Approved: March 27, 2002
Date

MINUTES OF THE SENATE AGRICULTURE COMMITTEE.

The meeting was called to order by Chairperson Derek Schmidt at 8:30 a.m. on March 13, 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:
Alan Alderson, Legislative Counsel, Western Association
Joe Lawhon, Legislative Post Audit
Jamie Clover Adams, Secretary, Kansas Department of Agriculture
Representative Daniel Thimesch

Others attending: See attached list

HB 2660 – Repurchase of machinery, equipment and parts upon termination of dealership franchise agreements

Alan Alderson, Legislative Counsel, Western Association, testified in support of **HB 2660**, stating the bill amends the "buy-back" laws which regulate the obligations of manufacturers of farm equipment, outdoor power equipment, and lawn and garden equipment to repurchase equipment and parts when a dealership contract has been terminated. Western Association has recently become aware that some manufacturers have taken the position that, when a dealership contract is terminated, they are not obligated by Kansas law to repurchase parts and equipment which have been purchased from other than the manufacturer or distributor. The purposed amendments in **HB 2660** make an exception to the provisions which do not require repurchase of these parts or equipment.

Mr. Alderson stated there are instances in which the dealer has acquired the parts from other sources at the direction or by the authorization of the manufacturer or distributor, and other instances in which the manufacturer or distributor arranges for the equipment or parts to be acquired from other sources arranged by the manufacturer or distributor. The Association believes that repurchase should be required. **HB 2660** provides for such a requirement. (Attachment 1)

Joe Lawhon, Auditor, Legislative Post Audit, briefed the Committee on the Performance Audit Report "*Department of Agriculture: Reviewing the Water Structures Program*". (A copy is on file in the Office of Legislative Research) The Audit Report was initiated by the Secretary of Agriculture who expressed concerns about the ability of Program staff to keep up with their workload, in particular their inability to issue permits and inspect dams on a timely basis. In addition, legislative concerns were expressed about bridges being built without permits in Sedgwick County, and those bridges contributing to flooding in that area. To address these concerns, the performance audit answers two questions: "Is the Department of Agriculture's Water Structures Program able to issue permits for new water structures on a timely basis and complete timely inspections of existing structures, and if not why not?", and "Are water structures being built in Kansas without approved permits and have unpermitted projects contributed to localized flooding in Sedgwick County?"

The Report concluded the Water Structures Program has significant problems, many of which have been ongoing for quite some time. The problems can be fixed, but it will take time and hard work. The effort will require commitment from Department management, and may require a commitment from the Legislature as well. The Report recommends: 1) amending the statutory definition of a dam to more closely follow the definition suggested by the Association of State Dam Officials; 2) developing written procedures for processing permit applications, examining the checklists used by Program staff during the review of permit applications to ensure the checklists contain the appropriate items and consider ways for reassigning work when an employee leaves and assigning priorities; 3) making the process of inspecting

dams and managing the dam database more efficient, effective and accountable; 4) making the investigating of complaints more efficient, effective and accountable; 5) ensuring information contained in the Program's database is accurate, reliable, and protected; 6) ensuring Department officials receive timely and accurate information relating to work that remains to be completed; (the manager should prepare a monthly summary report that provides comprehensive information about the workload of the program and whether that workload is progressing at an acceptable rate); 7) reducing staff turnover and position vacancies; and 8) keeping the Legislature informed about the progress being made to address the problems identified in this report.

The Report relating to the second question regarding "water structures being build in Kansas without approved permits and have unpermitted projects contributed to localized flooding in Sedgwick County", the Report concluded that unpermitted bridges and other stream obstructions are being built within the State and it is impossible to ascertain the exact number because the Program has few ways to detect unpermitted structures. The Report further concluded the Program is doing all it should to evaluate potential damage to landowners as a result of water structure projects; however, the Department should reevaluate its procedures in its narrow look at upstream and downstream impact, particularly in view of the Kansas Supreme Court's 1996 ruling. The Report recommended that the Department should review its philosophy concerning what types of projects should and shouldn't be permitted, how far upstream and downstream they need to look, etc.; and Department officials should seek the power to levy fines against violators who do not obtain the necessary permit applications.

Jamie Clover Adams, Secretary, Kansas Department of Agriculture (KDOA), appeared before the Committee and in responding to the Performance Report, stated she requested the audit because she had serious concerns about the program's efficacy. Ms. Adams stated she had no excuses for the audit findings and has made a commitment to "fix it".

Ms. Adams stated KDOA does advocate amending the statutory definition of a dam to more closely follow the definition suggested by the Association of State Dam Officials. Kansas defines a dam as "any structure that impounds, or holds back, more than 30 acre-feet of water". The National Dam Safety Act raises that threshold to 50 acre-feet, as does the Association of State Dam Officials' Model State Dam Safety Program. The National Act and Model Act also specify that if a dam doesn't impound 50 acre-feet of water, it may be considered a dam if it's at least 25 feet tall. Kansas law does not address the issue of height.

Plans are being made to ensure the accuracy of data maintained by the Program and to develop a data base which can be relied upon to support processes and to provide management support. Efforts also have been redoubled to attract and retain qualified, experienced professional employees and to track and assign their work more efficiently. Ms. Adams further stated that in regards to the recommendations relative to unpermitted structures and the Kansas Supreme Court's 1996 ruling, she agrees to review department philosophy and policies about unpermitted bridges and stream obstructions, but disagrees with the audit's conclusions about legal implications of the 1996 Kansas Supreme Court ruling.

Representative Daniel Thimesch appeared in regards to the flooding downstream from new bridges stating there should be the same concern for the free flow of water downstream as there is upstream.

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

The Chair announced the appointment of a subcommittee consisting of Senators Huelskamp, Lee and Schmidt to consider **SB 436**. A meeting is scheduled for Thursday, March 14, 2002, in Room 234-N, upon adjournment of the Senate.

Upon motion by Senator Downey, seconded by Senator Tyson, the Minutes of March 5 and March 6, 2002, were unanimously approved.

The meeting adjourned at 9:30 a.m.

The next meeting is scheduled for March 19, 2002

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: March 13, 2002

NAME	REPRESENTING
Joe Lieber	KS Co-Op Council
Alan Alderson	Western Association
Joe Lawhon	CPA
Greg Foley	KDA
Matt Scherer	KOA
Mike Pepoon	Sedgwick County
Keith Bradshaw	Div of the Budget
Mary Jane Stattelman	KGFA
Tom Bruno	GBBA
Don Ryan	KACD
Jamie Clover Adams	KS Dept. of Agriculture
Chris Wilson	KSIA
Janet McPherson	Ks Farm Bureau
Randy Allen	Ks. Assoc. of Counties

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**LICENSED TO PRACTICE IN KANSAS AND MISSOURI

MEMORANDUM

TO: Members, Senate Agriculture Committee
FROM: Alan F. Alderson, Legislative Counsel, Western Association
DATE: March 13, 2002
RE: House Bill No. 2660 (As Amended by House Committee)

Mr. Chairman and members of the Senate Agriculture Committee I thank you for the opportunity to allow me to appear to present testimony in support of House Bill No. 2660. This bill would make some simple amendments to the so-called buy-back laws which regulate the obligations of manufacturers of farm equipment, outdoor power equipment, and lawn and garden equipment to repurchase equipment and parts when a dealership contract has been terminated. I appear today on behalf of Western Association, an association which manages several different associations and represents farm machinery and equipment, construction equipment and lawn and garden equipment dealers in several midwestern states.

Recently, as a result of dealership terminations which have already occurred, the Association has become aware that some manufacturers have taken the position that, when a dealership contract is terminated, they are not obligated by Kansas law to repurchase parts and equipment which have been purchased from other than the manufacturer or distributor. A strict reading of the three (3) laws which regulate repurchases of parts and equipment excludes from the repurchase requirement any equipment, attachment or repair parts which were acquired by the retailer from any source other than the wholesaler, manufacturer or distributor.

However, there are instances in which the dealer has acquired the parts from other sources at the direction or by the authorization of the manufacturer or distributor, and other instances in which the manufacturer or distributor arranges for the equipment or parts to be acquired and drop shipped from another source arranged for by the manufacturer or distributor. It is under these circumstance

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Attachment # 1-1 thru 1-3

the manufacturer or distributor should be required to repurchase these pieces of equipment and parts on the same terms as would be required if the dealer had obtained the equipment or parts directly from the manufacturer or distributor.

Our proposed amendments to the three (3) applicable Kansas statutes simply make an exception to the provisions which do not require repurchase of these parts or equipment.

Given the present economy and the rapidly declining number of equipment dealerships in Kansas, it is important that we protect our local Kansas businesses before they go out of business. Once a dealership franchise is terminated, it is often too late. Unless Kansas law on the books at the time a dealership goes out of business fairly protects the dealer, there may not be an opportunity to properly compensate our Kansas dealers for equipment and parts they have in stock.

Current Kansas law attempts to fairly apportion the liability for remaining parts and equipment by excluding from the repurchase requirement equipment and parts which either have no value to the manufacture or which, for some other reason, would make it inequitable for the manufacture to pay for that equipment or parts. Where a manufacture arranges for parts from another source to be stocked by the dealer, either by authorization or by shipment from a third-party source, the dealer should not be stuck with those pieces of equipment or parts therefor. Basic principles of fairness dictate that the manufacturer should repurchase those parts or equipment.

I am not prepared to present you with specific instances where a dealer has already been left "holding the bag" because of current law. Some of the problems have been negotiated satisfactorily. However, our law should not put a manufacturer in a position to avoid this responsibility when a dealership franchise is terminated.

This bill has been reviewed by at least two major manufacturers -- John Deere and Case New Holland, Inc. John Deere has indicated it has no problem with the bill, and Case New Holland has agreed with it in principle, but asked that there be a clarifying amendment to insure its application does not include what they refer to as "approved attachments" -- those manufactured by third party sources that Case IH or New Holland tests for engineering compliance and approve for use with their equipment. Information about these attachments may have been obtained through company-sponsored dealer meetings or trade shows, and literature may have been sent to the dealers by the equipment manufacturer. However, the manufacturer does not want these items treated as if they were

"acquired from any source authorized or arranged for by the . . . manufacturer" as was required in the original bill.

Western Association is sympathetic to this concern and offered an amendment in the House Committee to limit the exception we are requesting to items which are ". . . ordered from, invoiced to the retailer by or financed to the retailer" by the manufacturer, to make sure the manufacturer was actually a part of the transaction in which the dealer purchased the parts or equipment.

I will try to answer any questions you might have.

Sincerely,

Alan F. Alderson

Alan F. Alderson
ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.

AFA:tla