

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 February 6, 2002 in Room 423-S of the Capitol.

All members were present except:

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
Mike Beam, Kansas Livestock Association
Hal Hudson, Kansas Pest Control
Art Brown, Mid-America Lumbermens Association
Doug Wareham, Kansas Grain & Feed Association and the Kansas
Agribusiness Retailers Association

Others attending: See attached list

Mike Beam, Kansas Livestock Association, submitted a request for a bill introduction that grants immunity from liability for livestock producers.

Senator Tyson moved, seconded by Senator Umbarger that a bill be introduced as a committee bill and referred back to committee that grants immunity from liability for livestock producers. The voice vote was in favor of the motion.

Senator Morris moved, seconded by Senator Umbarger that a bill be introduced as a committee bill and referred back to committee that conceptually expands liability insurance to ranchers and farmers who provide hunting on their land. The voice vote was in favor of the motion.

Senator Schmidt moved, seconded by Senator Schmidt, that a bill be introduced as a committee bill and referred back to committee relating to the control of serica lespedeza. The voice vote was in favor of the motion.

Senator Morris moved, seconded by Senator Umbarger, that a Resolution be introduced urging the University of Kansas School of Law establish a clinical program relating to agricultural law. The voice vote was in favor of the motion.

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

Jamie Clover Adams, Secretary, Kansas Department of Agriculture, resumed her testimony in support of **SB 438**, stating the legislation proposes the creation of a new annual facility authorization fee with a graduated fee schedule based on the number of scales within the facility; and increasing the annual scale company licensing fee. The facility authorization fee reflects the actual KDA cost of inspection for each category of weighing and measuring device. The facility will still have to pay the private scale company to perform the annual inspection required by law. The increased revenue is to be used to meet the basic responsibilities of the Weights and Measures program.

The Water Appropriation and Water Management Service Program provides the foundation for the acquisition and administration of water rights in the state. **SB 438** proposes to create a new annual water administration fee to be paid each year when water use reports are filed; establish new fees for ownership changes and failure to file accurate water use reports; and increase all other existing fees in aggregate 100 percent. Ms. Adams stated KDA does not believe the proposed 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. If cuts continue to be absorbed by KDA, protection of these real property rights cannot be

CONTINUATION SHEET

guaranteed.

Water is agriculture's most vital resource. **SB 438** asks water right holders to play a greater financial role in maintaining the resources that directly benefits them. Two-thirds of the program's funding will continue to come from the general fund, regardless of the proposed increase in fees.

Ms. Adams stated that if **SB 438** and its companion bills are not passed, the KDA budget will be cut by at least 5% for FY 2003. This cut includes two positions from the Pesticide and Fertilizer program, four positions from the Agricultural Statistics program, and five positions from the Water Resource program. The continued erosion of the KDA budget severely curtails the Secretary's ability to advocate for Kansas agriculture. (Attachment 1)

Hal Hudson, Kansas Pest Control Association, appeared on behalf of Mark Hassman, and stated the Association's support of **SB 438**. Mr. Hudson stated the increase in fees charged to all Kansas pest control companies is the result of the anticipated loss of state general fund revenues for KDA. KDA will be using the increased revenue as a source to make up the budgetary shortfalls. The Association is not opposed to the increases proposed, but is opposed to the department receiving additional monies without performance criteria being attached. (Attachment 2)

Art Brown, Mid-America Lumbermens Association, testified in opposition to **SB 438**, regarding new fees for small scales. **SB 438** provides for new fees, thereby creating a new cost of doing business that is either borne by the business, or passed on to the consumer.

Currently, the system for checking scales is administered by independent contractors who pay a license fee to the State to check scales to the specifications of the National Institute of Standards (NIST) and Technology Handbook No. 44. KDA division of Weights and Measures provides continuing education training as required by rules and regulations. The independent companies that employ the technicians must submit their weighing devices to an NIST laboratory yearly so that the devices are in compliance with NIST handbook tolerances. Each owner of a small scale in the State must have their scale(s) tested on an annual basis by one of these licensed technicians. The normal fee range from \$25 for small scales to \$50 per scale based on travel time and time spent in testing the scale. When the form is submitted to the Division of Weights and Measures by the licensed technician, the information is entered into a computer and the information is randomly checked to see that scales are being checked in a timely manner and are in compliance. The Division does not charge for this service.

Mr. Brown stated that in summary, the Association is opposed to any additional fees imposed for doing business. (Attachment 3)

Doug Wareham, Kansas Grain & Feed Association, testified in opposition to **SB 438**, stating the "new" proposed fees for weights and measure devices, including small scales, large scales and meters will add significant new costs to every grain handling facility and feed manufacturer in the state of Kansas. The new fees for weights and measure devices will generate approximately \$300,000 in additional revenue for KDA.

Mr. Wareham stated the proposed new fees for weights and measure devices are costly and will not lead to any significant increase in compliance percentage, but will cause unwanted paperwork for grain handlers and other agribusinesses, as well as an increase in the cost to do business. (Attachment 4)

Doug Wareham, Kansas Agribusiness Retailers Association (KARA), testified in opposition to **SB 438**, stating KARA is opposed to new fees for weights and measure devices. KARA has agreed to accept some of the proposed increases. KARA is opposed to the \$40 increase for the Business License Application fee related to the Pesticide and Fertilizer Program. Statistics obtained from KDA indicate there are 210 different government agencies that are presently assessed only \$35 for the right to apply pesticides. **SB 438** proposes to increase that amount to \$50.

KARA continues to object to the unfair competition from county-operated noxious weed programs that utilize the benefit of tax dollars to provide low-cost agricultural chemicals to landowners and KARA is in favor of a state-wide noxious weed program that includes, rather than excludes, local agribusiness

CONTINUATION SHEET

retailers. (Attachment 5)

The meeting concluded at 9:30 a.m.

The next meeting is scheduled for February 12, 2002.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 6, 2002

NAME	REPRESENTING
Doug Wareham	KOFA / KARA
Justin Holstein	Propane Marketers Assn of KS
Pat Lehman	GMD #4
Kevin Barone	Hein Law Firm
Joe Brown	M. LA / western
Joe Lieber	KS Coop Council
Tom Alley	SCA board
Greg Kressek	KCGA / KGSPA
Mike Beam	Ks. Livestock Assn.
Mike Jensen	Ks Pork Assn.
Jedd Johnson	KS Livestock Assn.
Greg [unclear]	KDA
Constantine Cotsonadis	KDA
MAX FOSTER	KDA
Matt Scherer	KDA
Keith Bradshaw	Div of the Budget
Martin Hawver	Hawver's Capital Report
Tom PALACE	PMCA OF KANSAS

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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

Senate Agriculture Committee

Date 2-06-02

Attachment # 1-1 thru 1-8

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.

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PEST CONTROL ASSOCIATION

INC



**Statement by Mark Hassman, Chairman Government Affairs
Kansas Pest Control Association
On Senate Bill 438
Before the Senate Agriculture Committee**

Wednesday, January 30, 2002

Mr. Chairman and members of the committee: My name is Mark Hassman. I am currently the chairman of the Government Affairs committee of the Kansas Pest Control Association and Manager of Hassman Termite and Pest Control in both Salina and McPherson.

I am here today to voice concerns that the Kansas Pest Control Association has with regard to SB 438.

The Kansas Pest Control Association is a 52-year-old organization comprised of about 100 member pest control companies in Kansas. The Association is the primary avenue that these companies have to collectively work with the Kansas Department of Agriculture (KDA) on issues of mutual concern. For several years we have had concerns about the performance of the Department's Pesticide Program in regulating our industry. While we continue to work with the Department, we have become increasingly frustrated at the lack of meaningful change to address our concerns.

The bill before you today would increase the fees charged to all Kansas pest control companies for our Business Licenses, Commercial Certification Applications, and Certification Exams, and would increase the Uncertified Applicator Fees and Technician Registration Fees. This action is being taken to compensate for the anticipated loss of budgeted State General Fund revenues for the Department. The economic reality is that KDA will be using this increased revenue as a source to make up for these budgetary shortfalls.

While we are sympathetic to their plight, we are reluctant to offer full support to these proposed fee increases. We are not opposed to the dollar amounts of the increases proposed in this bill. We are, however, opposed to the department receiving additional monies without performance criteria being attached to them.

Our industry struggles with conflicts between statutes and regulations that are antiquated and were written prior to the development of modern products whose labeling provides very specific instructions as to their proper use. We believe the label of the product should be the primary determining factor when enforcing proper use during the performance of our professional services, not statutes developed almost 50 years ago. We also continue to struggle with other issues on enforcement of the Kansas Pesticide law, as well.

Our members want all Kansas Consumers to be confident that they will receive safe and effective service from reputable companies that are properly trained and licensed. To that end, we will continue our efforts with the KDA Pesticide Program staff, but we do not believe that simply providing additional funding to the department will accomplish this. Program performance criteria should be tied to the funding.

Thank you for your time. I would entertain any questions.

Senate Agriculture Committee

Date 2-06-02

Attachment # 2



MID-AMERICA LUMBERMENS ASSOCIATION

TESTIMONY

Senate Bill No. 438

Senate Agriculture Committee

January 30, 2001

RM: 423-S

Mister Chairman, and members of the Senate Agriculture Committee, my name is Art Brown.

I represent the retail Lumber and Building material dealers in the State of Kansas through the Mid-America Lumbermens Association, and on this issue, the Hardware dealers in the State of Kansas through the Western Retail Implement and Hardware Association. As their representative, I am here to oppose the language in Senate Bill No. 438 regarding new fees being implemented for small scales. This new language can be found on page 36 of the bill and commences on line 34 and ends on page 37, line 10. I will enumerate my reasons for wanting to eliminate this language to the Committee.

Attached to my testimony is a letter I wrote to Senator Dwayne Umbarger who asked for such a letter so that he could review the concerns our members had with this change. I will not take the Committees time in reading this letter to you, safe to say you can review it as you weigh your decision as to how you want to decide on the fate of the aforementioned language. I would point out to the Committee that while all the points are valid points expressed to us by members of the said Associations. The prime angst in the letter is the first point. This action creates a new fee,

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Page 2—Testimony on SB 438, Senate Ag. Committee, January 30, 2002

thus a new cost of doing business that either must be sustained by the business, or passed on the consumer in higher cost for product. As with any fee charged by any State Agency, it will never be reduced in price, and it will never go away should economic times improve. We are stuck with it.

I feel I must give you an overview of how the current system for checking scales is administered in Kansas so that you can better understand our opposition to this new language being proposed. In the late 1980's, a privatization program was adopted by the Legislature to monitor scales in the State for compliance and accuracy. Independent Contractors pay a license fee to the State of Kansas to check scales to the specifications of the National Institute of Standards and Technology (NIST) Handbook No 44. (K.A.R. 99-25-1.)

The State of Kansas Wts. and Measures Division provides continuing educational training as noted in K.A.R. 99-25-4. Companies that employ such representatives must also have those technicians submit their weighing devices to an NIST laboratory once a year so that the devices are in compliance with NIST handbook 44 tolerances. (KSA 83-402.) Each owner of a small scale in the State of Kansas (some exceptions apply) must have their scale(s) tested on an annual basis by one of these licensed technician. (KSA-83-404.) It goes without saying that this said technician providing the service is going to charge a fee. Normal fees range (small scales) from \$25.00 to \$50.00 per scale based on travel time and time spent in testing the scale. If adjustments need to be made for the scale to meet compliance requirements, then of course additional costs are incurred. It is the responsibility of the scale owner to make sure these devices are checked on an annual basis. (Again, KSA 83-404.)

Attached to my testimony is a copy of the scale checking form required for this service and provided to technicians of license companies for a nominal fee. Please note the number in the far upper right hand corner (100002.) When this completed form is submitted to the State Wts.

Pg. 3—Testimony to Senate Ag. Committee, Senate Bill 438, January 30, 2002

and measures division, it is entered into a computer with other such test results and such reports are randomly drawn for lack of a better term a “check the checker” program in which State licensed inspectors make random unannounced calls on the tests drawn to check to see that scales are being checked in a timely manner and that they are in compliance. The State charges no fee for this in that the licensed technician has already charged a fee for this service. Thank you for your indulgence in laying this groundwork to this point. Now, here is the basis for our objection to these new fees.

I have been around long enough to know that one of the first questions Legislators ask when discussing an issue of this nature is “what do other States do? Other States do not have a privatization program, but lets review the fees they do charge and what the merchants receive for such fees as pointed out in the attachment to my testimony. (NOTE: All neighboring States have the same compliance requirements as Kansas and require the same type of weighing device certification and criteria as Kansas does.)

What does this information tell us? It tells us that the fees being proposed are in line with what neighboring States charge their merchants. It also tells us we are in the same range as the number of inspectors in the field checking on scale compliance. The Oklahoma model is the only neighboring State that has any form of privatization involved in it's wts. and measures program. The Kansas merchant in this case also has to pay another fee as noted earlier in my testimony and to us, that seems like a true double dip. As you will notice in Oklahoma this is a voluntary fee, not a mandatory one like being proposed in Kansas.

An example of how these costs can mount up, I just recently had a member in S.E. Kansas have his 2 scales checked at costs of \$40.00 per scale. Under the provisions of this new language, he would pay another \$25.00 to the State for having 2 scales at his facility. Total bill for the annual inspection from the licensed technician and the State fee for having 2 scales at his place of

Pg. 4—Testimony to Senate Ag. Committee, Senate Bill 38, January 30, 2002

business--\$105.00! That is a lot to pass through to consumers from a small town hardware store. We have to ask this question: Does the average Kansas taxpayer feel that that much costs must be added and passed on to them just to assure them that they are getting a true pound of nails from their local hardware store or lumber yard? Not to us it doesn't.

What makes this all the more objectionable to us is that the fees being proposed in this bill are but a weigh station for fee increases that will occur in the future and knowing these fees will never disappear and never decline.

Tied in with the letter to Senator Umbarger expressing other concerns we have with this issue, the way neighboring States handle fees to their merchants, and the real life example I provided at the end of my testimony, I am hopeful that you will agree that implementation of this language is a poor policy to utilize for a revenue stream.

We take no position on the balance of the bill. We don't particularly like what we see, but we voice no strong objection to it. If it's the desire of the Committee to pass this bill out favorably, we recommend that you only do so by striking the language on pages 36 and 37 of the bill noted at the beginning of my testimony.

It has been my pleasure to visit with you about this issue and I thank the Committee for its indulgence in hearing our concerns. I now look forward to addressing any of your comments, questions or concerns regarding this testimony. Thank you.



MID-AMERICA LUMBERMENS ASSOCIATION

January 15, 2002

The Honorable Dwayne Umbarger
Assistant Majority Leader and Republican Senate Whip
Room 401-South, Kansas State House
Topeka, KS.

Senator Umbarger:

Welcome back to Topeka! One of the good things about the beginning of the Legislative session is being able to once again catch up with our friends in the Legislature. Over the years Senator, we have always appreciated your support and understanding of our issues.

This letter is in regard to the Senate Agriculture meeting this A.M. in which Ag. Secretary Jamie Clover Adams presented her overview of the Dept. of Ag. as well as needed budget resources for her department.

I will tell you before I go any further that I very much like the Secretary and worked with her "in her prior life" as a lobbyist. I know the sincerity she feels when she approaches you regarding the needs of her department and know the tenacity and energy she will expend to further the agenda for the Dept. of Ag. Her intent is for the good of the Dept. and of Kansas citizens and I respect her for that.

For years now, Agencies and Bureaus have approached the Legislature asking for fees, permits and licenses to assist in funding their budgets. The political wisdom while not dwelling on it is that the consumer pays for the services it wants from that particular agency through a fee, a permit, or a license rather than have the legislature pass some sort of tax increase. Obviously the above-mentioned revenue sources are passed on at the point of sale to the consumer from the impacted business or entity.

My concern, and I know it will be the concern of every lumber dealer and hardware store in Kansas, is the idea of paying a fee for having a scale located at their place of business. While the size of the fee is not particularly onerous, there are a few things regarding this policy that raise a red flag in my mind:

1. While the fee starts out as a small fee, the camel's nose has gotten under the tent. In subsequent years, the fee will increase and soon, it will be a noticeable cost of

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

doing business. History will prove that over the years all such fees have followed such a course.

2. It is a stretch to even get the State involved in the first place. If you would, follow this example: As a business owner, you purchase a scale from the private sector, an independent contractor (Note: I was such and independent contractor for the Wts. and measures dept. for 13 years,) under the current privatization program checks for compliance and the State wants a fee for that scale being in that place of business? That Senator is going to be one tough sell to the small business owners impacted by this policy.
3. I have a hard time believing that the average consumer is going to come into one of our places of business and purchase a pound of fasteners and pay a portion of that costs to the State just to make sure they got a said pound and feel that it is money well spent. What I am saying here is if there is say 1 cent of compliance costs in a pound of nails (a truly wild guess I assure you but follow along if you will,) can we make a truly legitimate argument that that consumer really feels it necessary to pay that 1 penny to the State just to make sure they got a pound of nails? If the customer feels he is not getting the true pound of product, he can handle the matter at the point of sale. Why pay a fee to the State for this? Even at a ½ a cent or less, the principle is just not good policy. Again, as time progresses, these are just costs that will increase and become an additional costs of doing business.

Thank you taking the time to review the concerns I have expressed in this letter. As the friend to small business I know you to be, we as a membership stand ready to support you in any way we can to see that this policy is not implemented to our hardware and lumber operations in the State of Kansas.

Sincerely,

Arthur L. Brown
Kansas Regional Manager

Copies to: Mid-America Lumbermens Assn. Kansas Board of Directors
Jeff Flora, CAE, Executive Vice-President, Kansas City Office

Ka. Department of Agriculture
 Weights & Measures Division
 2016 SW 37th Street
 Topeka, KS 66611-2570
 Phone 913-267-4641

1000
 SMALL SCALE TEST REPORT

① FACILITY: Co / / / / Telephone
 ③ OLD FACILITY: Co / / / / Telephone

② Address or Name Change
 If checked →

④ TYPE OF CONTACT (circle one)

1 Serv. Co. Test	4 Quality Control
2 New Installation	5 Tech Check
3 Service Call	6 Complaint

⑤ ACTION TAKEN CODES

1 Approved	4 Rejected-Spec
2 Adjusted	5 Taken Out of Service
3 Rejected	6 Action Pending

⑥ DEVICE CATEGORY CODES

11 Food	14 Dockage
12 Pet Food	15 Hardware/Nursery
13 Shipping	16 Propane

Name of Facility ⑦ Facility Number ⑧ Location ⑨

Address City State Zip Code

Contact Person Phone Test Date ⑩ Last Test Date ⑪

Serial # ⑫	Serial #	Serial #
Make ⑬	Make	Make
Model ⑭	Model	Model

⑮ Device Category ⑮

Commercial	Non-Commercial	Commercial	Non-Commercial	Commercial	Non-Commercial
------------	----------------	------------	----------------	------------	----------------

⑯ Capacity X d Capacity X d Capacity X d

⑰ Number of Scale Div. Number of Scale Div. Number of Scale Div.

⑱ Type Appr. Yes No Type Appr. Yes No Type Appr. Yes No

⑲ Mechanical Digital Mechanical Digital Mechanical Digital

⑳ Accuracy Class: Accuracy Class: Accuracy Class:

㉑ Tolerance Maint. Accept Tolerance Maint. Accept Tolerance Maint. Accept

Test	Error as Found	A	R	Error as Left	Test	Error as Found	A	R	Error as Left	Test	Error as Found	A	R	Error as Left
Start on Zero					Start on Zero					Start on Zero				
20 d					20 d					20 d				
500 d or ¼ Cap					500 d or ¼ Cap					500 d or ¼ Cap				
1500 d or ½ Cap					1500 d or ½ Cap					1500 d or ½ Cap				
Shift Test					Shift Test					Shift Test				
2000 d or ¾ Cap					2000 d or ¾ Cap					2000 d or ¾ Cap				
Capacity					Capacity					Capacity				
Decr. to 1500 d or ½ Cap					Decr. to 1500 d or ½ Cap					Decr. to 1500 d or ½ Cap				
1000 d					1000 d					1000 d				
500 d or ¼ Cap					500 d or ¼ Cap					500 d or ¼ Cap				
Return to Zero					Return to Zero					Return to Zero				

㉒ Action Taken ⑳ ± 1 2 3 ㉓ ± 1 2 3 ㉔ ± 1 2 3

Comments: ㉕ Comments: Comments:

Service Company (Print Name) ㉖ I.D. Number ㉗ Technician (Print Name) ㉘ I.D. Number ㉙

Owner/Operator (Signature) ㉚ Technician (Signature) ㉛ Time In ㉜ Time Out

WTS AND MEASURES FEES OF STATES THAT BORDER KANSAS

	Fees Charged		# of Field Inspectors	No. of small scales in State
NEBRASKA	35 lbs and under	\$11.00	15	8200
	36 to 1000 lbs	\$14.00		
Source:	1001 to 4000 lbs	\$25.00		
Don Onwiler	4001-50000	\$29.00		
Program Director	50,000 - 150,000	\$34.00		
Wts. & measures	Over 150,000	\$55.00		

MISSOURI	Counter scales up to 100 lbs	\$5.00	15	over 10,000
	101 to 1000 lbs	\$10.00		
Source:	over 1000 lbs	\$20.00		
Steve Gill				
Program Administrator				

COLORADO	Scales up 174 lbs	\$5.00	19	not sure
	75 to 450 lbs	\$7.00		
Source:	451 to 2000 lbs	\$12.00		
Sandy Stennel	2001 to 10,000 lbs	\$20.00		
Administrative Asst.	10,001 to 30,000 lbs	\$40.00		
	30,001 to 80,000 lbs	\$75.00		
	Over 80,000 lbs	\$100.00		
	cordage charge	\$5.00		

OKLAHOMA	Scales up to 40 lbs	\$15.00		5000 +
	41-1000 lbs	\$25.00	12 part time	
Source:	over 1000 lbs	\$75.00	2 full time	
Charles Carter			3 large scale testers	
Program Director				

Semi-Privatization program administered as follows:

Scale companies pay a fee of \$100.00 per company for license to test scales. Each technician then pays a \$25.00 fee for 3 different levels of testing available. Company provides training to Handbook 44 specifications. Scale company only provides reports on scales that do not meet tolerances or need on site repair. No other report is sent to the State. They "check the checker" on a strictly random basis. Merchant can call State to have them come out to place of business to check scales. There is a \$10.00 mileage fee on all sizes of scales. **Above noted fees only are applied if merchant calls State for above noted service.** Service companies charge fees to check scales, amount charge varies and not consistent like Kansas.

KANSAS	As proposed in SB 438 and HB 2701		6 for small scales 2 for large scale 1 part time field part time administrative	12000
Source:	Constantine Cotsoradis Director Div. of Wts. & Measures			

KANSAS GRAIN AND FEED ASSOCIATION

STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION
BEFORE THE
SENATE AGRICULTURE COMMITTEE
SENATOR DEREK SCHMIDT, CHAIR
REGARDING
SENATE BILL 438

JANUARY 30, 2002

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

Senate Agriculture Committee

Date 2-06-02

Attachment #

4-1 thru 4-3

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 in opposition to S.B. 438. While significant portions of this bill do not directly impact the grain and feed industry, the "new" proposed fees for weights and measure devices including small scales, large scales and meters will add significant new costs to every grain handling facility and feed manufacturer in the state of Kansas. These new assessments are featured in Sections 27 & 28 of S.B. 438, with the fee schedules found on page 36, line 40 through 43 and on page 37, line 1 through 5.

It is our understanding that the provisions in S.B. 438, which establish "new" fees for weights and measure devices, will generate roughly \$300,000 in additional annual revenue for the Department of Agriculture. While one might mistakenly assume \$300,000 divided between all entities operating small scales, large scales, scanners and meters used in commerce might prove to be nominal, that could not be farther from the truth for grain handlers and other agribusinesses operating in Kansas. Since grain handling firms utilize both small and large scales and often have multiple locations, they will be faced with paying several costly "new" fees. These new fees will mean hundreds of dollars for several grain handling firms and, coupled with the other fees contained in this bill, will in some cases mean thousands paid annually to the Department.

While we understand the Department needs resources to follow-up on the annually required inspections, which are performed by private inspection firms, we simply believe the Department's proposal is unjustified considering they do not intend to provide any additional service for the scale, scanner or meter owner. Grain handlers and feed manufacturers are already faced with \$20 to \$30 assessments for small scale inspections and \$50 to \$60 assessments for large scale inspections annually. Once again, these inspections are required by law and are performed by private sector service companies.

Furthermore, we believe the Department's own statistics, which indicate that both small and large scales are found to be in compliance 92% of the time compared to a compliance percentage of only 65% for scanners, gives additional cause for concern. If fees must be considered shouldn't the brunt of the fees being proposed be targeted where the greatest need for improvement presents itself?

We requested numbers from the Department of Agriculture and found the following:

Estimated Number of Facilities w/ Scanners:	2,000
Estimated Number of Small Scales:	12,000
Estimated Number of Large Scales:	4,000
Estimated Number of Meters:	2,700

While these numbers help us paint a picture of "who will pay", they do not explain the justification for assessing a large retail department store that may have 20 or more scanners, which statistics show are often out of compliance, a modest fee of \$60 annually when compared to the combined small scale fee (\$15 to \$40) and large scale fees (\$60 to \$170) paid by a grain handling firm for each facility they operate. It appears to us that grain handlers and other businesses that utilize numerous types of scales and meters, and may even have a scanner or two, are being assessed more than a reasonable amount. We simply fail to see equity when comparing devices presently being checked by the Department and the fee schedule proposed in this bill.

We hope this committee will agree that these "new" fees for weights and measure devices are costly and will not lead to any significant increase in compliance percentage for owners of scales and meters. What these fee increases will cause is unwanted paperwork for grain handlers and other agribusinesses, not to mention the problems that will occur when an employee purchases small scale #4 and an inspector from the Department of Agriculture arrives and finds it in use and the firm only paid a fee that enables them to use up to 3.

I appreciate the opportunity to share our concerns and I would be happy to respond to any questions you might have.

KANSAS AGRIBUSINESS RETAILERS ASSOCIATION

Statement of the

Kansas Agribusiness Retailers Association

Presented to the

Senate Agriculture Committee

Senator Derek Schmidt, Chair

Regarding Senate Bill 438

January 30, 2002



KARA is
*"Committed to
Professional
Development
and Business
Viability for
the Retail Crop
Production
Industry"*

Senate Agriculture Committee

Date 2-06-03

Attachment #

5-1 thru 5-3

Chairman Schmidt and members of the committee, I am Doug Wareham appearing today on behalf of the Kansas Agribusiness Retailers Association (KARA). KARA's over 550 members are primarily retail agribusiness operations that provide fertilizer, crop protection chemicals, seed, fuel and propane products and services to Kansas producers. In addition to serving the interests of retail agribusiness, KARA also represents crop input distribution firms, ag chemical manufacturing firms, application equipment manufacturers and other businesses related to the crop production industry.

While the Kansas Agribusiness Retailers Association (KARA) has a mixed-view of the many fee increases contained in S.B. 438, we do appear in opposition to the bill. I would like to begin by stating that KARA is specifically opposed to the new fees proposed for weights and measure devices. Agribusiness retailers typically utilize a combination of small and large scales and meter devices and once combine, the seemingly reasonable amounts proposed in S.B. 438 quickly begin to add up. KARA supports striking the "new" fees for weights and measure devices.

Our organization has reviewed the various Pesticide and Fertilizer Program Fee Increases contained in the bill and will concur that many of the increases to existing fees may be necessary should the Department face significant cuts in general fund dollars for FY-2003. We have been informed by the Secretary that anticipated cuts in general funding could cause the elimination of two personnel from the Kansas Department of Agriculture's (KDA) Fertilizer and Pesticide Program Staff.

KARA believes that fee increases should only be considered as a last resort, but has agreed to accept increases to the following assessments to protect the integrity of the Departments Fertilizer and Pesticide Program:

- Pesticide Product Registration Increase
- Certification Exam Fee Increase
- Certification Application Fee Increase
- Uncertified Applicator Registration Fee Increase
- Ag Liming Material Inspection Fee Increase
- Ag Liming Material Registration Fee Increase
- Soil Amendment Inspection Fee Increase
- Soil Amendment Product Registration Increase

While these fees are not exclusively paid by agribusiness retailers, they are fees that are paid by Kansas agribusiness retailers. These fee increases will generate just over \$250,000 annually and should enable the Department to maintain an effective regulatory program that promotes the safe handling and storage of fertilizers and ag-chemical products in Kansas. While KARA has agreed to accept these increases, they do believe that any increase in fees should be accompanied by the enforcement tools needed for the Fertilizer and Pesticide Program to adequately enforce the Kansas Fertilizer Law and the Kansas Pesticide Law. In that regard, we believe civil penalty authority is a much needed tool, which would enable the Department to better enforce provisions of the Kansas Fertilizer Law. A recent review of the Fertilizer and Pesticide Program by Legislative Post Audit concurred with our opinion that civil penalty authority under the Kansas Fertilizer Law is a much needed tool. It only makes sense to provide the Department with the tools they need, before increasing license and registration fees.

I should point out that KARA is presently opposed to one fee related to the Pesticide and Fertilizer Program, that being the Business License Application. Our objection to this particular fee increase is two-fold. First, we believe a \$40 increase is a significant jump. 40% seems rather steep. Second, statistics obtained from the Department indicate there are 210 different government agencies that are presently assessed only \$35 for the right to apply pesticides. S.B. 438 proposes to increase that amount to \$50.

I am sure members of this committee are well aware that KARA has had long-standing concerns over unfair competition from county-operated noxious weed programs that utilize the benefit of tax dollars to provide low-cost agricultural chemicals to landowners, often at the expense of local agribusiness retailers. We will continue to press for a state-wide noxious weed program that includes rather than excludes local agribusiness retailers, and we believe the fee paid by government agencies should equal those paid by the private sector.

Once again, we do have an appreciation for the Department's budget situation and do not want to see important regulatory programs suffer because of inadequate resources. We realize the benefits of a strong agriculture department and the advocacy role the department plays both in Kansas and on a national level. We believe our willingness to accept numerous fee adjustments to existing fees shows our commitment, however we do believe fee increases should clearly show a measurable return and fail to see that return with respect to the "new" weights and measures fees contained in this bill and the \$140 proposal for business license applications when compared to the \$50 proposal offered for government agencies.

Thank you for the opportunity to appear today and I would be happy to stand for questions.