

MINUTES OF THE SENATE AGRICULTURE COMMITTEE.

The meeting was called to order by Chairperson Derek Schmidt at 8:30 a.m. on February 12, 2002 in Room 423-S of the Capitol.

All members were present except: Senator Huelskamp (excused)

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

Conferees appearing before the committee:

Joe Lieber, President, Kansas Cooperative Council
Justin K. Holstin, Executive Vice President, Propane Marketers Association
Pat Lehman, NW Kansas Groundwater Management Dist. #4
Thomas M. Palace, Executive Director, Petroleum Marketers and Convenience Store Association of Kansas
Chris Wilson, Kansas Seed Industry

Others attending: See attached list

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

Joe Lieber, Kansas Cooperative Council (KCC), testified in opposition to **SB 438**, stating that raising fees creates a real hardship for its members. Cooperative businesses presently are experiencing financial hardship, particularly an increase in insurance premiums, which have escalated in some instances by 30 - 46 percent. The fee in **SB 438** adds to the cost of doing business, a cost a large percentage of the businesses cannot afford. The Council opposes any fee increase. (Attachment 1)

Justin K. Holstin, Executive Vice President, Propane Marketers Association of Kansas (PMAK), testified in opposition to **the weights & measures section of SB 438**. PMAK questions the inequality among businesses in the fee structure. An increase in fees does not encourage economic growth. Private service companies may suffer financially if fees are increased. PMAK believe consumers are protected by the good business decision of marketers to employ professional service companies. The current system of private service companies and state testing is working. (Attachment 2)

Pat Lehman, Northwest Kansas Groundwater Management District No. 4, testified in opposition to **SB 438**, stating the purpose of the legislation is to increase filing fees and administrative fees for the Department of Agriculture to replace a state budget reduction. Mr. Lehman stated that the financial responsibility of water use should not be borne only by those directly using the system as everyone should be sharing the responsibility. The level of fee increases in **SB 438** takes into account only the immediate needs of the state agency and not the economic condition of the regulated community. Water is an important resource for all the citizens of Kansas. The Groundwater Management District is against the reliance of user fees to support the agency. (Attachment 3)

Thomas M. Palace, Executive Director, Petroleum Marketers and Convenience Store Association of Kansas (PMCA) testified in opposition to **SB 438**. Mr. Palace stated that in 1996 PMCA, and the petroleum industry supported legislation that enhanced the Department of Agriculture, Weights and Measures Division ability to test fuel dispensers and check the quality of fuel. This legislation established a "self-imposed tax/fee that petroleum marketers pay on a per gallon basis". This program has been successful and a fee of \$.015 per barrel (50 gals) of motor fuel is paid into the Kansas petroleum inspection fee fund. The fee fund is used to pay salaries, travel and the cost to test the pumps and check the quality of fuel. \$250,000 of the fee fund is appropriated to the state general fund. (Attachment 4)

CONTINUATION SHEET

Mr. Palace submitted an amendment to **SB 438**. On Page 36, Line 38 following the "period (.)" by inserting the following: "The authorization fee shall not be assessed upon liquid fuel, vehicle tank meters and motor fuel dispensing devices."

Chris Wilson, Legislative Counsel, Kansas Seed Industry Association, submitted written testimony opposing **SB 438**. Ms. Wilson stated the Department of Agriculture's programs are for the protection of the public, and the public should provide for the cost of administration of those programs through the state's general funds. The Department should not become a fee agency and rely solely on fees levied. (Attachment 5)

The hearing on **SB 438** was concluded.

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

Senator Tyson moved, seconded by Senator Morris, that SB 437 be amended on Page 5, line 31 by striking "\$100" and inserting "\$40", Line 34 by striking "\$100" and inserting "\$60".

Senator Umbarger made a substitute motion, seconded by Senator Taddiken, that SB 437 be amended on Page 5, Line 31 by striking "\$40" and inserting "\$30"; and on Line 34 by striking "\$60" and inserting "\$50". The vote taken by a show of hands was in favor of the substitute motion.

Senator Tyson moved, seconded by Senator Morris, that SB 437 be amended on Page 6, Line 17, by striking the "\$50-\$150" and insert the following: "\$60, and shall not apply to live plant dealers whose total annual retail live plant sales are less than \$10,000." The voice vote was in favor of the motion.

Senator Umbarger moved, seconded by Senator Corbin that SB 437 as amended be recommended favorably for passage. The voice vote was unanimous in favor of the motion.

Senator Corbin moved, seconded by Senator Umbarger that the Minutes for January 29, February 5 and February 6 be approved as distributed. The voice vote was in favor of the motion.

The meeting was concluded at 9:25 a.m.

The next meeting is scheduled for February 13, 2002.

Testimony on SB 438
Senate Agriculture Committee
February 12, 2002
Prepared by Joe Lieber, Kansas Cooperative Council

Mr. Chairman and members of the Committee, I'm Joe Lieber, President of the Kansas Cooperative Council. The Council has a membership of nearly 200 cooperative businesses who have a combined membership of nearly 200,000 Kansans.

The Council would like to take this opportunity to express our appreciation for the work that the Kansas Department of Agriculture does for Kansas agriculture. The Secretary and her staff have done an excellent job working with agribusinesses to promote and protect Kansas consumers and producers.

We understand that with the current budget problems that the state is going through that all state departments, including agriculture, have been asked to cut costs. We realize that it is hard to continue services with a lower budget, and that one way to maintain them is to raise fees on those services. But, raising fees at this time would create a real hardship on our members that would have to pay them.

Agriculture, as well as many other industries in the state, is going through some financial hardships. But this year seems especially hard on our members.

Most of you know because of the tragic events of 9-11 and fall of the stock market the insurance industry is going through some hard times. Because of this, insurance premiums have gone "sky high."

One of our member's insurance premiums has gone up 46% and the average has been over 20%. One of our members has seen their total insurance cost increase \$200,000. Most of you know it takes a lot of sales to add \$200,000 to the bottom line.

As I stated earlier, we understand where the Department of Agriculture is coming from, but we are opposed to any fee increase that would affect our members.

Thank you for your time. I would be happy to try to answer any questions

Senate Agriculture Committee

Date 2-12-02

Attachment # 1



Propane Marketers Association of Kansas

214 S.W. 6th Avenue, Suite 305

Topeka, KS 66603-3719

Phone 785-354-1749

Fax 785-354-1740

e-mail: jkholtin@pmak.net

Justin K. Holstin
Executive Vice President

Testimony on SB 438
Senate Agriculture Committee
February 11, 2002

Mr. Chairman, members of the Committee, I appreciate the opportunity to speak with you today and address SB 438. My name is Justin Holstin, and I am the Executive Vice President of the Propane Marketers Association of Kansas. PMAK has a membership of over 300 businesses and individuals representing every aspect of the propane industry including exploration, transportation, manufacturing, and local marketer service. The Propane Marketers Association of Kansas is opposed to several parts of the legislation, but remains neutral on the rest of the bill.

Kansas has a very strong and independent propane industry where marketers constantly self-police themselves to insure compliance with regulations and the law. In the propane industry, safety is paramount and good business decisions, constant upkeep of equipment, and continuous education ensure the highest degree of safety for the public, consumers, and employees of the propane industry.

We feel that fees for meter testing and licensing fees for private service companies should not be increased. Currently protection of the public and marketer compliance with laws and regulations is insured through the use of private service companies with established routes to visit propane marketers at least twice a year. Larger propane companies have service companies visit even more frequently. This is just good business. Businesses do not want to cheat customers by not giving them the correct amount, and in fact, most meters will tend to "give away" product if not working properly which means marketers are losing potential profits.

The cost of having a private company check meters varies, but is around \$100 per meter which includes calibration and adjustment, preventative maintenance, and no charge for driving time or mileage if on a route system. Private companies do not feel that an increase in meter or scale accuracy will result from an increase in fees or the hiring of more testers. In reality, both marketers and private testing companies feel that Weights & Measures is doing a good job of monitoring the industry and helping to protect the public. Marketers feel that a visit by the state testers is good, but they would rather rely on private companies for testing several times a year.

According to the legislation, starting with Section 29 on page 36 of the bill, the main goals of a weights and measures inspection program are to

1. Assure that weights and measures in commercial service within the state are suitable for their intended use, properly installed, accurate....
2. prevent unfair or deceptive dealing by weight or measure....
3. encourage desirable economic growth while protecting the consumer....

Senate Agriculture Committee

Date *2-11-02*

Attachment # *2-1 thru 2*

We believe that these goals are currently being met through the reliance on private service companies and checking by state testers.

Through the checking and servicing by private companies, and the visits by state testers, there is little “unfair and deceptive dealing by weight or measuring...” because at any point, most meters for marketers are only 6 months away from a test by a service company.

An increase in fees will not “encourage desirable economic growth” as desired in the legislation. Private service companies may suffer financially if fees are increased. Currently, state inspectors do not service or adjust any metering devices, only check to see if they are within the allowed tolerances. If marketers rely on state testers to test the meters and not private service companies, the “route” system may end. Service companies would need to increase their costs because marketers would only be calling for special trips after a state tester has visited instead of continuing to be on a route.

The Secretary has made mention of a compliance rate of about 70%. However, we do not feel that this compliance rate would be dramatically increased unless there is a drastic change in enforcement re-visits. If a company is found to be out-of-compliance, the state testers should revisit that company to insure that they are actually having meter tests completed by private testers. Instead of adding fees to companies who are law-abiding, interested in protecting consumers, and currently comply with state law and regulations through the use of testing companies, the Secretary could use penalties for those companies who are disregarding the necessity of testing and are continually found to be in violation of the established tolerances.

The Propane Marketers Association of Kansas also has concerns about the possible inequality among businesses from the suggested fee structure. As written, a small “mom and pop” propane company that has four small scales and three meters pays a total of \$65. Although \$65 does not seem like an exorbitant amount of money, this is in addition to the at least \$200 a year in fees they pay to private companies. In addition, this could be inequitable when compared to other businesses in the area such as a grocery store that has, for example, 5 scales in the produce section, many in other departments, and at least 25 scanners at the checkouts paying only around \$100. The grocery store has almost 5 times more scales and scanners inspected than does the small propane company but pays only \$35 more in state fees.

In conclusion, the Propane Marketers Association of Kansas believes that consumers are protected by the good business decision of marketers to employ professional service companies. Private service companies are the best way to insure that the public is receiving what they are paying for and that marketers are complying with state requirements. The current system of private service companies and state testing is working.

**Testimony to the
Senate Agriculture Committee
SB 438
February 5, 2002
by Pat Lehman on behalf of the
The Northwest Kansas Groundwater Management District No. 4**

Mr. Chairman and Members of the Committee:

My name is Pat Lehman, and on behalf of the Board of Directors of the Northwest Kansas Groundwater Management District No. 4, I would like to make the following comments on SB 438. The purpose of this legislation is to use increased filing fees and additional administrative fees for the Kansas Department of Agriculture (KDA) to replace impending state budget reductions.

1. Problems associated with transitioning the Kansas Department of Agriculture (KDA) away from the traditional legislatively funded budgets toward more fee-funded budgets are as follows:
 - Although most fees being increased are voluntary in nature and fit well with the current trend of having those responsible for the costs paying those costs via specific fees, there are other considerations. For example, the Division of Water Resources has the responsibility to protect the water resources on behalf of all the citizens of the state – including those who do not currently use the permitting system. The proposed increases of filing fees begins to shift more of the responsibility to only those directly using the system, while in reality, we all should be sharing this responsibility.
 - Once a higher percentage of the operating budget is reliant upon user fees, the agency budget suffers during any reduction of fee-supported activities. This in turn necessitates either another increase in fees or a request to increase future legislative support. Additional fee increases shifts yet more cost responsibility to only those directly involved in the system, and requested increases in legislative support become increasingly more difficult. KDHE is now in a similar dilemma with a combination of its user fees and federal support – both having replaced a significant portion of state

Senate Agriculture Committee

Date *2-12-02*

Attachment # *31 thru 3-2*

funding support over time. What happens to this agency today if federal support is suddenly reduced?

- There is also a point at which fees can become expensive enough to begin interfering with the public's ability to participate in the system – especially in times of lower economic conditions.
 - Every step to a higher percentage of fee funding requires the agency to manage itself that much more like a private business. If the agencies did not have other responsibilities to the citizens of the state, and had clear and immediate control of their work force to immediately respond to fluctuations in increased or reduced income, this could be a good situation. This is not the case, however, with our state agencies, and any move to make them operate more like private business should carefully be considered in this regard alone.
2. The levels of the fee increases in SB 438 are also opposed by the board because this approach only takes into account the immediate needs of the state agency while not concerning itself with the economic condition of the regulated community. The present western Kansas economy is by most accounts "less than robust."
 3. The addition of an administrative fee to file any statutorily mandated annual report does not seem to us to be either good business or good government. The administrative fee for the mandated annual water use reports is clearly a segment of the KDA process that should remain completely administrative and NOT fee funded at all.
 4. The GMD 4 board is very concerned over the impending budget reductions of the KDA and feels that this agency's reduced budget will adversely affect important regional services. Water is an important resource for ALL the citizens of Kansas, and it does not make sense to transition this agency toward more reliance upon user fees. The Northwest Kansas Groundwater District No. 4 Board of Directors does, however, appreciate the dilemma that is faced by this committee and will make a sincere effort to suggest some alternatives.

Thank you for your attention, and I'd be happy to respond to questions.



MEMO TO: Senate Agriculture Committee
FROM: Thomas M. Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas
DATE: January 30, 2002
RE: Comments on SB 438

Mr. Chairman and members of the Senate Agriculture Committee:

My name is Tom Palace and I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA), a statewide trade association that represents over 360 independent petroleum marketers and convenience stores throughout Kansas.

I appreciate the opportunity to appear before you today in opposition to SB 438. More specifically, section 29 relating to Weights and Measures proposed fees for inspections. In 1996, PMCA and the petroleum industry pushed for legislation that would enhance the Department of Agriculture, Weights and Measures Divisions ability to test fuel dispensers and check the quality of fuel, in other words establishment of a checks and balances system needed to run an effective program (SB 704). This is a "self-imposed tax/fee that petroleum marketers pay on a per gallon basis. I've been told that the additional fees/tax that is imposed by SB 438, do not impact fuel dispensers. However, there is no mention of an exemption for fuel dispensers in this bill. The bill uses the term "meter devices." Petroleum marketers have been paying into the petroleum inspection fee fund with the knowledge that both fueling dispensers and vehicle tank meters would be tested by the state on an annual basis. Marketers also pay private companies to test their meters throughout the year.

Petroleum marketers and Weights and Measures representatives agree that the program that is now in place has been very successful. A fee of \$.015 per barrel (50 gals) of motor fuel is paid into the Kansas petroleum inspection fee fund, which in turn pays for the salaries, travel and cost to test the pumps and check the quality of fuel. It should also be pointed out that \$250,000 is appropriated to the state general fund on a 1/3- 2/3 split. Funds are deposited into the state treasury and 2/3 of each deposit is credited to the state general fund with the balance of each deposit credited to the petroleum inspection fee fund. After \$250,000 is credited to the state general fund, remaining deposits are credited to the inspection fee fund.

Based on the Weights and Measures budget to run their program, plus the amount that is appropriated to the state general fund, petroleum marketers pay in excess of \$800,000 which generates fees to the state and the inspection fee fund. SB 438 would require marketers to pay additional fees/taxes for inspections that the industry is currently funding.

Clearly petroleum marketers have gone the extra mile to make sure that motoring consumers "get what they pay for," and they are paying for it. We ask that the committee oppose this bill or amend the bill exempting motor fuel dispensers and vehicle tank meters from the \$25 annual fee.

Thank you !

Petroleum Marketers and Convenience Store Association
201 NW Highway 24 • Suite 320 • PO Box 847
Topeka, KS 66608-0479
785-233-9655 Fax: 785-354-4374

Senate Agriculture Committee
Date 2-12-02
Attachment # 4

**STATEMENT OF
KANSAS SEED INDUSTRY ASSOCIATION
TO THE SENATE AGRICULTURE COMMITTEE
SEN. DEREK SCHMIDT, CHAIR
REGARDING S.B. 438
FEBRUARY 12, 2002**

Mr. Chairman and Members of the Committee, I am Chris Wilson, Legislative Counsel and Director of Member Services of the Kansas Seed Industry Association (KSIA). Our approximately 150 member firms are involved in the production, processing, marketing and distribution of seed in Kansas and throughout the world. We appreciate the opportunity to comment on S.B. 438, and to express some concerns with regard to proposed fees of the Kansas Department of Agriculture.

We commend Secretary of Agriculture Jamie Clover-Adams and her staff for the manner in which they have analyzed and responded to the fiscal problems of their agency. We know seeking increases in fees is not an easy task, but one that they and we recognized is needed for the future of the agency. We have concerns about increased fees that increase the cost of doing business, but also recognize the situation of our Department of Agriculture at this time.

We believe that it is unfortunate that our state was not better able to provide resources for the Department of Agriculture that could have avoided the situation that is now before us. We in America have taken our food supply and food safety for granted, and that is something we can and should all be grateful for. The Kansas Department of Agriculture has done a great job in protecting the food supply of our citizens, yet we have

Senate Agriculture Committee

Date 2-12-02

Attachment # 5-1 thru 5-3

not provided it with the fiscal resources to continue to do so without some dramatic increases. This situation comes at a time when we realize the state does not have the resources to provide such a dramatic increase without the kind of measure you are considering here today. But we do think it should be noted that many of the Department of Agriculture's programs are for the protection of the public, and that the public should provide for the cost of administration of those programs through the state's general funds.

We are especially concerned that we not get into a situation where fees are increased to support the increases the Department needs, only for state general fund contributions to the Department's budget to be decreased in efforts to balance the state budget. Then the Department would be no better able to continue to enforce its statutory programs, but the industries affected would be bearing a greater burden. As you know, the farm economy is not a bright picture at this time, and that fact is reflected in our state's financial woes. We are concerned about the impact of these fee increases on our state's farmers and ranchers at a time when they can ill-afford them nor pass them on to their customers.

As we look at the specific fees in S.B. 438, the ones that cause us the most concern at this time are the scales fees. These fees would add a cost of at least \$75 to \$200 per facility for our members. Seed companies are already paying private companies for the inspection of their scales. A check of some of our members found that companies pay varying annual amounts, depending on their facilities, location and private scale companies in their areas. The range I heard was from approximately \$90 to \$800 per facility annually. The scale fees in S.B. 438 are not for the inspection of the scales, since that is done privately, but for the administration of the privatized program. Our members

questioned whether the amount generated by the proposed fees wouldn't be high in comparison with the job of administration of the program.

Fees not in these bills at this time include those for seed dealer registration. The KSIA and Kansas Crop Improvement Association (KCIA) board of directors appreciated the opportunity to meet jointly with Secretary Clover-Adams recently. She discussed with us that seed registration fees can be increased by regulation under the existing statutory cap, should the fee increase package move through the Legislature. We appreciate her efforts to work with our industry toward a plan for how increased seed registration fees could be used to better enforce the Kansas Seed Law.

In conclusion, while we do not welcome fee increases, we understand the need for them at this time and want our Department of Agriculture to be strong. We do question the level of fees for scales. Thank you for the opportunity to address this bill. I would be glad to respond to any questions at the appropriate time.

####