

Approved: February 12, 2002
Date

MINUTES OF THE SENATE AGRICULTURE COMMITTEE.

The meeting was called to order by the Vice-Chair Tim Huelskamp at 8:30 a.m. on February 5, 2002 in Room 423-S of the Capitol.

All members were present except: Senator Schmidt (excused)

Committee staff present: Raney Gilliland, Legislative Research Department
Gordon Self, Revisor of Statutes
Betty Bomar, Secretary

Conferees appearing before the committee:

Jamie Clover Adams, Secretary, Kansas Department of Agriculture
Richard Jones, Executive Director, Kansas Association of Conservation Districts
Leslie Kaufman, Associate Director, Public Policy Division, Kansas Farm Bureau
Mary Odgers, Kansas Nursery & Landscape Association
Doug Wareham, , Kansas Grain & Feed Association

Others attending: See attached list

Continue hearing on:

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

Richard G. Jones, Executive Director, Kansas Association of Conservation Districts, submitted written testimony which requests an amendment to exempt wetlands planned and constructed through the USDA, Wetlands Reserve Program. (Attachment 1)

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

Jamie Clover Adams, Secretary, Kansas Department of Agriculture (KDA), testified in support of **SB 437**, stating the Plant Protection and Weed Control program ensures the health and protection of the state's natural and cultivated plant resources from high-risk invasive insects, plant diseases and weeds. KDA activities occur in three areas: safeguarding; export commodity assurance and pest management, control and eradication.

SB 437 is the result of a review of the Plant Pest Act with representatives from the Kansas Nursery and Landscape Association and the Kansas Greenhouse Growers Association and KDA. Currently, all Kansas nurseries must be inspected and all nursery stock dealers are licensed annually. Nursery stock is defined to include only woody ornamental plants, and all nursery stock is required to be sold free of pests.

The review group recommended the following: (1) Replace the term "nursery stock" with "live plants"; (2) License all live plant dealers and simplify the inspection fee structure; (3) Establish one fee for all domestic and international inspection certificates; (4) Develop pest freedom standards based on risk to focus on the highest priorities, mainly imported plant materials; and (5) Provide KDA with civil penalty authority.

SB 437 proposes the changes recommended by the review group which: sets a cap for the hourly inspection rate at \$100 per hour, however, it was a consensus that the rate be set at \$30 per hour; and sets the cap for the live plant dealer license at \$150, however, the consensus was to set the license at \$50; authorizes the Secretary to develop pest freedom standards and grants KDA civil penalty authority. **SB 437** repeals the Kansas Apiary Inspection Act.

Ms. Adams stated, **SB 437** benefits the live plant industry and Kansas agriculture because it allows KDA to focus on the greatest threats to the cultivated and natural plant resources. The proposed legislation reduces administrative overhead, establishes a license expiration date and simplifies the fee

CONTINUATION SHEET

structure, reducing the number from nine to three; strengthens KDA's ability to ensure that Kansas commodities are accepted in the domestic and international marketplace. (Attachment 2)

Mary Odgers, Executive Secretary, Kansas Nursery & Landscape Association, submitted written testimony, in support of the proposed "review group" amendments to **SB 437**. The "review group" amendments are: Adopt a risk - based approach to plant pest regulation; replace the term "nursery stock" with "live plants"; license all live plant dealers; adjust fees - \$50 for a live plant dealer business license, expiring annually on January 31, \$30 per hour plus mileage for live plant inspections; establish pest freedom standards; and add civil penalty authority to KDA enforcement capability. (Attachment 3)

Leslie Kaufman, Assistant Director, Public Policy Division, Kansas Farm Bureau (KFB), testified in support of **SB 435, 436, 437 and 438**, which increases KDA fees and licenses. The KFB, at its 83rd Annual Meeting, strongly supported the state Meat and Poultry Inspection Program. The farmers and ranchers of Kansas want a strong KDA that is a vigorous voice for production agriculture. KFB supports a program designed to protect the public health of the people of Kansas. (Attachment 4)

Doug Wareham, Kansas Grain and Feed Association (KGFA), appeared in opposition to the passage of **SB 437**, stating the proposed fee increases will increase the cost to grain exporters from approximately \$7,200 to \$17,200. KGFA is in favor of establishing the fee structure by statute rather than by rules and regulations. Mr. Wareham stated that bordering states regularly accept "clean grade inspections" performed by USDA Designated Grain Inspection Agencies when phytosanitary certificates are issued at three of the four "export" cross-over points on the Mexico border. Further, USDA's APHIS will issue a phytosanitary certificate, based upon "clean grades" from the Kansas Grain Inspection Service for a \$50 fee plus a \$25 messenger delivery charge.

KGFA has determined that the phytosanitary inspection and certificate fee increase will not lead to increased revenue, but will encourage grain exporters to purchase these services elsewhere, further exacerbating revenue for the KDA Plant Protection Program. KGFA supports maintaining the current \$50 flat fee rate for phytosanitary inspections on grain export shipments and the present \$20 fee for phytosanitary certificates issued on grain exports until all options are thoroughly explored. (Attachment 5)

There were no further conferees to be heard on **SB 437**. The hearing was concluded.

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

Jamie Clover Adams, Secretary, Kansas Department of Agriculture, appeared in support of **SB 438**. Ms. Adams stated that every program in the Department is touched by **SB 438** or one of its companion bills. The entire fee package increases KDA revenue by approximately \$2.27 million. KDA is expected to contribute to the general fund a shortfall of approximately \$500,000.

The Pesticide and Fertilizer program is responsible for enforcing Kansas statutes and regulations governing chemicals used to control pests or to enhance plant growth. **SB 438** proposes to create a new annual fee for nutrient utilization plans and increases all other existing fees except for: fertilizer inspection fees, fertilizer product registration, fertilizer blender licenses, and pesticide dealer registration. **SB 438** creates a pesticide and fertilizer compliance and administration fund, funded with 5 cents from the existing fertilizer inspection fee.

The Meat and Poultry Inspection Program ensures the safety and wholesomeness of meat and poultry products produced by Kansas slaughter and processing plants that are not under federal inspection. **SB 438** requires wholesalers and brokers to remit a registration fee and increases all other existing fees in aggregate 50 percent. The increased revenue is to be used to meet the basic responsibilities of the Inspection program and enable increasing the number of compliance checks on ready-to-eat products.

The Dairy Inspection Program ensures consumers safe, wholesome milk and dairy products by inspecting all areas of the dairy industry. **SB 438** repeals the counter freezer inspection program, giving Kansas Department of Health and Environment (KDHE) sole jurisdiction over counter freezer operations; and increases all existing fees in aggregate fifty percent. (Attachment 6)

The meeting concluded at 9:30 a.m.

The next meeting is scheduled for February 6, 2002.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 5, 2002

NAME	REPRESENTING
Tom Bruno	Farm Credit Council
Constantine Cotsoradis	KDA
Matt Scherer	KDA
Jim Allen	Seaboard
Pat Lehman	GMD #4
Art Brown	AMU - western Aff.
Dean Garwood	Consulting Entomologist JOP
Hal Hudson	KPCA
Moh Hassan	KPCA
Jed Johnson	KLA
Leslie Kaufman	KFB
Greg Kringsick	KCGA / KGSPA
Jedson	KS FURK
Matt Berthoff	KS Co-op Council
Joe Lieber	KS Co-op Council
Doug Wareham	KGFA / KARIA
Sustian Holstein	Propane Marketers Assn of KS
George Blush	KDA
MAX FOSTER	KDA

Tom Sim

Kansas Dept. of Agriculture

TOM PALACE

PRMCA OF KANSAS

Keith Bradshaw

Dir of the Budget

Mike Beam

Ks. Livestock Assn.

ARLEA FOLEY

KDA.



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SENATE COMMITTEE ON AGRICULTURE

Senate Bill 436 - AN ACT concerning dams, levees and other water obstructions; fees and inspections.

**January 30, 2002
Topeka, Kansas**

Presented by:

**Richard G. Jones, Executive Director
Kansas Association of Conservation Districts**

Chairman Schmidt, and members of the Committee, my name is Richard Jones and I am here representing the 105 Conservation Districts of Kansas. We appreciate the opportunity to express our concerns with Senate Bill 436. Our concerns are not with the proposed fee changes, but with the permit procedures required for very shallow water areas developed through the USDA Wetlands Reserve Program.

At their 57th Annual Meeting November 20, 2001, the Conservation Districts of Kansas passed a resolution proposing a construction and water used permit exemption for shallow wetland areas developed through the Wetlands Reserve Program (WRP). (Copy Attached)

The WRP was created as a voluntary land-retirement program designed to assist landowners in restoring and protecting wetlands. The program does not create new wetlands but enhances and or improves existing areas that are designated as wetland. Areas having been identified as hydric soils and or with



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hydrophytic plants. Those developed or planned for landowners in Kansas have fill areas less than of less five (5) feet and a water depth of less than two (2) feet. Wetlands developed through this program do not obstruct streams, have no water use other than temporary storage of flood flows and incidental wildlife use. They are designed under federal policies and regulations of the Natural Resources Conservation Service with concurrence of the U. S. Fish and Wildlife Service. They do provide significant environmental benefits to the surrounding area. Participants have given many reasons for signing up in the program, but the main reason is the belief that it is good for wildlife, conservation, and economically wise. Producers have commented, "These acres should never have been farmed."

Kansas has nearly 100 WRP contracts covering nearly 10,000 acres. Interest is greatest in the southeastern part of the state. Neosho County is leading the state with about 3,000 acres of WRP easements.

The permit requirements for WRP shallow water areas are nearly the same as for water storage areas designed for flood control, water supply, recreation, etc. These requirements are not practical or applicable to the WRP shallow water areas.

We ask the Senate Committee on Agriculture to amend Senate Bill 436 to exempt wetlands planned and constructed through the USDA, Wetlands Reserve Program.

(Attached are some photos of the WRP Wetlands constructed in Kansas)

KACD WILDLIFE, FORESTRY AND RECREATION COMMITTEE

RESOLUTION NO. 1: PERMIT EXEMPTION FOR WETLANDS RESERVE PROGRAM PARTICIPANTS

WHEREAS, the wetlands restored and protected through the Wetlands Reserve Program (WRP) are very shallow water areas developed to improve wildlife habitat; and

WHEREAS, WRP wetlands do not obstruct streams, have no water use other than temporary storage of flood flows and incidental wildlife use; and

WHEREAS, WRP wetlands provide significant environmental benefits to the surrounding area including, flood damage reduction, water quality improvement, and wildlife use; and

WHEREAS, WRP wetlands are designed under the federal policies and regulations of the Natural Resources Conservation Service with concurrence of the U.S. Fish and Wildlife Service; and

WHEREAS, the State of Kansas and the Kansas Division of Water Resources require the same permits for WRP wetlands shallow water areas as water storage areas designed for flood control, water supply, recreation, etc., and the forms and reports are not practical or applicable to WRP wetland shallow water areas;

THEREFORE, BE IT RESOLVED, that the Kansas Association of Conservation Districts work to exempt WRP wetland areas (which receive only water from natural runoff) from the requirements of the State Statutes.



10-Acre Wetlands Project in Labette County





Wetlands Project in Barber County



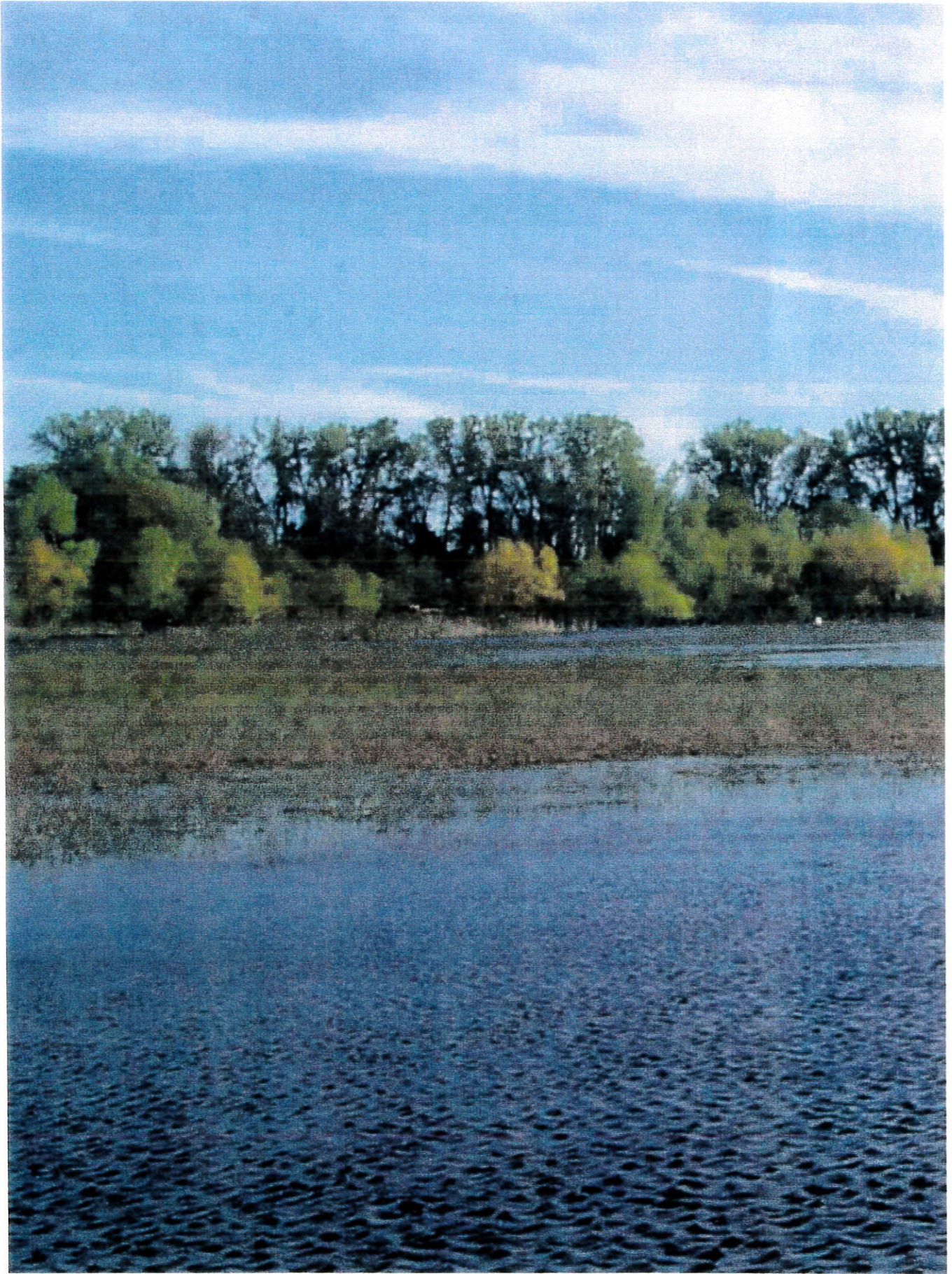
Wetlands Project in Barber County



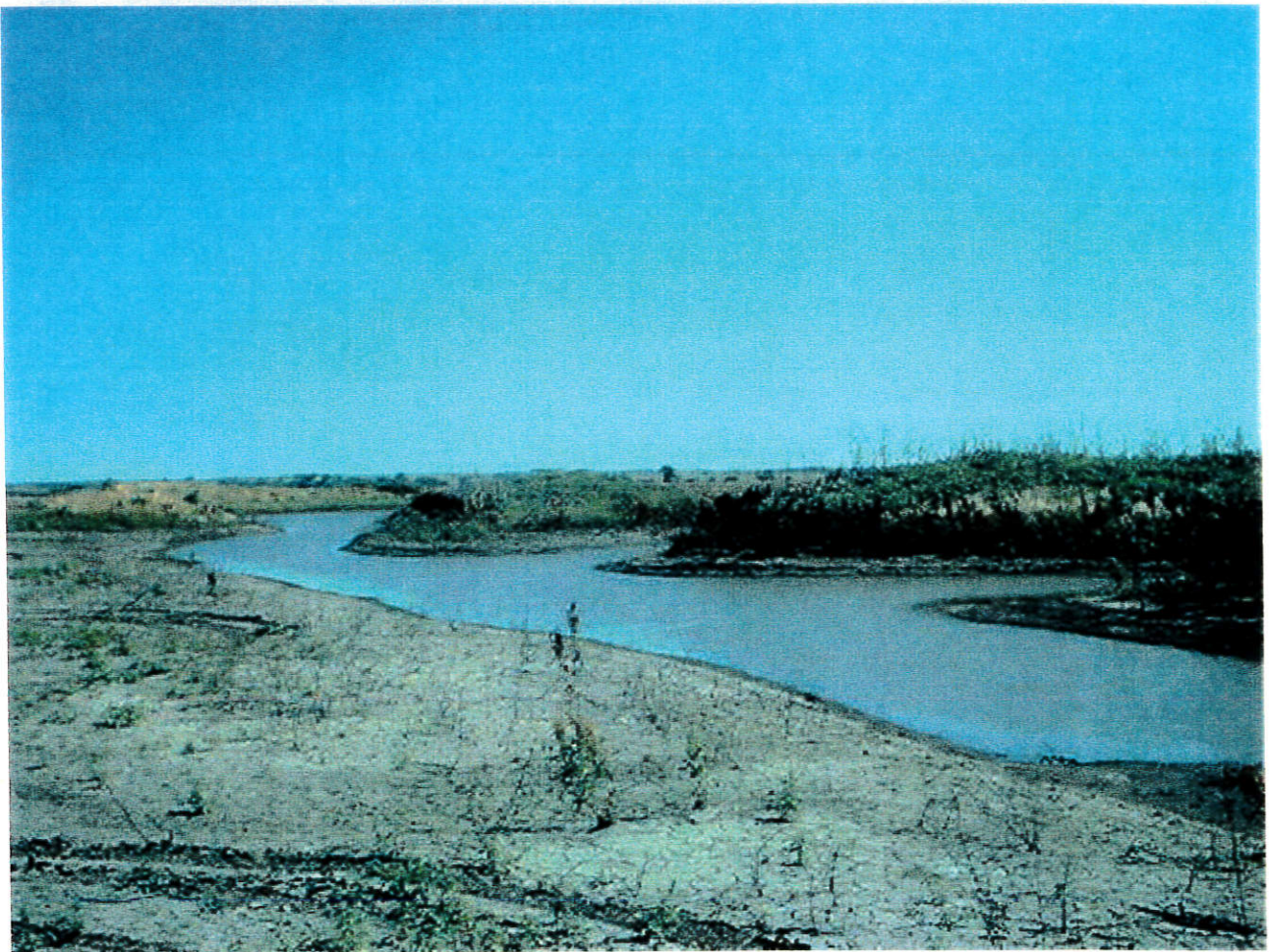
Wetlands Project in Barber County



Republic County, Wetlands Reserve Program Restoration Project



Wetlands in Pratt County



STATE OF KANSAS

BILL GRAVES, GOVERNOR

Jamie Clover Adams, Secretary of Agriculture
109 SW 9th Street
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KANSAS DEPARTMENT OF AGRICULTURE

Senate Agriculture Committee

January 29, 2002

Testimony Regarding SB 437

Jamie Clover Adams, Secretary of Agriculture

Mr. Chairman and members of the committee, I am Jamie Clover Adams, Secretary of the Kansas Department of Agriculture. Thank you for the opportunity to appear today to support Senate Bill 437.

Current Program

The Plant Protection and Weed Control program ensures the health and protection of the state's natural and cultivated plant resources from high-risk invasive insects, plant diseases and weeds. Most activities occur in three functional areas: safeguarding; export commodity assurance; and pest management, control and eradication. The 11 employees in this program respond to and deal with urban and rural issues that can range from fire ants to Karnal bunt. During fiscal year 2001, the program had a budget of \$919,175, 71 percent of which was from the state general fund, 25 percent from fees and 4 percent from federal funds.

Stakeholder Group

SB 437 is the product of a stakeholder review of the Plant Pest Act. The group consisted of representatives from the Kansas Nursery and Landscape Association, the Kansas Greenhouse Growers Association and KDA. We met about six times between December 2000 and January 2002. In addition, a special meeting was held with Kansas Grain and Feed Association representatives.

The original intent of the meetings was to examine current law for needed updating. The last time the act was significantly changed was in 1964. Since the industry has changed, a close examination of the law was necessary to address those changes.

Current law requires that all Kansas nurseries be inspected and all nursery stock dealers be licensed annually. Nursery stock is defined to include only woody ornamental plants (trees, shrubs, roses, etc.). Further, current law requires that all nursery stock sold be free of pests.

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There are no provisions for risk-based decisions, so there is no method to focus limited resources on the highest risks.

The stakeholder group looked at all areas of the law, and they were in the final stages of making recommendations when the Karnal bunt issue arose last summer. The group met again in early January 2002 to complete their work. Following are conceptual modifications the stakeholder group believes are necessary to modernize and improve the act:

- Replace the term “nursery stock” with “live plants.” The scope of current law is too narrow because it does not cover annual, herbaceous, perennial or aquatic plants.
- License all live plant dealers and simplify the inspection fee structure.
- Have one fee for all domestic and international inspection certificates.
- Develop pest freedom standards based on risk to focus on the highest priorities, mainly imported plant materials.
- Develop civil penalty authority.

Requested Changes

SB 437 proposes the changes outlined above. Specifically, live plant is defined to mean any living plant, but it will not include field and forage crops, cut plants and greenery not used for propagation, seeds, and fruits and vegetables used for food or feed. KDA agreed with the stakeholder group to create an exclusion under the live plant dealer license to exempt persons with annual live plant retail sales of less than \$5,000 who offer only Kansas-produced live plants. All persons importing live plants from other states would need to obtain a license. We believe broadening the scope of the law to include all live plant dealers will increase the regulated community by 300.

SB 437 sets the cap for the hourly inspection rate at \$100 per hour. We agree with the consensus of the stakeholder group and will set our rate at \$30 per hour. This rate reflects KDA’s actual costs and it excludes travel time to and from the inspection location. Further, the bill sets the cap for the live plant dealer license at \$150. Again, through consensus, we agreed to set the license fee at \$50. The average fee for each nursery in FY 2001 was \$72.

SB 437 authorizes the Secretary to develop pest freedom standards. Such standards are intended to help identify those non-quarantine and restricted pests that should be regulated, since some level of infestation of some endemic, low-risk pests may be acceptable in plants for sale. The purpose of pest freedom standards is to focus limited resources on those pests of greatest concern. The bill also grants the Department of Agriculture civil penalty authority. Currently, the only enforcement mechanism is criminal prosecution, which is difficult since the criminal justice system has higher priorities.

Finally, SB 437 repeals the Kansas Apiary Inspection Act (K.S.A. 2-411 *et seq.*). We propose this repeal because the state’s commercial honey and beekeeping industry has declined in recent years. Only one inspection was performed in 2001, and the state apiarist position was cut from the FY 2002 budget during the last legislative session. SB 437 includes bees and

beekeeping equipment within the Plant Pest Act, which gives KDA the authority to accommodate anyone who wants to export bees or beekeeping equipment.

Comparison to Other States' Fees

A recent survey by the Central Plant Board shows that the fees and hourly charges proposed in SB 437 compare favorably to surrounding states.

Nursery Dealer Licenses	
Nebraska	\$100
Colorado	\$75
Missouri	\$50
Kansas Proposed	\$50
Oklahoma	\$38

Phytosanitary Inspection Fees	
Nebraska	\$15/hr plus mileage. Hourly rate includes drive time.
Colorado	\$32/hr. Includes drive time and per diem if special trip required.
Missouri	\$50/hr for first hour and \$20 for each additional hour.
Kansas Proposed	\$30/hr plus mileage. Hourly rate does not include drive time.
Oklahoma	Currently no charge. Drafting regulations this year.

Benefits to Kansas Stakeholders and KDA

SB 437 benefits the live plant industry and Kansas agriculture because it allows us to focus on the greatest threats to our cultivated and natural plant resources. The bill reduces administrative overhead by eliminating the need to issue certificates of nursery inspection for every nursery. It also establishes a license expiration date during the industry's off-peak season.

Finally, simplifying the fee structure – from nine types of licenses, certificates and authorizations down to three – will require less administrative overhead to manage for both the department and the regulated industry. Further, the simplified fee structure should create more opportunities for interaction and reciprocity with other states.

SB 437 also strengthens KDA's ability to ensure that Kansas commodities are accepted in the domestic and international marketplace. Currently, staff conduct surveys of pests that are a concern to importing states and foreign countries to help meet the importing entity's plant pest quarantine requirements. This information is combined with final inspection data when the necessary phytosanitary certification is issued for the commodity. Staff have identified 391 Kansas pests that are a concern to Kansas' trading partners. In FY 2001, 77 of these pests were detected during phytosanitary surveys and/or inspections. Also in FY 2001, 38 foreign countries imported 22 Kansas-produced commodities. No shipments certified by KDA were rejected by an importing country.

The increased fees generated by SB 437 will help supplement the general fund support for this important activity. In calendar year 2001, KDA received nearly \$29,000 in fees to certify \$70 million worth of Kansas commodities shipped to foreign countries. I believe the additional investment by the regulated community that is proposed in SB 437 is not excessive in light of the benefit it offers Kansas producers and those who ship Kansas commodities.

Finally, general taxpayer support of this program remains strong even with the addition of the proposed fees. Under this proposal, general funds will contribute approximately 75 percent of the program budget. Further, I understand there is concern that increased fees place a burden on Kansas agriculture. Please understand that approximately 35 percent of the fees will be paid by traditional agriculture, while the remaining 65 percent are paid by the nursery and greenhouse industries.

Conclusion

Modernizing the Plant Pest Act will allow KDA to focus its limited resources on the highest risks. Further, the fees proposed are reasonable when you weigh them against the important role the Plant Protection and Weed Control program has in ensuring that Kansas commodities are accepted in the domestic and international marketplace.

Thank you for the opportunity to appear today to support SB 437. I will stand for questions at the appropriate time.



Kansas Nursery and Landscape Association

January 28, 2002

Senator Derek Schmidt
Senate Agriculture Committee
Room 143 N, State Capitol
Topeka, KS 66612

Dear Senator Schmidt:

The Kansas Nursery & Landscape Association (KNLA) would like to enter a written testimony for support of Senate Bill 437 before the Senate Agriculture Committee today.

The KNLA had been working with The Kansas Department of Agriculture, as well as The Kansas Greenhouse Growers (KGGA) over the past year to arrive at an agreeable act for all concerned.

The highlights of the recommendations from this committee follow:

1. Adopt a risk-based approach to plant pest regulation.

The group believes that the adoption of a risk-based plant pest regulatory system is necessary to achieve the desired level of plant pest prevention while maximizing the use of available state resources. To adopt a risk-based system, it will be necessary to broaden the regulated industry base while maintaining the capability to provide appropriate inspection and certification as needed to allow for the orderly marketing of plant materials and to meet pest freedom standards of foreign countries and other states.

2. Replace the term "nursery stock" with "live plants".

The group indicated the term "nursery stock" was too limited in scope and was archaic. Today's green industry is broader than "nursery stock". Live plants would include all live plants except aquatic plants sold for indoor use.

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3. License all live plant dealers.

All live plant dealers will be required to obtain a business license. This license will be a business license and will not serve as a plant certification document. The current requirement that all nurseries in the state be inspected annually will be deleted. The group indicated KDA could better accomplish assigned pest prevention responsibilities by having more time to dedicate to high-risk activities.

KDA staff will work with those live plant dealers wishing to ship their plant materials to another state to ensure their plants meet the pest and inspection requirements of the importing state. A separate certification document will then be issued by KDA to cover the plant materials being shipped. The importing state will determine the type of certification to be issued. KDA will attempt to develop agreements with other states to expedite this process.

A licensing exclusion was developed for persons with annual live plant retail sales of less than \$5,000 who offered only Kansas-produced live plants. All persons importing live plants from other states regardless of sales level would need to obtain a business license.

4. Adjust Fees. The following fees were developed:

\$50 for a live plant dealer business license. This license would expire annually on January 31.

\$30 per hour plus mileage for live plant inspections.

Inspections would generate fees only if an inspection was made at the request of the live plant dealer. Licensees would not pay fees for compliance inspections initiated by KDA staff. The standards for compliance inspections would be the pest freedom standards described below.

5. Pest Freedom Standards.

The group recognized that the current requirement for all nursery stock to be pest-free is unattainable and unrealistic. The current requirement to inspect all nurseries forces KDA to spend time dealing with low-risk pests and commodities and prevents activities, which would focus on high-risk pests and commodities.

The group discussed the role of quarantine pests and regulated non-quarantine pests in defining pest freedom standards through regulations. Processes to identify these pests have been developed and are readily available. By utilizing risk-based analytical methods, it will be possible to define acceptable, non-economic levels of low-risk established plant pests on live plants offered for sale.

The application of these standards would apply to live plants imported from other states as well as those produced in Kansas.

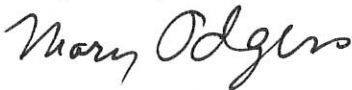
The development of pest freedom standards in regulations would be a duty assigned to the Kansas secretary of agriculture.

6. Civil Penalty.

The addition of civil penalty authority would streamline KDA enforcement efforts. The only enforcement mechanism available under the current plant pest act is the criminal justice system. A matrix of civil penalties would be developed through the rule and regulations process and are subject to the limitations of the Kansas Administrative Procedure Act.

The KNLA asks that the committee honor the recommendations set forth by the industries involved in reviewing the Plant Pest Act.

Respectfully,



Mary Odgers
Executive Secretary
Kansas Nursery & Landscape Association



Kansas Farm Bureau

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SENATE AGRICULTURE COMMITTEE

RE: SB 435 through 438 – Regarding amendments allowing the Secretary of Agriculture to increase or implement fees for various department programs.

**January 30, 2002
Topeka, Kansas**

**Presented by:
Patty Clark, Director
Public Policy Division**

Chairman Schmidt and members of the Senate Agriculture Committee, thank you for the opportunity to appear today and comment on the Kansas Department of Agriculture's (KDA) fee proposal package. I am Patty Clark, Director of Public Policy for Kansas Farm Bureau.

We appear today in qualified support for the Secretary's fee increase package and our testimony will address SB 435 through 438 collectively, rather than individually.

Secretary Adams approached our organization prior to the legislative session and outlined for us her ideas for covering budgetary shortfalls by increasing fee revenues to the Department. We appreciate this, because it provided us the opportunity to introduce the concept through our policy development process and receive member input. Our members reaffirmed existing policy and adopted new language regarding the State Dept. of Agriculture at our 83rd Annual Meeting of Kansas Farm Bureau this past November:

“ . . . We strongly support the state Meat and Poultry Inspection Program administered by the Kansas Department of Agriculture. Meat is inspected for the protection of all consumers. All plants should be inspected and the program should be supported primarily by State General Fund appropriations. . .

Regulatory functions provided primarily for the protection of the general population should receive significant funding from State General Fund monies. Programs that have a more limited scope of benefit may be candidates for a funding mix that includes user fees. . . “

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4-1 thru 4-2

We think it important when examining the Department's budgetary situation, to look back over previous year's budgets, as well. In real terms, the State General Fund (SGF) allotment for KDA programs has been steadily declining over the past several years. Secretary Adams saw the need to prepare an alternative, fee package even before the overall state projections hit new lows this fall.

As we understand it, the SGF dollars coming to the Department the past few years have not been sufficient to fully cover the cost of carrying out the obligations the legislature has statutorily given to KDA. We noted earlier in our policy language, that some programs, not affecting the general populace, might be candidates for a fee funding mix. But, we strongly urge the State of Kansas to ensure that program designed to protect the public health and Kansans at large receive greater support from the State General Fund.

We know the state's budgetary situation this year, and possibly in fiscal '04 as well, is going to force a fee increase or a cut in some valuable programs. Our farmers and ranchers want a Kansas Department of Agriculture that will be a strong and vigorous voice for production agriculture. As such, they are willing to acknowledge, and even accept, some reasonable user fees. At the same time, we encourage the legislature, and succeeding legislatures, to look for new ways to prioritize KDA programs that benefit the general public and increase the Department's share of SGF funding, once the state is past this current fiscal crisis.

Thank you.

Kansas Farm Bureau represents grassroots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.

KANSAS GRAIN AND FEED ASSOCIATION

STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION
BEFORE THE
SENATE AGRICULTURE COMMITTEE
SENATOR DEREK SCHMIDT, CHAIR
REGARDING
SENATE BILL 437

JANUARY 30, 2002

KGFA, promoting a viable business climate through 
sound public policy for more than a c

Senate Agriculture Committee

Date 2-05-03

Attachment #

5-1 thru 5-3

Chairman Schmidt and members of the Senate Agriculture Committee, my name is Doug Wareham and I am Senior Vice President for the Kansas Grain and Feed Association (KGFA). The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. Our membership includes over 1,100 Kansas business locations and represents 98% of the commercially licensed grain storage in the state.

I appear today in opposition to S.B. 437 in light of the proposed fee increases outlined in Section 7 on Page 5 beginning at line 25, where the bill states that inspection services for certification of regulated articles intended for shipment interstate or internationally shall be assessed at a rate of \$100 per hour, plus mileage. Presently, grain exporters in Kansas are assessed a \$50 flat fee/per commodity for phytosanitary inspection services performed by the Department. While it is difficult to pin down the actual cost increase in lieu of the mileage assessment, which would vary from location to location, the best we have been able to estimate is a direct cost to grain exporters from \$7,200 to \$17,200 per year. It is my understanding the Department only intends to charge \$30/hour for inspection services, but we are concerned that future administrations might not recall these proceedings and seek the opportunity to increase the hourly fee to \$100 down the road.

In that same section the bill calls for a fee to be assessed for the issuance of certificates not to exceed \$100. For the Kansas grain trade, this means an increase in the fee paid to receive phytosanitary certificates, which are required for grain that is shipped to Mexico or the Texas Gulf for export overseas. Today, grain handlers are assessed \$20 for phytosanitary certificates. The impact to grain handlers should this language be adopted is once again difficult to pin down. We have been told the Department only intends to raise certificate fees to \$50, however, the bill clearly gives them the authority to raise the fee to \$100 without review by this committee or the full legislative process. We once again attempted to determine the fiscal impact associated with this increase and based upon 900 certificates (a number provided to us by the Department following our request) this increase would mean \$27,000 to \$72,000 to Kansas exporters.

While these increases may seem insignificant to some, they become even more troublesome for grain exporters in Kansas when compared to the fees assessed by neighboring states that fall far below the fees proposed in S.B. 437 and even the existing fees assessed by the Kansas Department of Agriculture today.

For example in Nebraska, the Nebraska Department of Agriculture recognizes "clean grade" logs submitted by the USDA Designated Grain Inspection Services that operate in that state. Therefore, grain exporters shipping from Nebraska are not required to pay for both grain inspection services and separate phytosanitary inspection services that are essentially looking for the same quality and pest concerns. It is also my understanding that phytosanitary certificates are issued in Nebraska for a \$30 fee. I have been informed by grain export firm representatives that Missouri and Iowa operate

similar programs that utilize USDA Designated Grain Inspection Service Logs when issuing phytosanitary certificates.

In addition to some of our bordering states, USDA itself regularly accepts "clean grade inspections" performed by USDA Designated Grain Inspection Agencies when they issue phytosanitary certificates at three of the four "export" cross-over points on the Mexico border. It is my understanding that USDA's APHIS will issue a phytosanitary certificate, based upon "clean grades" from the Kansas Grain Inspection Service for a \$50 fee plus a \$25 messenger delivery charge. APHIS will also provide phytosanitary certificates based upon Federal Grain Inspection Service grain grades issued at the Texas gulf.

The conclusion we have arrived at is the phytosanitary inspection and certificate fee increases contained in S.B. 437 will not lead to increased revenue, but will instead encourage grain exporters to purchase these services elsewhere, further exacerbating the revenue situation for the Kansas Department of Agriculture's Plant Protection Program. Therefore, we support maintaining the current \$50 flat fee rate for phytosanitary inspections on grain export shipments and the present \$20 fee for phytosanitary certificates issued on grain exports until all options are thoroughly explored by KDA. We would be happy to bring in stakeholders and meet with the Secretary and her staff to ensure that any changes in fees will not simply lead to fewer companies utilizing the Department's program.

Thank you for the opportunity to share our concerns and I would be happy to respond to any questions.

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KANSAS DEPARTMENT OF AGRICULTURE
Senate Agriculture Committee

January 29, 2002

Testimony Regarding SB 438

Jamie Clover Adams, Secretary of Agriculture

Mr. Chairman and members of the committee, I am Jamie Clover Adams, Secretary of the Kansas Department of Agriculture. Thank you for the opportunity to appear today to support Senate Bill 438.

SB 438 Overview

Every program in the department is touched by SB 438 or one of its companion bills. The impact of the entire package – SBs 435, 436, 437 and 438 – increases KDA revenue by approximately \$2.27 million. However, KDA will be expected to contribute to the general fund shortfall to the tune of approximately \$500,000. This leaves the net revenue at approximately \$1.77 million. If the KDA fee package is enacted, the overall funding mix will be 46 percent from state general funds, 36 percent from state fees and 18 percent from federal grants.

Just slightly more than one-half of the increased revenue would fund the Water Appropriation and Water Management Services programs which currently account for nearly 33 percent of the general fund spending in the department. The Pesticide and Fertilizer program and the Weights and Measures program account for the majority of the remaining revenue.

An analysis of KDA fee funds show that agricultural producers would pay 53.2 percent of the fee increase. However, this is driven by the fees associated with the Water Appropriation program, in which 98 percent of the water rights are used by the agriculture industry. Agribusiness firms account for 10.4 percent of the new fee revenue and non-agricultural firms account for the remaining 36.4 percent.

The following sections address the specific aspects of each program included in SB 438.

Pesticide and Fertilizer Program

The Pesticide and Fertilizer program is responsible for enforcing the Kansas statutes and regulations governing chemicals used to control pests or to enhance plant growth. In general, we make sure that only approved pesticides and fertilizers are offered for sale or use in Kansas; that

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they are safely stored so they do not harm people or the environment; and that all pesticides are used safely and according to label directions.

For the Pesticide and Fertilizer program, SB 438 proposes:

- Creating a new annual fee for nutrient utilization plans (NUPs);
- No change to fees for fertilizer inspection, fertilizer product registration, fertilizer blender licenses, and pesticide dealer registration; and
- Increasing all other existing fees in aggregate just under 56.5 percent. Half of these fees have not been increased in 20 years and the remaining fees have not increased in more than 13 years.

The proposed increases do not unduly burden the regulated community. SB 438 proposes a less than 60 percent increase for fees that have not been increased in 20 and 13 years respectively. Further, the overall burden of these increases on agribusiness is minimal. A sample of small, medium and large firms from across the state showed that for the entire package – not just increased pesticide and fertilizer program fees – the following annual increases are likely:

- Small firms – average \$230 per year
- Medium firms – average \$660 per year
- Large firms – average \$1,485 per year

Further, within the sample, the fee increases are 0.14 to 0.4 percent of net revenues and 0.017 to 0.177 percent, or less than two-tenths of one percent, of gross revenues. Finally, even with these fee increases, general tax dollars will contribute nearly \$700,000 to the program budget.

The increased revenue would be used to meet the basic responsibilities of the Pesticide and Fertilizer program as outlined above. This includes funding two positions that are cut from the FY 2003 proposed budget, completing Oracle database development, contributing a greater share to the Records Center program where program work accounts for nearly 50 percent of the records processed, contributing to the work of the legal section where program enforcement accounts for a substantial share of the work, basic enforcement of the pesticide containment regulations, increased chemigation inspections, contributing to a laboratory fund for new equipment when it is needed and funding nutrient utilization plan compliance inspections. Also, we should increase the number of regular inspections across the program to bolster less-than-satisfactory compliance rates.

SB 438 also proposes creating a pesticide and fertilizer compliance and administration fund. It is funded with five cents from the existing fertilizer inspection fee. When I merged the fertilizer program with the pesticide program two years ago, I had hoped we could increase efficiencies and utilize fertilizer employees to improve outcomes within the pesticide programs. However, because of funding restrictions, this has not happened. Money from this fund could be used across all areas of the Pesticide and Fertilizer program. It would allow us to more efficiently deploy and utilize program employees.

Meat and Poultry Inspection Program

The Meat and Poultry Inspection program ensures the safety and wholesomeness of meat and poultry products produced by Kansas slaughter and processing plants that are not under federal inspection. Its mission is to detect, and eliminate from commerce, meat and poultry items that pose a health threat, are improperly labeled, or serve as a source of economic fraud to the consumer.

For the Meat and Poultry Inspection program, SB 438 proposes:

- Requiring wholesalers and brokers to remit a registration fee (currently they are required to register, and KDA inspects their facility, but they do not pay the fee);
- Increasing all other existing fees in aggregate 50 percent. These fees have not been increased in more than a decade.

The increased revenue would be used to meet the basic responsibilities of the Meat and Poultry Inspection program as outlined above. This includes contributing to a laboratory fund for new equipment when it is needed, hiring and retaining qualified inspectors, and increasing the number of compliance checks on ready-to-eat products.

Dairy Inspection Program

The goal of the Dairy Inspection program is to ensure consumers safe, wholesome milk and dairy products by inspecting and/or sampling all areas of the dairy industry. The department regulates the dairy industry at the following levels: farm production, raw product transportation, processing, packaged product distribution, and wholesale and retail sale. Operation of the program must also comply with the Pasteurized Milk Ordinance (PMO) – FDA regulations regarding milk – to ensure that Kansas producers can continue to ship milk out of Kansas.

For the Dairy Inspection program, SB 438 proposes:

- Repealing the counter freezer inspection program. KDA shares jurisdiction over these operations with KDHE. This repeal would give KDHE sole jurisdiction over counter freezer operations.
- Increasing all other existing fees in aggregate 50 percent. These fees have not been increased in more than a decade.

The proposed increases do not unduly burden the regulated community. SB 438 requests a 50 percent increase for fees that have not been increased in more than a decade. A sample of small, medium, large and very large dairy producers showed that the following annual increases are likely:

- Small firms – approximately \$10 per year
- Medium firms – between \$42 and \$145 per year (majority of farms fall in this category)

- Large firms – between \$180 and \$440 per year
- Very large firms – between \$4,000 and \$5,000 per year

Within the sample, the fee increases are approximately 0.04 percent (four one-hundredths of one percent) of the producer's gross revenues. With these fee increases, the program funding mix will be 46 percent general funds and 54 percent fees. The current funding mix is 50 percent general fund and 50 percent fees.

The increased revenue would be used to meet the basic responsibilities of the Dairy Inspection program as outlined above. This includes contributing to a laboratory fund for new equipment when it is needed, inspector training and maintaining compliance rates to ensure Kansas producers are able to ship their milk into interstate commerce.

SB 438 also repeals the counter freezer program that addresses soft serve frozen dairy desserts served in retail establishments. Currently, both KDA and KDHE have jurisdiction in this area. The legislative history indicates legislators wanted to keep everything dealing with dairy in the Department of Agriculture. However, under current budget circumstances, we believe it is wise to eliminate this duplication of service and give sole jurisdiction to KDHE since they already inspect these establishments. KDA currently spends approximately \$118,000 per year on this program. Repeal would eliminate \$55,000 in fees. However, I intend to continue to utilize the remaining general funds within the dairy program.

Weights and Measures Program

Weights and measures is one of the oldest government functions. It is specifically mentioned in the Articles of Confederation and the United States Constitution. The global and United States economies depend on uniform standards of mass, volume and length. Thus, the Weights and Measures program serves a very important role in consumer protection and facilitating trade.

Weights and measures inspectors test all kinds of commercial weighing and measuring devices. Inspectors test scales used in grocery stores, grain elevators, livestock sale barns, pawn shops and other locations. They test gas pumps and meters used to sell chemicals or to sell propane to homeowners. Weights and measures inspectors check packages containing edible and inedible products to ensure that the consumer receives the quantity stated on the label. They even verify that scanners scan the correct price. Essentially, all consumer goods are subject, in one way or another, to the weights and measures law.

For the Weights and Measures program, SB 438 proposes:

- Creating a new annual facility authorization fee with a graduated fee schedule based on the number of scales within the facility. Essentially, the larger the facility, the higher the fee.

- No increase in the petroleum inspection fee, which funds the gas pump inspection program.
- Increasing the annual scale company licensing fee.

In 1996, the Legislature overhauled the weights and measures law when an audit revealed widespread inaccuracies in Kansas weighing and measuring devices. In fact, it was the concern of the Packers and Stockyards Administration that large scales were not being tested properly that led to the post audit investigation. You will recall that the Weights and Measures program was “privatized” in the late 1980s, at a time when the state was facing a budget situation similar to what we face today. I believe the program’s failure was directly related to the idea that in tight budget times there was no need to follow-up on the private sector testing of scales. Currently, we have a good program with acceptable compliance rates. We should not risk allowing the program to falter by pulling back state oversight.

FY 2001 Compliance Rates	
Scanners	65%
Small Scales	92%
Large Scales	92%
Meters	73%

The number of inspections conducted under each category includes both random sampling and targeted follow-up. The mixture varies by category depending on the needs of the program and the resources available. We believe that the facility authorization fees proposed in SB 438 reflect our actual costs of inspection for each category of weighing and measuring device. However, we acknowledge that the facility will still have to pay the private scale company to perform the annual inspection required by law.

Our data indicate that 25 percent of the devices are part of the agriculture sector while the remaining 75 percent are not. However, the agriculture sector would pay approximately 49 percent of the fees, while the non-agricultural sector would pay 51 percent. This is driven by the large scale facility fees and the higher costs associated with large scale inspections.

The increased revenue would be used to meet the basic responsibilities of the Weights and Measures program as outlined above. Fees could be used to focus on meters and scanners to increase compliance rates, as well as to respond to the use of carcass meters which are starting to be used to factor the price paid for cattle. Further, the program is part of the agency conversion to a common customer Oracle database, which will increase efficiencies and provide e-business opportunities for the regulated community.

The Weights and Measures program has come a long way since 1996. We should not let this program again erode to the point that Kansans can no longer have confidence in the weighing and measuring devices used in commercial transactions.

Water Appropriation and Water Management Services Programs

The Water Appropriation program administers the provisions of the Kansas Water Appropriation Act, which provides the foundation for the acquisition and administration of water rights in the state. The programs primary functions are to:

- Process applications for permits to appropriate water for beneficial use;
- Issue certificates of appropriation in accordance with actual use within the terms, conditions and limitations of the permit;
- Process applications for a change to an existing water right;
- Process water transfer applications;
- Maintain a reporting and accounting system of the amount of water used as reported by each water right holder; and
- Allocate water during shortages, investigate impairment, waste, illegal wells or water use in violation of water right terms, conditions or limitations.

The Water Management Services program provides administrative and technical assistance to the Water Resource programs. The program also develops long-term water management programs to address interstate and intrastate issues, represents Kansas in interstate river basin compacts and addresses water conservation issues.

For the Water Appropriation program, SB 438 proposes:

- Creating a new annual water administration fee to be paid each year when water use reports are filed.
- Creating new fees for ownership changes and failure to file accurate water use reports.
- Increasing all other existing fees in aggregate 100 percent. These fees have not been increased in more than a dozen years.

The Water Appropriation and Water Management Services programs utilize nearly 33 percent of the state general funds allocated to the department. To date, as the department has captured efficiencies and cut budgets in other areas, these programs have been held harmless. Likewise, of the total fees proposed in SB 438, fees for these programs account for 51.5 percent of the total generated.

Further, the bulk of the funds generated by fees within these programs come from the \$20 per water right or permit annual administration fee. In a sample of water right holders grouped by the size of the operation, water right holders could expect to pay the following:

- Small operations – from \$20 to \$60 per year
- Medium operations – from \$20 to \$800 per year
- Large operations – from \$20 to \$1,400 per year
- Very large operations – from \$5,000 to \$10,000 per year

While this provides a wide range, we wanted to illustrate the impact on Kansas agriculture since 98 percent of the water rights are used for agricultural purposes. To put these costs into perspective, the \$20 water right administration fee accounts for 0.008 cents – eight one-thousandths of a cent – per bushel on land yielding 200 bushel corn.

I do not believe these fees place an undue burden on water right holders. The funds will ensure that the water right holder's real property rights continue to be protected. However, if cuts continue to be absorbed by KDA, protection of these real property rights cannot be guaranteed. As the water resource continues to mature, enforcement against overpumpers, investigation of impairment complaints, processing abandonments, implementing innovative but resource-intensive solutions to water declines will be necessary, but it may not be possible under the current resource scenario.

The increased revenue would be used to meet the basic responsibilities of the Water Appropriation and Water Management Services programs as outlined above. Fees could be focused on document imaging technology to increase efficiency and reduce data errors, as well as allow water right holders e-business opportunities. Further, fees would also be focused on obtaining greater compliance with permit conditions, meeting the needs outlined in the paragraph above and improving the timeliness of permit application processing.

Water is agriculture's most vital resource. SB 438 asks water right holders to play a greater financial role in maintaining the resource that directly benefits them. If the proposal is passed, two-thirds of the program's funding would still come from the general fund.

The Alternatives

If SB 438 and its companion bills are not passed, I will cut the KDA budget at least 5 percent for fiscal year 2003. This includes two positions from the Pesticide and Fertilizer program, four positions from the Agricultural Statistics program and five positions from the Water Resource programs. The total cumulative cuts from FY 2000 to FY 2003 will be nearly \$1.1 million and nearly 26 positions. Further, if projections for FY 2004 and FY 2005 are correct, inaction on the KDA fee fund package will make it necessary to cut 3 percent to 5 percent more in each of those years.

The department has no more fat to cut and it will be unable to capture efficiencies because there will not be funds to invest in technology. Therefore, the bulk of the cuts will be people and possibly entire programs. (Nearly 80 percent of the KDA budget is allocated for salaries and wages and costs associated with inspection activities.) Most likely targets include our partnership with the National Agricultural Statistics Service, deep cuts to the Water Resources and Administration programs, as well as other state general funded programs. I believe the hole would be so deep, KDA would never be able to climb out of it given other state funding priorities.

This type of erosion will severely curtail the Secretary's ability to advocate for Kansas agriculture. Without staff, KDA would not be involved in such debates as water quality

standards, confined animal feeding regulations, endangered species management planning and general agricultural advocacy. Further, the Secretary's position would be weakened within the executive branch.

Conclusion

As I have stated on many occasions, I bring this package out of necessity. I understand members' concerns about the fee-to-general-fund mix at KDA. The current and future budget picture makes increasing the KDA state general fund allocation impossible. However, as the adage goes, politics is the art of the possible. SB 438 is what is possible for KDA.

I appreciate the opportunity to make my case for passing SB 438 and its companion bills. I will stand for questions at the appropriate time.