a significant general fund shortfall for fiscal year 2003, and the Division of the Budget projects significant general fund needs in fiscal years 2004 and 2005. This package of bills is intended to ensure that KDA retains its regulatory credibility and the Secretary remains a viable voice for Kansas agriculture. (Attachment 2)

Ms. Adams submitted an overview of KDA operations since it became a cabinet level agency to the present time: agricultural marketing was transferred to Department of Commerce & Housing; the

## CONTINUATION SHEET

Weights and Measures program was overhauled; the fuel pump inspection program was transferred to KDA; KDA established a computerization and a database; acquired the Grain Warehouse Examination program; disbanded the official seed laboratory, trained grain warehouse examiners; overhauled the Meat and Poultry Inspection program; revamped the water appropriation decision making process; conducted peer review of the Plant Protection and Weed Control program; promulgated rules and regulation; privatized grain commodity commissions; and performed a Water Appropriations Program Fail Mode Effects Analysis. The Department further advocated extensively on behalf of agriculture: in protecting and expanding its markets; promulgating reasonable, customer-friendly laws and regulations; ensuring availability of pesticides and other innovative pest management practices; protecting the state's natural resources, improving water quality, enhancing food safety; protecting agricultural producers from Karnal bunt; and sponsored renewable energy to benefit farmers and ranchers

Frances Kastner, Kansas Food Dealers Association, stated the initiation of fees on services are funded with tax dollars. The Kansas Food Dealers are willing to pay their fare share to ensure that their customers are receiving accurate weights. The members do not want to see their customers put at a greater disadvantage than is absolutely necessary. All citizens must assume their fair share of the economic conditions of the state. ([Attachment 3](#))

Jim Herynk, Kansas Landscape and Nursery Association submitted testimony regarding **SB 437**. The Association requests the following amendments:

1. Change the term "nursery stock" to "live plant materials";
2. Fee for live plant dealers with more than \$10,000 in retail sales
3. Fee adjustments for plant inspections.

The association does support a \$30 per hour fee for live plant inspections. ([Attachment 4](#))

Rebecca Reed, Special Assistant to the Secretary of Agriculture, appeared in support of **SB 435** that repeals regulation of livestock remedies law. ([Attachment 5](#))

Greg Foley, Assistant Secretary of Agriculture, appeared in support of **SB 436**, that establishes fees and inspection of dams, levees and other water obstructions. ([Attachment 6](#))

Mr. Foley stated **SB 436** provides KDA with the authority to prioritize and refocus the greatest risk components, to create an incentive to comply with current statutes, to address problems during the planning stage instead of dealing with problems that occur after the construction of an unreviewed and unpermitted structure, and to ensure that dams that potentially threaten life and/or property receive periodic safety inspections. New fees will provide additional staff to process applications in a timely manner, to review inspection reports and/or inspect high- and significant-hazard dams, particularly those that have been declared unsafe by the chief engineer.

The meeting concluded at 9:30 a.m.

The next meeting is scheduled for January 30, 2002

# SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: January 29, 2002

NAME	REPRESENTING
Jim Alley	Sea Bount
Justin Holstin	Propane Marketers Ass'n of KS
Doug Wareham	Kansas Grain & Feed Ass'n. Ks. Agribusiness Retailers Ass'n.
Art Brown	M.I.A. / Western ASK
Constantine Cotsoradis	KDA
Frances Kestner	Ks Food Dealer Assn
Matt Bertholt	Ks. Coop Council
Rebecca Reed	KS Dept. of Agriculture
Jul Lubber	KS Co-op Council
Keith Bradshaw	Div. of the Budget
Matt Scherer	Ks Dept. of Agriculture
MAX FOSTER	KS. DEPT. OF AGRICULTURE
Tom Sim	Kansas Dept. of Agriculture
George Bush	Ks. Dept. Agric.
Don Rypoc	RACD
Todd Johnson	KLA
TOM TUNNELL	KGFA - KARA
Tom Bruno	Tri-County Drainage Districts
SUE PETERSON	K-STATE

# SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: \_\_\_\_\_

NAME	REPRESENTING
Mike Jessy	KPA
JOHN C. BOTTENBERG	KPA
Greg Krissch	KS Corn Growers Assoc

SENATE BILL No. 395

By Committee on Agriculture

1-16

9 AN ACT concerning plant and animal diseases; relating to state of disaster emergency; unlawful acts and punishment therefor; amending  
10 K.S.A. 21-3436 and K.S.A. 2001 Supp. ~~47-623 and~~ 48-924 and re-  
11 pealing the existing sections

14 *Be it enacted by the Legislature of the State of Kansas:*

15 ~~New Section 1. (a) It shall be unlawful for any person to knowingly:  
16 (1) Bring into this state any plant which is affected with any conta-  
17 gious or infectious disease or any plant which has been exposed to any  
18 contagious or infectious disease; or  
19 (2) expose any plant in this state to any contagious or infectious  
20 disease.  
21 (b) Violation of subsection (a)(1) or (a)(2) is a severity level 3, non-  
22 person felony;~~

23 Sec. 2. K.S.A. 21-3436 is hereby amended to read as follows: 21-  
24 3436. (a) Any of the following felonies shall be deemed an inherently  
25 dangerous felony whether or not such felony is so distinct from the homi-  
26 cide alleged to be a violation of subsection (b) of K.S.A. 21-3401 and  
27 amendments thereto as not to be an ingredient of the homicide alleged  
28 to be a violation of subsection (b) of K.S.A. 21-3401 and amendments  
29 thereto:  
30 (1) Kidnapping, as defined in K.S.A. 21-3420 and amendments  
31 thereto;  
32 (2) aggravated kidnapping, as defined in K.S.A. 21-3421 and amend-  
33 ments thereto;  
34 (3) robbery, as defined in K.S.A. 21-3426 and amendments thereto;  
35 (4) aggravated robbery, as defined in K.S.A. 21-3427 and amend-  
36 ments thereto;  
37 (5) rape, as defined in K.S.A. 21-3502 and amendments thereto;  
38 (6) aggravated criminal sodomy, as defined in K.S.A. 21-3506 and  
39 amendments thereto;  
40 (7) abuse of a child, as defined in K.S.A. 21-3609 and amendments  
41 thereto;  
42 (8) felony theft under subsection (a) or (c) of K.S.A. 21-3701 and  
43 amendments thereto;

[also repealing KSA 2001 Supp. 47-623

New Section 1. (a) Endangering the food supply is knowingly:

(1) Bringing into this state any domestic animal which is affected with any contagious or infectious disease or any animal which has been exposed to any contagious or infectious disease;

(2) exposing any animal in this state to any contagious or infectious disease;

(3) except as permitted under K.S.A. 2-2112 et seq., and amendments thereto, bringing or releasing into this state any plant pest as defined in K.S.A. 2-2113, and amendments thereto, or exposing any plant to a plant pest; or

(4) exposing any raw agricultural commodity, animal feed or processed food to any contagious or infectious disease.

(b) As used in this section:

(1) "Contagious or infectious disease" includes, but is not limited to,

ag (2) "raw agricultural commodity, animal feed or processed food" shall mean the same as defined by the food, drug and cosmetic act.

(c) Endangering the food supply is a severity level 9, nonperson felony. Endangering the food supply is a severity level 3, nonperson felony, if done with the intent to cause damage to plants or animals or to cause economic harm or social unrest. Endangering the food supply is a severity level 3, person felony, if done with the intent to cause illness, injury or death to a human being or beings.

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Attachment # 1-1 thru 1-5

(9) burglary, as defined in K.S.A 21-3715 and amendments thereto;

(10) aggravated burglary, as defined in K.S.A. 21-3716 and amendments thereto;

(11) arson, as defined in K.S.A. 21-3718 and amendments thereto;

(12) aggravated arson, as defined in K.S.A. 21-3719 and amendments thereto;

(13) treason, as defined in K.S.A. 21-3801 and amendments thereto;

(14) any felony offense as provided in K.S.A. 65-4127a, 65-4127b or 65-4159 or K.S.A. 1995 2001 Supp. 65-4160 through 65-4164 and amendments thereto; and

(15) any felony offense as provided in K.S.A. 21-4219 and amendments thereto;

(16) ~~any offense as provided in K.S.A. 47-623, and amendments thereto, and~~

~~(17) any offense as provided in section 1, and amendments thereto.~~

(b) Any of the following felonies shall be deemed an inherently dangerous felony only when such felony is so distinct from the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401 and amendments thereto as to not be an ingredient of the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401 and amendments thereto:

(1) Murder in the first degree, as defined in subsection (a) of K.S.A. 21-3401 and amendments thereto;

(2) murder in the second degree, as defined in subsection (a) of K.S.A. 21-3402 and amendments thereto;

(3) voluntary manslaughter, as defined in subsection (a) of K.S.A. 21-3403 and amendments thereto;

(4) aggravated assault, as defined in K.S.A. 21-3410 and amendments thereto;

(5) aggravated assault of a law enforcement officer, as defined in K.S.A. 21-3411 and amendments thereto;

(6) aggravated battery, as defined in subsection (a)(1) of K.S.A. 21-3414 and amendments thereto; and

(7) aggravated battery against a law enforcement officer, as defined in K.S.A. 21-3415 and amendments thereto.

(c) This section shall be part of and supplemental to the Kansas criminal code.

~~Sec. 3. K.S.A. 2001 Supp. 47-623 is hereby amended to read as follows: 47-623. (a) It shall be unlawful for any person to knowingly;~~

~~(1) Bring into this state any domestic animal which is affected with any contagious or infectious disease or any animal which has been exposed to any contagious or infectious disease;~~

~~(2) except as provided in paragraph (3), expose any domestic animal in this state to any contagious or infectious disease; or~~

[and

1 ~~(c) expose any animal in this state to foot and mouth disease.~~  
 2 (b) Violation of subsection (a)(1) or, (a)(2) or (a)(3) is a class A non-  
 3 person misdemeanor severity level 3, nonperson felony. Violation of sub-  
 4 section (a)(3) is a severity level 4, nonperson felony.]

3.] 5 Sec. [4.] K.S.A. 2001 Supp. 48-924 is hereby amended to read as fol-  
 6 lows: 48-924. (a) The governor shall be responsible for meeting the dan-  
 7 gers to the state and people presented by disasters.

8 (b) (1) The governor, upon finding that a disaster has occurred or  
 9 that occurrence or the threat thereof is imminent, shall issue a procla-  
 10 mation declaring a state of disaster emergency.

11 (2) In addition to or instead of the proclamation authorized by K.S.A.  
 12 47-611, and amendments thereto, the governor, upon a finding or when  
 13 notified pursuant to K.S.A. 47-611, and amendments thereto, that a quar-  
 14 antine or other regulations are necessary to prevent the spread among  
 15 plants or domestic animals of any contagious or infectious disease, may  
 16 issue a proclamation declaring a state of disaster emergency.

17 (3) The state of disaster emergency so declared shall continue until  
 18 the governor finds that the threat or danger of disaster has passed, or the  
 19 disaster has been dealt with to the extent that emergency conditions no  
 20 longer exist. Upon making such findings the governor shall terminate the  
 21 state of disaster emergency by proclamation, but except as provided in  
 22 paragraph (4), no state of disaster emergency may continue for longer  
 23 than 15 days unless ratified by concurrent resolution of the legislature,  
 24 with the single exception that upon specific application by the governor  
 25 to the state finance council and an affirmative vote of a majority of the  
 26 legislative members thereof, a state of disaster emergency may be ex-  
 27 tended once for a specified period not to exceed 30 days beyond such 15-  
 28 day period.

29 (4) If the state of disaster emergency is proclaimed pursuant to par-  
 30 agraph (2), the governor shall terminate the state of disaster emergency  
 31 by proclamation within 15 days, unless ratified by concurrent resolution  
 32 of the legislature, except that when the legislature is not in session and  
 33 upon specific application by the governor to the state finance council and  
 34 an affirmative vote of a majority of the legislative members thereof, a  
 35 state of disaster emergency may be extended for a specified period not  
 36 to exceed 30 days. The state finance council may authorize additional  
 37 extensions of the state of disaster emergency by a unanimous vote of the  
 38 legislative members thereof for specified periods not to exceed 30 days  
 39 each. Such state of disaster emergency shall be terminated on the 15th  
 40 day of the next regular legislative session following the initial date of the  
 41 state of disaster emergency unless ratified by concurrent resolution of the  
 42 legislature.

43 (5) At any time, the legislature by concurrent resolution may require

1 the governor to terminate a state of disaster emergency. Upon such action  
2 by the legislature, the governor shall issue a proclamation terminating the  
3 state of disaster emergency.

4 (6) Any proclamation declaring or terminating a state of disaster  
5 emergency which is issued under this subsection shall indicate the nature  
6 of the disaster, the area or areas threatened or affected by the disaster  
7 and the conditions which have brought about, or which make possible  
8 the termination of, the state of disaster emergency. Each such procla-  
9 mation shall be disseminated promptly by means calculated to bring its  
10 contents to the attention of the general public and, unless the circum-  
11 stances attendant upon the disaster prevent the same, each such procla-  
12 mation shall be filed promptly with the division of emergency manage-  
13 ment, the office of the secretary of state and each city clerk or county  
14 clerk, as the case may be, in the area to which such proclamation applies.

15 (c) In the event of the absence of the governor from the state or the  
16 existence of any constitutional disability of the governor, an officer spec-  
17 ified in K.S.A. 48-1204 and amendments thereto, in the order of succes-  
18 sion provided by that section, may issue a proclamation declaring a state  
19 of disaster emergency in the manner provided in and subject to the pro-  
20 visions of subsection (a). During a state of disaster emergency declared  
21 pursuant to this subsection, such officer may exercise the powers con-  
22 ferred upon the governor by K.S.A. 48-925, and amendments thereto. If  
23 a preceding officer in the order of succession becomes able and available,  
24 the authority of the officer exercising such powers shall terminate and  
25 such powers shall be conferred upon the preceding officer. Upon the  
26 return of the governor to the state or the removal of any constitutional  
27 disability of the governor, the authority of an officer to exercise the powers  
28 conferred by this section shall terminate immediately and the governor  
29 shall resume the full powers of the office. Any state of disaster emergency  
30 and any actions taken by an officer under this subsection shall continue  
31 and shall have full force and effect as authorized by law unless modified  
32 or terminated by the governor in the manner prescribed by law.

33 (d) A proclamation declaring a state of disaster emergency shall ac-  
34 tivate the disaster response and recovery aspects of the state disaster  
35 emergency plan and of any local and interjurisdictional disaster plans  
36 applicable to the political subdivisions or areas affected by the procla-  
37 mation. Such proclamation shall be authority for the deployment and use  
38 of any forces to which the plan or plans apply and for use or distribution  
39 of any supplies, equipment, materials or facilities assembled, stockpiled  
40 or arranged to be made available pursuant to this act during a disaster.

41 (e) The governor, when advised pursuant to K.S.A. 74-2608, and  
42 amendments thereto, that conditions indicative of drought exist, shall be  
43 authorized to declare by proclamation that a state of drought exists. This



1 declaration of a state of drought can be for specific areas or communities,  
2 can be statewide or for specific water sources and shall effect immediate  
3 implementation of drought contingency plans contained in state approved  
4 conservation plans, including those for state facilities.

4.] 5 Sec. [5.] K.S.A. 21-3436 and K.S.A. 2001 Supp. 47-623 and 48-924 are  
6 hereby repealed.

5.] 7 Sec. [6.] This act shall take effect and be in force from and after its  
8 publication in the Kansas register.

STATE OF KANSAS

BILL GRAVES, GOVERNOR  
Jamie Clover Adams, Secretary of Agriculture  
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KANSAS DEPARTMENT OF AGRICULTURE

Senate Agriculture Committee

January 29, 2002

Statement Regarding Fee Fund Proposals

Jamie Clover Adams, Secretary of Agriculture

The Kansas Department of Agriculture is proposing four bills that make up a comprehensive fee fund package for the agency. The package creates some new fees and increases some of our existing fees, while other fees will remain at current levels and the feed inspection fee will be reduced. We also propose repealing three existing statutes.

Last spring, when I reviewed the agency's budget history and analyzed the future budget picture, I concluded that the Department of Agriculture would erode to the point of irrelevancy if new revenue was not found. To counter that trend, we began developing the package before you today. Legislative Research analysis shows that since fiscal year 1994 the SGF portion of the KDA budget has increased 4.5 percent and the overall budget has increased 7.1 percent. We face significant general fund shortfalls for fiscal year 2003, and the Division of the Budget projects significant general fund needs in fiscal years 2004 and 2005. Clearly, KDA cannot expect general fund increases any time in the next three to four years. In addition, most KDA fees have not increased in more than a decade.

The FY 2001 budget for KDA was \$18,084,295. The funding mix is 55 percent state general funds, 29.5 percent state required fees and 15.5 percent from federal grants financed by the nation's taxpayers. KDA had 303.2 FTEs in FY 2001, down from 326.5 in FY 1994.

Our package of bills is intended to ensure that the Department of Agriculture retains its regulatory credibility and that the Secretary remains a viable voice for Kansas agriculture. Our package includes:

Bill Description	House Bill Number	Senate Bill Number
Livestock Remedy Repeal	2687	435
Structures Program Changes	2689	436
Plant Pest Act Changes	2700	437
Agency Fee Bill	2701	438

Senate Agriculture Committee  
Date 1-29-02

Attachment # 2-1 thru 2-8

## Adjustments to Improve Operations and Meet Increasing Expectations

- 1995
- Became a cabinet level agency
  - Clearly defined the mission – administer the laws and programs assigned to the Department in an effective and efficient manner which, if challenged, will be proven credible.
  - Established Karnal bunt laboratory; Worked with Allied Signal to develop a one of a kind automated microscope.
  - Completed review of statutes, rules and regulations
- 1996
- Transferred agricultural marketing to Department of Commerce & Housing. Four positions were retained and pushed to field operations.
  - Flattened agency chain of command. Removed an entire layer of bureaucracy. Each manager now reports directly to the Secretary or Assistant Secretary.
  - Overhauled the Weights & Measures program. Acquired the fuel pump inspection program. Plan for improvement was developed through a peer review, stakeholder meetings and a system analysis of the program.
- 1997
- Consolidated and centralized support functions.
  - Began agency computerization and database integration working to do away with multiple databases and equipment and software which were incompatible.
  - Acquired the Grain Warehouse Examination program after the abolishment of the Kansas Grain Inspection Department.
  - Performed a Water Structures Program systems analysis to improve program operations.
- 1998
- Disbanded the official seed laboratory. Permissive services are now performed by the private sector. KDA retained regulatory sample responsibility.
  - After DeBruce explosion, trained grain warehouse examiners to recognize unsafe conditions and report it to the Kansas Department of Human Resources.
- 1999
- Overhauled the Meat and Poultry Inspection program. Changes made after a peer review with USDA and state program directors from Oklahoma and Texas, as well as a systems analysis which included inspection staff and industry representatives.
  - Revamped the water appropriation decision making process requiring that applicants receive due process under KAPA and requiring the movement of policies to rules and regulations as required by the Kansas Supreme Court.
  - Peer review of the Plant Protection and Weed Control program was conducted.
- 2000
- Completed review of statutes, rules and regulations.
  - Privatized grain commodity commissions.
  - Reorganized ACAP program. Created the Pesticide & Fertilizer Program to address national environmental regulatory trends.
- 2001
- Disbanded the Apiary Program.
  - Narrowed the involvement of KDA in implementing the Kansas Noxious Weed Law.
  - Made major strides toward database integration with completion scheduled for 2002.
  - Performed a Water Appropriations Program Fail Mode Effects Analysis to improve program efficiency and implementation.

2002

- Repeal three obsolete laws and programs.
- Implement top recommendation from the fail mode effects analysis of the water appropriations process.
- Narrow the scope and responsibility of the Water Structures program.

During this time period, **nearly every program has undergone a peer review**, systems analysis, internal or external audit, or sought advice from stakeholder teams in order to improve efficiency and effectiveness. These include meat and poultry, plant health, pesticide and fertilizer, ACAP, water structures, water appropriations, the nutrient utilization program and weights and measures.

November 21, 2001

## **Advocacy Efforts on Behalf of Agriculture**

### *Protecting and Expanding Markets*

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- Proactive response to Karnal bunt wheat threat continues to protect export markets for Kansas wheat. The structure used to develop detection data was also used to respond to the Khapra beetle, another pest highly regulated by most foreign countries that import Kansas commodities.
- Governor Graves served as chairman of the Governor's Ethanol Coalition. KDA promoted ethanol before the California Energy Board and has worked with the Kansas Department of Commerce and Housing to develop an ethanol template for use by firms exploring ethanol production opportunities in Kansas. During 1999, Governor Graves led 23 state governors in promoting the use of ethanol as an alternative fuel. All this benefits Kansas grain producers.
- Secretary Clover Adams actively supported a wheat export initiative for funding by the Kansas Wheat Commission to open markets for high-quality Kansas wheat in Mexico.
- Signed an memorandum of agreement with the North American Weed Free Forage Association to open new markets for Kansas producers who raise weed-free certified forage.
- Implemented a boll weevil trapping program to assure USDA and the United States cotton industry that Kansas was free of boll weevils. No boll weevils were found in 2001, which negated the need for a statewide boll weevil eradication program paid for by growers.

### *Reasonable, Customer-Friendly Laws and Regulations*

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- Supported SB 237, which contained provisions for water banking and five-year flex accounts, for more flexibility in surface water and groundwater appropriations. KDA supported this legislation because of the flexibility it offered water users and its potential to contribute to water conservation.
- Developed and made available a computer program that aids creation of nutrient plans for fields as part of KDA's responsibility to regulate nutrient management planning for swine facilities. Although originally developed to assist swine producers under HB 2950, the program has been made available to any producer using any other fertilizer source.
- Supported amending the grain warehouse law to allow irrevocable letters of credit, giving grain storage facilities greater flexibility to meet their producers' needs.
- Proposed amendments to anhydrous ammonia regulations to allow farmer cooperatives and fertilizer dealerships the opportunity to use new technology to meet the needs of producers.

- Funded a portion of the KSU mobile irrigation laboratory to provide Kansas producers with information and education to reduce nitrate pollution of groundwater possibly caused by the application of fertilizers through irrigation equipment. The risk of pollution is greatly reduced by appropriate timing of fertilizer application.
- In 2001, the Kansas dairy statutes were reorganized and updated. Obsolete laws were removed and the remaining laws were organized into sections for easier reference by the user. Further, KDA contracted with the Kansas Dairy Commission to produce a Kansas Dairy Producer's Handbook to help producers identify legal requirements that impact their operations and by providing best management practice information on waste lagoon management and maintenance.

#### Ensuring Availability of Pesticides and Other Innovative Pest Management Practices

- In May 2001, secured a Section 18 emergency exemption from EPA to use Vista to control sericea lespedeza in Kansas rangeland and permanent grass pastures. The approval means ranchers and land managers now have a more cost-effective tool to battle this noxious weed.
- Funded FQPA assessments of pesticides needed by farmers for on-farm stored grain, cattle production, post-harvest grain sorghum stored in elevators and apple and peach production. This effort precluded EPA from using worst-case default assumptions to determine agricultural pesticide use and hazards. KDA also is funding profiles of a number of Kansas crops, which EPA will use to make pesticide registration decisions. Kansas is the only state to use tax dollars to fund these studies and profiles. In other states producers have paid for them.
- The Kansas Secretary of Agriculture is a member of the USDA-EPA Committee to Advise on Reassessment and Transition (CARAT), the successor to the Tolerance Reassessment Advisory Committee (TRAC), which was formed to help implement the Food Quality Protection Act. Secretary Clover Adams is the only secretary of any state agricultural agency to sit on this committee. She serves to protect Kansas producers in the implementation of new safety standards for evaluating pesticide active ingredients used in food, while not stepping on the interests of other states.
- Worked to provide agricultural producers access to pesticides needed for crop protection in the face of severe weather and pest challenges. KDA approved 20 special pesticide use permits in 1998 and 1999, one of which saved a grain sorghum producer \$1.5 million worth of seed and a certain and significant loss of income.
- Examining and using biocontrol methods for combating noxious weeds (Musk Thistle, Canada Thistle, Multiflora Rose, Purple Loosestrife) and pests (Japanese Beetle, Pine Sawfly, Alfalfa Weevil), which is a benefit to both agriculture and the environment. Biocontrol methods allow producers to achieve some level of control over pests without using pesticides, which is especially important in environmentally sensitive areas.

#### Natural Resource Protection

- With help from the Department of Wildlife and Parks and the State Conservation Commission, KDA brought together the landowner, conservation, commodity, environmental, wildlife and agribusiness interests that formed the Kansas Farm Bill Conservation Coalition. The group met several times during the summer of 2001 to develop its recommendations to Congress for the conservation title of the next farm bill.
- Hosted KDA's second Agriculture Earth Day on May 8, 2001. This annual event rotates across the state to reach more individuals and to reinforce the message of agricultural stewardship in Kansas.
- Supported the Agriculture and Specialty Chemical Remediation Act, which provides financial aid to property owners faced with clean-up costs associated with soil and groundwater contamination caused by agricultural and speciality chemicals (fertilizers and pesticides).

#### Water Quality Improvements

- Encouraged—and committed resources—to intervene in the TMDL lawsuit to ensure that our state's rights are protected.
- Helped the State Conservation Commission fund a study to determine primary sources of coliform bacteria in Kansas surface waters and to test the effectiveness of farm best management practices to reduce bacterial contamination of streams, lakes and rivers.
- Actively support voluntary, incentive-based approaches to achieve water quality improvements. In that vein, KDA provided some funding for Extension watershed specialists and a NRCS field conservationist, who will provide full-time educational and technical assistance to farmers and ranchers in high-priority TMDL watersheds.
- Actively participated in the 2000 EPA rulemaking regarding Kansas Water Quality Standards. Submitted a 47-page document detailing why EPA should not proceed with its proposed rule. These comments were supplemented with an 8-inch stack of supporting materials documenting many measures the state has taken to improve water quality. Secretary Clover Adams also appeared at the public hearing in Dodge City to oppose the proposed rule.
- Actively supported passage of SB 204 during the 2001 session. When implemented, this legislation will allow the state of Kansas and landowners to focus their limited resources on improving water quality rather than chasing paper problems. This new water quality framework allows all parties to focus on the highest priorities and improve water quality.

#### Enhancing Food Safety

- Strongly believe that Kansas farmers and ranchers benefit from consumer confidence in the Kansas meat, milk and egg supply. To that end, KDA has aggressively

improved the state meat and poultry inspection program and updated the Kansas egg law to comply with federal regulations enacted to improve egg safety.

- Partnered with the Kansas Public Health Association on Kansas Conference for Food Protection October 9 and 10, 2001, in Wichita, which provided an opportunity for food safety officials to discuss state and federal issues that impact public health.
- Worked closely with the Kansas Department of Health and Environment and the FDA to address misapplications of pesticide to wheat. KDA provided laboratory analysis, grain warehouse auditing to locate potentially contaminated wheat, and general administrative guidance on pesticide use and grain handling information. Partnerships like these are essential to food safety, pesticide regulation and the protection of our state's leading export commodity.
- Applied for and received an FDA grant to develop Spanish-language training materials to better meet the needs of Kansas' rapidly changing dairy industry. Spanish is the first language of many individuals now working in Kansas dairies and as milk haulers. A written training guide, test and training video were translated into Spanish for milk haulers. The materials will help ensure safe handling of Kansas milk.

#### *Moving Government to the Private Sector to Benefit Agriculture*

- Supported legislation to restructure Kansas' four grain commodity commissions. The new structure privatizes the commissions' operations, allows each commission to elect its own leadership from registered producers and returns control of checkoff funds to each commission.
- Dedicated one member of the Secretary's staff to facilitate the commodity commissions' transition to privatization. This individual developed a database, informational materials and a website for the new commissioner election process, and promoted the election through media interviews, trade shows and visits to individual counties.
- Supported privatization of grain inspection services in May 1997. Kansas was one of very few states where inspections were done in the public sector.

#### *Protecting Agricultural Producers*

- Initiated producer awareness campaign to minimize the possibility of Karnal bunt being introduced to Kansas wheat when USDA expanded its Karnal bunt quarantine to include four north-Texas counties in June 2001. Secretary Clover Adams recorded public service announcements to air on farm radio stations statewide, and fact sheets were made available to affected stakeholders and all county extension offices.
- Promoted Kansas' interests in daily conference calls sponsored by USDA's Animal and Plant Health Inspection Service in response to the spread of Karnal bunt to four north-Texas counties in June 2001.



- After USDA expanded its quarantine of Karnal bunt-infected areas, Secretary Clover Adams ordered that all wheat seed must test Karnal bunt-free before it may be offered for sale in Kansas.
- KDA took a proactive stance to protect Kansas' livestock from contagious animal illnesses like foot-and-mouth disease. Inspectors who come into contact with animals susceptible to contagious disease are trained to spot signs of illness and know which steps to take to contain the disease. Also, administrative staff and an agency veterinarian participated in emergency management training to help the state prepare its response to an outbreak of contagious animal disease.
- Secured legislative approval for enhanced regulations and civil penalty authority regarding feedstuffs. This allows KDA to more effectively prevent material believed to be responsible for bovine spongiform encephalopathy, or mad cow disease, from entering the food chain through ruminants.
- Opposed EPA-proposed rules for confined animal feeding operations because of the detrimental economic impact they would have on smaller livestock producers and their overall ineffectiveness to achieve their stated goal of improved water quality.
- Actively supported legislation to update the antiquated Kansas Restraint of Trade Act to bring Kansas anti-trust laws into the 21<sup>st</sup> century. It provides consumers, businesses and commodity producers with an effective avenue of recourse against market-distorting practices of unscrupulous businesses.
- Provided comments to the U.S. Fish and Wildlife Service regarding their proposed critical habitat for the Arkansas Shiner. Created an internal Endangered Species Workgroup to monitor endangered specie activities in Kansas and to identify opportunities for KDA to be involved in the listing, habitat designation and recovery process.

#### Measuring Public Opinion

- Shared with Kansas Department of Commerce and Housing the cost of conducting a statistical survey to determine Kansans' attitudes about agriculture, which serve as the basis for an information campaign by agricultural trade associations.

#### Renewable Energy to Benefit Farmers and Ranchers

- The Kansas Department of Agriculture has been a sponsor of the first and second annual Kansas Wind Energy Conferences. We support research and commercialization of technology making wind a renewable energy source and an income supplement for farmers and ranchers. Kansas is a good source of wind energy and wind turbines can provide another source of income to Kansas farmers and rural residents.



EXECUTIVE DIRECTOR  
JIM SHEEHAN  
Shawnee Mission

SENATE AGRICULTURE COMMITTEE SB 438 1-29-02

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DIRECTOR OF  
GOVERNMENTAL AFFAIRS

FRANCES KASTNER

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership includes retailers, distributors and manufacturers of food products throughout Kansas.

We understand the reasons for initiating fees on services that have been funded with tax dollars. However, I must say that we have always considered a FEE as a HIDDEN TAX.

Many legislators view a fee as easy revenue that doesn't impact their constituents since the business that pays the fee has to add that to their cost of doing business. Ultimately your constituents DO PAY for the fees you impose.

Whenever a business doesn't make a profit, they close their door. This results in lost sales tax, business tax, personal income tax their employees pay, and local property tax.

Our members are willing to pay for their fair share to insure that their customers are receiving accurate weights. It is equally important for grocers to be certain their scales are accurate.

We see the fees on scales at the bottom of page 36 and on scanners or point of sale systems on top of page 37 as "reasonable", if we can tell our members there will not be an increase each year.

Our members do not want to see their customers and neighbors put at a greater disadvantage than absolutely necessary, especially when they have no way to increase their income. We feel it is time for ALL our citizens to assume their fair share of the economic conditions of our state.

Thank you for the opportunity to express our concerns, and we respectfully request you to consider the full ramifications of this bill.

*Frances Kastner*

Senate Agriculture Committee

Date 1-29-02

The Honorable Senator Derek Schmidt  
Senate Ag Committee  
January 29, 2002

**Senate Bill 437**

My name is Jim Herynk. I am part of the Kansas Plant Pest Act Review Group, and represent the Kansas Landscape and Nursery Association as a board member. I am also a member of the Kansas Greenhouse Growers Association.

After much discussion and review of the current Kansas Plant Pest Act, we have determined that the Kansas Horticulture industry has changed enough to warrant revisions as proposed by Jamie Clover Adams, Kansas Secretary of Agriculture. Please consider the following 3 items:

**1. "Nursery Stock" Changed to "Live Plant Materials"**

The current act regulates "nursery stock", but the Kansas economy is no longer just being impacted by nursery stock. The Kansas "Green" industry now includes ornamental horticulture being produced in greenhouses and growing fields across our state. Redefining the green industry to include plants materials that would be more representative of the true picture of the Kansas Horticulture Industry is appropriate.

For this reason, we support replacing the exclusionary term "nursery stock" with the more inclusive term of "live plants". We also support a revision that applies a fee to all Live Plant Dealers, not just Nursery Stock Dealers.

**2. Fee for Live Plant Dealers with More Than \$10,000 in Retail Sales**

As a greenhouse grower, I am aware that, as a whole, our industry makes a great contribution to the economy of Kansas. But I also know that as individual growers, many are small enough that government regulations would be overwhelming.

For this reason we support a revision that would exclude persons with annual live plant retail sales of less than \$10,000 for Kansas produced live plants. Not included in this exclusion would be anyone who imported plant materials from other states.

We also support a revision that would change the fee for dealers to \$50, with an understanding that any increase in this fee would require a public hearing.

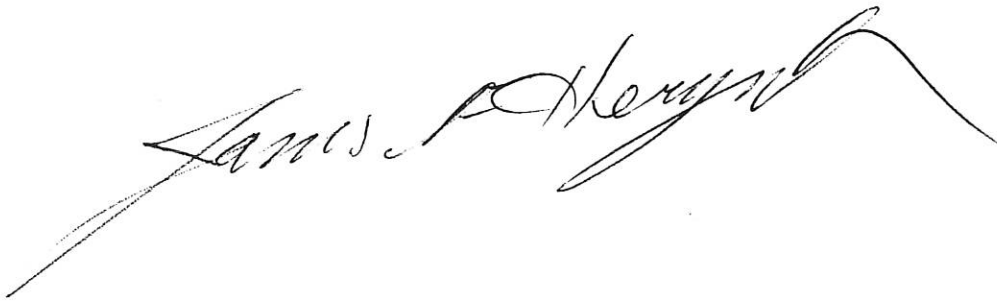
**3. Fee Adjustments for Plant Inspections**

One of our main goals is to prevent importation of harmful organisms into Kansas agriculture. I believe the Kansas Department of Agriculture does an excellent job of pest management, and is probably more vigilant than many states. Plant inspections are a necessary function of a healthy

agricultural industry. As a group we believe more discussion is needed as to what would be the best method and fee structure.

We do, however, support a \$30 per hour fee for live plant inspections, when these inspections are made at the request of the grower.

Thank you for your consideration.

A handwritten signature in cursive script, reading "James P. Heryn". The signature is written in black ink and is positioned in the upper middle section of the page.

STATE OF KANSAS

BILL GRAVES, GOVERNOR

Jamie Clover Adams, Secretary of Agriculture  
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KANSAS DEPARTMENT OF AGRICULTURE

Senate Agriculture Committee

January 29, 2002

Testimony Regarding  
Senate Bill 435

Rebecca Reed, Special Assistant  
to the Secretary of Agriculture

Mr. Chairman and members of the committee, I am Rebecca Reed with the Kansas Department of Agriculture. Thank you for the opportunity to present testimony regarding the repeal of the livestock remedies requirement for the Kansas Department of Agriculture.

**Background**

The original livestock remedies law was introduced during the 1910s. In the 1920s it was transferred to the Board of Agriculture and, in the 1940s, more authority was given to enforce the provision. While documentation of the reason for its introduction is sketchy, history shows that questionable remedies were being introduced to consumers at every corner. There was no federal oversight from the Food and Drug Administration, so states were responsible for consumer protection in the livestock remedies industry. The label requirement and oversight by a state agency were most likely intended to deter manufacturers of questionable medicated potions.

Currently manufacturers are required to register their label with KDA and to pay a \$10 fee. The label must contain:

1. The name and address of the person responsible for putting the remedy on the market;
2. The name, brand, or trademark under which the remedy will be sold;
3. The minimum net contents of the container, package, or parcel;
4. English name of each ingredient used.

Livestock remedies are, in general terms, over-the-counter medications for animals. Field inspectors typically check livestock remedy products for product registration, labeling requirements and the expiration date. We have done 279 livestock remedy inspections since October 1999, 218 of which were in co-ops and feed mills, 48 at farm supply stores, seven at pet shops and six at vet suppliers. KDA issued 155 stop sale orders, most of which were for out-of-date product still on the shelves.

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Attachment # 5-1 thru 5-2

## **Repeal**

Repealing the livestock remedies requirement from KDA's list of statutory authorities will not leave consumers without protection. Before a product can be marketed and distributed, FDA verifies that it is safe as labeled. Consumers are savvy enough to check expiration dates and to read the label to understand product uses.

The Agricultural Commodities Assurance Program (ACAP) regulates livestock remedies, as well as eggs, feed and seed. In fiscal year 2001, the total budget for this seven-employee program was \$361,212. Ninety percent of the budget came from fees, 8 percent came from a grant and 2 percent came from federal funds. The livestock remedies registrations contribute roughly \$16,000 a year to the ACAP budget, which is not enough to make the program economically viable. Repealing the livestock remedies requirement will allow staff to spend more time checking eggs, feed and seed.

I ask for a repeal of the livestock remedies requirement for KDA. Thank you for your time and I will stand for questions.

STATE OF KANSAS

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KANSAS DEPARTMENT OF AGRICULTURE

Senate Agriculture Committee

January 29, 2002

Testimony Regarding SB 436

Greg A. Foley, Assistant Secretary of Agriculture

Good morning Chairman and members of the committee. I am Assistant Secretary of Agriculture Greg Foley. Thank you for the opportunity to appear today to present testimony on Senate Bill 436.

The proposed bill addresses changes in current statutes that regulate floodplain fill and levees, dams, and channel changes or stream obstructions. The Water Structures program regulates human activities that affect the flow of rivers and streams, to ensure that those activities are properly planned, constructed, operated and maintained for their authorized purposes without adversely affecting the public's health, welfare or safety, the environment, or public and private property. Water resource regulation is accomplished primarily through permitting structures constructed in a floodplain, or that alter the course, current, or cross-section of a stream.

Why does this program need policy changes and new fees? These changes are needed for the agency and the program to prioritize and refocus on the greatest risk components, to create an incentive to comply with current statutes, to address problems during the planning stage instead of dealing with problems that occur after the construction of an unreviewed and unpermitted structure, and to ensure that dams that potentially threaten life and/or property receive periodic safety inspections. New fees will provide additional staff to process applications in a timely manner, to review inspection reports and/or inspect high- and significant-hazard dams, particularly those that have been declared unsafe by the chief engineer. In addition, this allows priority of resources to continue to address construction inspections, and utilize current staff on application review and approval.

Fill and levee permitting currently has no fee associated with it. Between 1998 and 2000, we received 317 applications for levees and floodplain fills. This proposal bases the fee on the type of project and the status of the project. We estimate that it will generate approximately \$8,960. K.A.R. 5-45-1 and 5-45-8 outline definitions applicable to the floodplain and classifications for levees, and those were used to establish three types of projects: major, moderate and minor. The fees actually address the status of the project, whether it is pre-construction or planning stage, construction or completed stage. The agency receives many after-

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the-fact applications to permit structures that do not comply with current statutes. Therefore, we propose that fees defined in this bill be doubled for noncompliant fills or levees. The last modification relative to fill or levees clarifies that the fees are in addition to any other penalty under law.

The next proposed amendment deals with application and inspection fees on new construction, modification and unsafe dams currently authorized under K.S.A. 82a-302 and 82a-303b. Between 1998 and 2000, the dams unit processed 192 permit applications. The proposed fees are new fees and are estimated to generate around \$21,500. The fee structure throughout this bill parallels the philosophy of doubling the fee amount for after-the-fact permits. The fees are assessed based on the size, hazard classification and the construction status of each individual structure. This basis is relative to the complexity and hazard review requirement of the structure.

K.S.A. 82a-303c authorizes the chief engineer to issue an order on any dam where conditions exist in the construction, modification, operation or maintenance of a dam, or other water obstruction, which may present a hazard to the public's safety. When a dam is declared unsafe by the chief engineer, the proposed amendment in this bill requires an annual inspection by his staff until the dam is either in compliance or is removed. The estimated first-year fees will generate approximately \$58,900. The long-run funding from this source is anticipated to decline significantly as dams come into compliance or are removed. The fees for this category of dams range from \$1,500 to \$4,000, depending on size, to establish a significant disincentive for noncompliance. In addition, this places a very high priority on the safety of citizens and property in Kansas. To carry on that concept, hazard classification B (significant-hazard) and C (high-hazard) dams are proposed to be required to be inspected by a licensed professional engineer at least every three or five years respectively. The inspection is to be followed by a written report within 60 days from the date of inspection. If a dam owner fails to comply, the chief engineer will conduct a mandatory inspection, and the fees, referenced above for the unsafe dams, will be paid by the owner. Failure to file a complete and timely report will subject the owner to criminal penalty as provided in K.S.A. 82a-305a.

The last and most significant workload area for the structures unit is reviewing and permitting channel changes and stream obstructions. Between 1998 and 2000, the unit processed 1,283 projects of this type. The fees are doubled for post-construction applications. Permit fees will be based on drainage area in categories of major, moderate and minor, with costs ranging from \$100 to \$1,000. We estimate that this fee structure will generate approximately \$37,500.

I know there are concerns about the burden of fees on the farm economy. The department delineated the fees into three categories to outline who will be paying them. The categories include the agriculture producer and private citizen (10 percent), agricultural business (13 percent) and nonagricultural related (77 percent). The annual Water Structures program budget for fiscal year 2001 was \$892,887, 91 percent of which came from public tax dollars. Approving this portion of the fee package will modify funding from the public to 77 percent, and fee funds and state water plan funding to 23 percent.



I would like to stress that the department reviewed the needs of this program to implement the statutory requirements for a five-year period, the relationships of other state programs and what is bearable on the regulated entity. The Kansas Department of Agriculture believes that this bill, as a component of the agency's fee package, is essential to ensure public safety and property protection. Action on this bill will show Kansans that public safety is a legislative priority.

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