

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on February 10, 2003, 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 Office
 Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

John Moore, Lt. Governor and Secretary, Kansas Department of Commerce and Housing
Janet McPherson, Assistant Director, Governmental Relations, Kansas Farm Bureau
Representative Mario Goico
Mary Allman, Executive Director, Kansas State Historical Society
Derenda Mitchell, Assistant Counsel, Kansas Livestock Association
Leslie Kaufman, State Director, Governmental Relations, Kansas Farm Bureau
Bill Yanek, Director of Governmental Relations, Kansas Association of Realtors
Kermit Kalb, Douglas County
Bob Rhoton, Frontier Farm Credit

Others attending: See attached list

Minutes of the February 3 meeting were distributed. Members were asked to notify the committee secretary of any corrections or additions prior to 5:00 p.m. February 12, or the minutes will be considered approved as presented.

Discussion and action on HCR 5003 - Concurrent Resolution urging Congress to provide emergency disaster assistance to agricultural producers.

Representative Kassebaum moved to amend HCR 5003 as recommended by the State Water Office, "Be it further resolved: That we urge the United States Congress to enact the National Drought Policy Act to provide for a cohesive federal policy, similar to that in place for other types of disasters, to reduce serious economic and other losses due to drought." (Attachment 1) Seconded by Representative Dahl, the motion carried.

Representative Showalter moved to amend HCR 5003 to send an enrolled copy of the resolution to the Majority Leader of the United States Senate, instead of the President of the United States Senate. Seconded by Representative Dahl, the motion carried.

Representative Thimesch moved to amend HCR 5003 by eliminating the word "flooding" on page 1, line 19, as the resolution concerns drought assistance. Representative Light seconded the motion. After some discussion concerning the fact that the resolution addresses all emergency disaster assistance, Representative Thimesch, with Representative Light's consent, withdrew his amendment.

Representative Larkin moved to conceptually amend HCR 5003 to ensure that the disaster payments go to those who can substantiate their losses. Seconded by Representative Dahl, the motion carried.

Representative Larkin moved to recommend HCR 5003, as amended, favorable for adoption. The motion was seconded by Representative Faber. The motion carried.

Hearing on HCR 5009 - Concurrent Resolution urging the President and Congress to remove trade, financial and travel restrictions to Cuba.

Chairman Johnson opened the hearing on HCR 5009. Raney Gilliland explained the resolution for the committee.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE at 3:30 p.m. on February 10, 2003, in Room 423-S of the Capitol.

John Moore, Lt. Governor and Secretary, Kansas Department of Commerce and Housing, appeared in strong support of **HCR 5009**. He said that Cuba holds promise, not only for agricultural and food products, but for other Kansas produced goods. He supports normalizing trade with Cuba for the good of both Kansas and Cuban citizens. (Attachment 2)

Janet McPherson, Assistant Director, Governmental Relations, Kansas Farm Bureau, presented testimony in support of **HCR 5009**. American Farm Bureau's policy concerning trade with Cuba, and unilateral sanctions generally, includes: 1) Support for opening negotiations to resume normal trading relations with Cuba, and 2) Belief that all agricultural products should be exempt from all embargoes and unilateral sanctions except in case of armed conflict. She said the proposed resolution is a solid signal to the federal government to open greater market opportunities for Kansas farmers. (Attachment 3)

Representative Mario Goico, who was born in Cuba, appeared in opposition to **HCR 5009**. He noted that the embargo against Cuba does not include food, although, they are required to pay cash. The Representative said that a resolution on trade with Cuba should include a statement on the violation of human rights that the Cuban citizens have suffered for the past 40 years. He also noted fugitives from U.S. Justice, terrorism and espionage as issues of concern. He read a U.S. Senate Resolution dated January 28, 2003, concerning the human rights situation in Cuba that he would like to have amended into **HCR 5009**. (Attachment 4)

Kenlon Johannes, Kansas Soybean Association, and member of the trade delegation to Cuba, testified in support of **HCR 5009** urging the President and Congress to remove trade, financial and travel restrictions to Cuba. It was noted that only the United States has Cuba on a cash-only basis.

There being no other conferees, Chairman Johnson closed the hearing on **HCR 5009**.

Hearing on HB 2168 - Preservation of historic property consistent with farming and ranching operations.

The Chairman opened the hearing on **HB 2168**. Raney Gilliland explained a **Proposed Substitute for HB 2168**, drafted as a result of a meeting of interested parties last week after the Kansas State Historical Society indicated that **HB 2168** would be contrary to federal law. He explained that the substitute bill is a simplified effort to accomplish the same goal. The substitute bill includes a requirement that approval of the owner of the property is required before the listing of the property on the state register of historic places. The substitute bill would remove the environs notification requirement. (Attachment 5)

Mary Allman, Executive Director, Kansas State Historical Society, discussed the state historic preservation statute and potential problems with **HB 2168** as written. She indicated she could support the **Proposed Substitute for HB 2168**. (Attachment 6)

Derenda Mitchell, Assistant Counsel, Kansas Livestock Association, testified in favor of **Proposed Substitute for HB 2168** that would encompass two concepts. First, elimination of environs language, and second, codify the practice of the Historical Society that no property is placed on the state register without the support and approval of the landowner. (Attachment 7)

Leslie Kaufman, State Director, Governmental Relations, Kansas Farm Bureau, appeared in support of the language in **Proposed Substitute for HB 2168** as a simplified approach to protecting landowners' rights. (Attachment 8)

Bill Yanek, Director of Governmental Relations, Kansas Association of Realtors, testified in support of the **Proposed Substitute for HB 2168** to remove the state's 500 foot environs requirement. He noted that Kansas is the only state that has an environs law. The Association believes that relieving the Historical Society of the burden of environs enforcement, the more positive aspects of historical preservation (tax incentives, etc.) will be more effectively pursued. (Attachment 9)

Kermit Kalb, Douglas County landowner, appeared in support of the **Proposed Substitute for HB 2168** and changes in the environs law concerning historic sites. He related his experiences with the current historical

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE at 3:30 p.m. on February 10, 2003, in Room 423-S of the Capitol.

preservation environs law as he owns property adjacent to the historical Black Jack Battlefield and Santa Fe Trail ruts in Douglas County being considered for historical preservation designation. (Attachment 10)

Roger Pine, Douglas County landowner, appeared in support of the **Proposed Substitute for HB 2168.**

Jerry McElheney, Douglas County Commissioner, testified in support of the **Proposed Substitute for HB 2168.**

Bob Rhoton, an agricultural lender for Frontier Farm Credit, testified in support of eliminating the historical preservation environs rule, not to discourage preservation, but to protect the rights of the landowners. (Attachment 11)

As there were no opponents, Chairman Johnson closed the hearing on **HB 2168.**

The meeting adjourned at 5:20 p.m. The next meeting is scheduled for February 12, 2003.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: February 10, 2003

| NAME | REPRESENTING |
|--------------------|---------------------------------|
| Edd Johnson | Kansas Livestock Assn. |
| Matt Meis | Lawrence Chamber of Commerce |
| FRANK MAJE | LAWRENCE CHAMBER OF COMMERCE |
| Sheila Fahn | Community College Assoc - KACCT |
| Janet McPherson | Ks Farm Bureau |
| Chris Kroh | staff |
| Rae Anne Davis | KDOCH |
| John Moore | Lt Gov / KDOCH |
| John Robinson | Lt Gov's office |
| Leslie Kaufman | KFB |
| BILL YANEK | Ks Assn of REALTORS |
| Roger Pine | Lawrence, Kan. Farmer |
| Rebecca Leed | Ks Dept. of Agriculture |
| Sev McElhoney | Douglas County Commissioner |
| Mark Wulfhackle | Lawrence 105, Farmer |
| Harraine Wingfield | LeCompton, Ks. Resident |
| Stephen Kalb | Kalb Farms, Wellsville |
| Permit Kalb | Wellsville, Ks |
| Margaret Kalb | Kalb Farms, Wellsville |

HCR 5003

Potential Additional Language Regarding National Drought Preparedness Act

Be it further resolved: That we urge the United States Congress to enact the National Drought Policy Act to provide for a cohesive federal policy, similar to that in place for other types of disasters, to reduce serious economic and other losses due to drought.

Testimony of John Moore
Lt. Governor/Secretary of Commerce
on HCR 5009
House Committee on Agriculture
February 10, 2003

Thank you for the opportunity to appear before you today in strong support of HCR 5009. Cuba imports nearly one billion dollars of food each year and Kansas, as a leader in agricultural exports, has the opportunity to seize our share of this market. I, along with other Department of Commerce staff and representatives from five Kansas companies, will be attending a Cuba/United States conference in Mexico next week. Over 100 U.S. companies will be in attendance to promote their products to the Cuban market. I would like to be able to report that this resolution has passed the Kansas House of Representatives and is being considered by the Kansas Senate.

Next week our Kansas delegation is planning to meet with Pedro Alvarez, the chairman of Alimport, the Cuban state enterprise responsible for importing food to Cuba. Chairman Alvarez is requesting a visa from the U.S. government today. Senator Pat Roberts and Representative Jerry Moran are actively supporting his efforts. In addition to this Congressional support, Chairman Alvarez's efforts and this resolution are supported by all of our partners on the December trade mission to Cuba, which I spoke with you about a few weeks ago. This includes the Kansas Farm Bureau, the Pork Producers Association, the Soybean Commission, The Corn Commission, the Wheat Commission and the Grain Sorghum Commission.

These initiatives are the first step in the process of opening the trade connection between Cuba and Kansas. Cuba holds promise, not only for agricultural and food products, but for other Kansas produced goods, and we support normalizing trade with Cuba for the good of both Kansas and Cuban citizens. Thank you for your support of this resolution and the efforts of Kansas agricultural producers to find a new and profitable market.



Kansas Farm Bureau

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PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON AGRICULTURE

**Re: HCR 5009 – Resolution urging the removal of trade,
financial and travel restrictions on Cuba.**

**February 10, 2003
Topeka, Kansas**

**Presented by:
Janet McPherson, Assistant Director
KFB Governmental Relations**

Mr. Chairman and members of the Committee, thank you for the opportunity to present support regarding HCR 5009, urging the U.S. Government to remove trade, financial and travel restrictions on Cuba. I am Janet McPherson and I serve as the Assistant Director of Governmental Relations for Kansas Farm Bureau (KFB). KFB is the state's largest general farm organizations and represents agricultural producers through the 105 county Farm Bureau Associations across Kansas.

Farmers looking for an opportunity to boost farm income need only look 90 miles from America's southern shores for an opportunity to tap into a \$1.24 billion market, according to a recently completed Texas A&M University study.

American Farm Bureau's policy concerning trade with Cuba and unilateral sanctions generally includes:

- *Support for opening negotiations to resume normal trading relations with Cuba, and*
- *Belief that all agricultural products should be exempt from all embargoes and unilateral sanctions except in case of armed conflict.*

House Agriculture Committee
February 10, 2003
Attachment 3

Cuba imports up to \$1 billion in food and agricultural goods per year from countries other than the United States. Opening trade with the United States would help Cuba to increase its standard of living, buy more food and agricultural products with its current fiscal budget and provide higher quality products to its citizens.

As economic growth accelerates in Cuba and living standards climb, potential U.S. export sales to Cuba could be expected to increase as well. Data compiled for 2002 totals reflects more than \$110 million of U.S. agricultural exports entering Cuba, with \$6.6 million of Kansas products in the mix.

Estimated Agricultural Exports from Kansas

| Cuba Millions of Dollars | 2002 Total U.S. | Estimated KS Share | (mil. of \$) KS Exports |
|-----------------------------|-----------------------|-----------------------|-------------------------------|
| Total U.S. Ag Exports | \$110.1 | 6.0% | \$6.6 |
| Wheat & Flour | \$22.8 | 16.9% | \$3.9 |
| Feed Grains & Prod. | \$21.6 | 7.2% | \$1.6 |
| Live Animals & Meat | \$0.0 | 14.2% | \$0.0 |
| Hides & Skins | \$0.0 | 18.6% | \$0.0 |
| Soybeans & Products | \$40.4 | 2.8% | \$1.1 |
| Feeds & Fodders | \$0.0 | 15.1% | \$0.0 |
| Fats, Oils & Greases | \$0.4 | 19.5% | \$0.1 |
| Seeds | \$0.0 | 3.0% | \$0.0 |
| Dairy Products | \$0.6 | 0.3% | \$0.0 |

* These are estimates only and are on a fiscal year basis (Oct - Sep)

** Data sources: KS Ag Statistics and FAS; compiled by Mark Nelson, KFB

American Farm Bureau predicts that U.S. exports to Cuba may increase to \$150 million in 2003. If that holds true, that is an additional \$2.4 million of Kansas products being exported to Cuba.

The proposed resolution is a solid signal to the federal government to open greater market opportunities for Kansas farmers. As such, we would appreciate favorable action by the committee to advance this resolution. Thank you.

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



TOPEKA

 HOUSE OF
 REPRESENTATIVES

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 REPRESENTATIVE, 100TH DISTRICT
 SEDGWICK COUNTY
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COMMITTEE ASSIGNMENTS
 MEMBER: FINANCIAL INSTITUTIONS
 HEALTH AND HUMAN
 SERVICES
 INSURANCE
 TAXATION
 KANSAS SECURITY

I stand before you in opposition to HCR 5009 as it is written.

Although I am a strong proponent of open markets and I know the dire situation that our farmers have faced with the drought for the past three years. There are several issues I'd like to bring to the attention of this committee:

- 1) The embargo against Cuba does not include food. At the present time Castro can buy all of our crops if he so desires, although he is required to pay cash for them.
- 2) A resolution on trade with Cuba should include a statement on the violation of human rights that the Cuban citizens have suffered under for the past 40 years. Several additional issues also include fugitives from US Justice, Terrorism and Espionage.
 - A. Fugitives: The FBI has a long list of fugitives from U.S. Justice who have found sanctuary in Cuba, from cop-killers like Joanne Chesimard (Assata Shakur) to garden-variety skyjackers and others from the 1970s. I suggest that it would be good to have the members call on Cuba to surrender these people. The U.S. and Cuba have a 1905 extradition treaty (amended in 1926) that is still in force, although it would probably not be possible to invoke the treaty in the absence of diplomatic relations. Still, the "rendition" doctrine would permit surrender of these fugitives, outside the treaty, to U.S. authorities if the Cuban government made up its mind to do so. The downside is that Castro can be expected to demand surrender of Cuban-Americans who have made his life miserable. Nonetheless, it would send an important law enforcement message to Castro, and also let the fugitives know that they're not out of the woods.
 - B. Terrorism/Espionage: I would recommend that we get a briefing from DIA/CIA on Cuba, its ties to terrorism, drug trafficking, and its espionage against the U.S. Ana Belen Montes is part of this story.
 - C. Trade: I won't get into this too much beyond pointing out that the Varadero Resort is a real foreign-exchange generator for Castro, but Cuban's aren't invited. Varadero brings to mind the infamous "Sun City" resort in one of the South African homelands, where no black or mixed race people were permitted. It was a foreigners-only resort, and there was a huge international boycott movement – do you remember "I Won't Sing in Sun City"? Anyway, I would ask that you entertain having some kind of statement about Cuba's "tourism apartheid" and try to shame the Europeans and Canadians into cutting back on their patronage of this resort until there are meaningful reforms.
 - D. Human Rights Commissions: Finally, you might consider have Castro to permit on-site visits to the Republic of Cuba by the Inter-American Commission on Human Rights and the European Commission on Human Rights.

House Agriculture Committee
 February 10, 2003
 Attachment 4

108TH CONGRESS
1ST SESSION

S. RES. _____

IN THE SENATE OF THE UNITED STATES

Mr. ENSIGN submitted the following resolution; which was referred to the
Committee on _____

RESOLUTION

Calling upon the Organization of American States (OAS) Inter-American Commission on Human Rights, the United Nations High Commissioner for Human Rights, the European Union, and human rights activists throughout the world to take certain actions in regard to the human rights situation in Cuba.

Whereas the democracies of the Western Hemisphere have approved an Inter-American Democratic Charter that sets a regional standard regarding respect for human rights and fundamental freedoms;

Whereas the government of the Republic of Cuba approved and is bound to respect the Charter of the Organization of American States (OAS) and the American Declaration of the Rights and Duties of Man;

Whereas in 2001, 2000, 1999, 1998, and previous years, the government of the Republic of Cuba declined to reply to the OAS Inter-American Commission on Human Rights when it sought the government's views on human rights violations in the Republic of Cuba;

Whereas all countries have an obligation to promote and protect human rights and fundamental freedoms as stated in the Charter of the United Nations and the Universal Declaration of Human Rights;

Whereas the United Nations Commission on Human Rights considered and passed a resolution in 2002 regarding the situation of human rights in the Republic of Cuba and called for the United Nations High Commissioner for Human Rights to send a personal representative to the Republic of Cuba;

Whereas the United States and other countries remain concerned about violations of human rights and fundamental freedoms in the Republic of Cuba, including the freedoms of expression, association, and assembly, and the rights associated with the administration of justice;

Whereas, according to the Department of State, Cuban authorities use exile as a means of repression and continue to harass, threaten, arbitrarily arrest, detain, imprison, and defame human rights advocates and members of independent professional associations, including journalists, economists, doctors, and lawyers with the goal of coercing them into leaving the country;

Whereas Cuban citizens are routinely jailed solely because their views do not coincide with those of the government;

Whereas Amnesty International in its 2002 report noted an increase in human rights violations in the Republic of

Cuba, including short-term arbitrary arrests, threats, summonses, evictions, interrogations, losses of employment, restrictions on travel, house arrests, and other forms of harassment directed by the government against political dissidents, independent journalists, and other activists in an effort to limit their ability to exercise fundamental freedoms;

Whereas Amnesty International also noted with concern the beginning of a trend toward the increased use of violence by Cuban authorities in order to repress dissent;

Whereas peaceful dissidents in the Republic of Cuba, such as Oscar Elias Biscet, who upon finishing more than 3 years in jail for "disrespect" is again in police custody and facing a possible year-long sentence, are subjected to ongoing harassment and imprisonment;

Whereas many Cubans, including journalist Bernardo Arevalo Padron who is currently in jail serving a 6 year sentence, are routinely jailed under the charge of "disrespect" for making negative statements about the government of the Republic of Cuba;

Whereas many Cubans, including Carlos Oquendo Rodriguez who is serving 2 years in prison, are routinely jailed under the charge of "public disorder" for criticizing the Castro regime;

Whereas many Cubans, including journalist Joel Diaz Hernandez who is serving 2 years in prison, are routinely jailed under the charge of "dangerousness" for belonging to peaceful dissident groups or the independent media;

Whereas many Cubans who belong to peaceful dissident groups and distribute leaflets, including Victor Bressler

Villazan who is serving 12 years in prison, are imprisoned on charges of "rebellion" and "enemy propaganda";

Whereas many Cubans who promote democratic practices and human rights, including Francisco Chaviano Gonzalez, the longest serving current Amnesty International prisoner of conscience in the Republic of Cuba, are imprisoned on charges of "revealing state security secrets" and "falsifying public documents";

Whereas Cuban political prisoners are deliberately exposed to harm and poor conditions as a means of punishment, including beatings, denial of medical treatment, forced labor against medical advice, unsanitary eating conditions, and coexistence with inmates carrying highly infectious diseases;

Whereas Amnesty International reports that participants in Oswaldo Paya's Varela Project collecting the required 10,000 signatures on a petition for peaceful change to the legal system of the Republic of Cuba have been harassed, detained, subjected to confiscation of signed petitions, and "kicked, punched, and threatened" by Cuban state security officials; and

Whereas the European Parliament rightfully recognized Oswaldo Paya for his work on the Varela Project with the 2002 Sakharov Prize for his human rights work in the Republic of Cuba: Now, therefore, be it

1 *Resolved*, That the Senate calls upon—

2 (1) the Organization of American States Inter-
3 American Commission on Human Rights to continue
4 its reporting on the human rights situation in the
5 Republic of Cuba and to request a visit to the Re-

1 public of Cuba for the purposes of reviewing and re-
2 porting to the international community on the
3 human rights situation there;

4 (2) the United Nations High Commissioner for
5 Human Rights and his newly appointed personal
6 representative to vigorously pursue the implementa-
7 tion of the 2002 Resolution regarding the situation
8 of human rights in the Republic of Cuba;

9 (3) the European Union, to build upon the Eu-
10 ropean Parliament's recognition of Cuban dissidents
11 and, through the appropriate bodies and mecha-
12 nisms, request to visit the Republic of Cuba for the
13 purpose of reviewing the human rights situation
14 there and issue a report to the international commu-
15 nity on its findings; and

16 (4) human rights organizations throughout the
17 world to issue statements of solidarity with the
18 Cuban human rights activists, political dissidents,
19 prisoners of conscience, independent journalists, and
20 other Cubans seeking to secure their internationally
21 recognized human rights and fundamental freedoms.

Proposed Substitute for HOUSE BILL NO. 2168

By

AN ACT concerning state historic property; relating to approval of owner for listing of property on state register; notice provisions; amending K.S.A. 75-2721 and K.S.A. 2002 Supp. 75-2724 and repealing the existing sections.

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

Section 1. K.S.A. 75-2721 is hereby amended to read as follows: 75-2721. (a) The state historical society shall have the following historic preservation powers and duties:

(1) Undertake a statewide survey to identify and document historic properties, including all those owned by the state, its instrumentalities and political subdivisions.

(2) Prepare and maintain a state register of historic places, which shall include all those listed on the national register of historic places. The historical society shall adopt standards for the listing and maintenance of historic properties on the state register consistent with relevant federal standards for preservation and care of historic properties. Such standards shall include a requirement that approval of the owner of the property is required before the listing of the property on the state register of historic places.

(3) Prepare the state's preservation plan, review such plan annually and make appropriate revisions.

(4) Within limits of available resources, acquire historic properties by gift, purchase, devise or bequest; preserve, restore and administer such properties; and transfer such properties when authorized by law.

(5) Establish standards and criteria for the acquisition of historic properties and for the preservation, restoration, maintenance and operation of properties under the jurisdiction of the agency, and, when deemed proper, to charge reasonable admission fees to such properties.

(6) Undertake the procedures necessary to qualify the state for participation in sources of federal aid for historic preservation purposes.

(7) Provide information concerning historic properties

within the state to the agencies and instrumentalities of the federal, state and local governments and, where appropriate, to private individuals and organizations.

(8) Cooperate with federal, state and local government agencies in the planning and conduct of specific undertakings affecting historic properties and preservation objectives and in overall land-use planning.

(9) Disburse federal and state funds to local governments and private agencies and individuals for historic preservation work; establish standards of eligibility to receive such funds; and enter into maintenance agreements with local governments and private agencies concerning historic properties.

(10) Participate in national and international conferences and programs concerning historic preservation and cooperate with federal officials and agencies in the conduct of such activities.

(11) Subject to limitations of staff and resources, provide technical and financial assistance to local historic preservation organizations and private parties involved in historic preservation activities.

(12) Assist, where possible, in developing public interest in historic preservation through the development and implementation of interpretive programs for historic properties and through the management of the state's historical marker program.

(13) Develop an ongoing program of historical, architectural and archeological research and development, to include continuing surveys, excavation, scientific recording, interpretation and publication of the state's historical, architectural, archeological and cultural resources. A reasonable charge may be made for publications.

(14) Request that the attorney general take action authorized under subsection (d) of K.S.A. 75-2724 and amendments thereto against any person or entities who fail to obtain any demolition or building permit required by local or state law.

(b) The state historic preservation officer shall adopt

rules and regulations to implement and administer the provisions of K.S.A. 75-2715 through 75-2725, and amendments thereto.

Sec. 2. K.S.A. 2002 Supp. 75-2724 is hereby amended to read as follows: 75-2724. (a) The state or any political subdivision of the state, or any instrumentality thereof, shall not undertake any project which will encroach upon, damage or destroy any historic property included in the national register of historic places or the state register of historic places ~~or--the--environs of--such--property~~ until the state historic preservation officer has been given notice ~~7--as--provided--herein7~~ and an opportunity to investigate and comment upon the proposed project. ~~Notice--to--the--state--historic--preservation--officer--shall--be--given--by--the--state or--any--political--subdivision--of--the--state--when--the--proposed project7--or--any--portion--thereof7--is--located--within--500--feet--of the---boundaries--of--a--historic--property--located--within--the corporate--limits--of--a--city7--or--within--1,000--feet--of--the boundaries--of--a--historic--property--located--in--the--unincorporated portion--of--a--county. Notwithstanding--the--notice--herein--required7 nothing--in--this--section--shall--be--interpreted--as--limiting--the authority---of---the---state--historic--preservation--officer--to investigate7--comment--and--make--the--determinations---otherwise permitted--by--this--section--regardless--of--the--proximity--of--any proposed--project--to--the--boundaries--of--a--historic--property.~~ The state historic preservation officer may solicit the advice and recommendations of the historic sites board of review with respect to such project and may direct that a public hearing or hearings be held thereon. Any such public hearing or hearings held pursuant to this subsection or held pursuant to authority delegated by the state historical preservation officer under subsection (e) or (f) shall be held within 60 days from the date of receipt of notice by the state historical preservation officer from the state or any political subdivision of the state as provided herein. If the state historic preservation officer determines, with or without having been given notice of the proposed project, that such proposed project will encroach upon,

damage or destroy any historic property included in the national register of historic places or the state register of historic places or the environs of such property, such project shall not proceed until:

(1) The governor, in the case of a project of the state or an instrumentality thereof, or the governing body of the political subdivision, in the case of a project of a political subdivision or an instrumentality thereof, has made a determination, based on a consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to such historic property resulting from such use; and

(2) five days notice of such determination has been given, by certified mail, to the state historic preservation officer.

(b) Any person aggrieved by the determination of the governor pursuant to this section may seek review of such determination in accordance with the act for judicial review and civil enforcement of agency actions. Any person aggrieved by the determination of a governing body pursuant to this section may seek review of such determination in accordance with K.S.A. 60-2101 and amendments thereto.

(c) The failure of the state historic preservation officer to initiate an investigation of any proposed project within 30 days from the date of receipt of notice thereof shall constitute such officer's approval of such project.

(d) Failure of any person or entity to apply for and obtain the proper or required building or demolition permit before undertaking a project that will encroach upon, damage or destroy any historic property included in the national register of historic places or the state register of historic places, or the environs of such property, shall be subject to a civil penalty not to exceed \$25,000 for each violation. The attorney general may seek such penalties and other relief through actions filed in district court.

(e) (1) The state historic preservation officer may enter

into an agreement authorizing a city or county to make recommendations or to perform any or all responsibilities of the state historic preservation officer under subsections (a), (b) and (c) if the state historic preservation officer determines that the city or county has enacted a comprehensive local historic preservation ordinance, established a local historic preservation board or commission and is actively engaged in a local historic preservation program. The agreement shall specify the authority delegated to the city or county by the state historic preservation officer, the manner in which the city or county shall report its decisions to the state historic preservation officer, the conditions under which the city or county can request assistance from the state historic preservation officer in performing certain project reviews, the length of time the agreement is to be valid and provisions for termination of the agreement. Such agreement shall provide that the state historic preservation officer shall retain final authority to implement the provisions of this act. The state historic preservation officer shall adopt any rules and regulations necessary to implement the provisions of this subsection.

(2) An agreement with a city or county authorized by this subsection shall not be construed as limiting the authority of the state historic preservation officer to investigate, comment and make determinations otherwise permitted by this section.

(f) The state historic preservation officer may enter into agreements with the state board of regents or any state educational institution under the control and supervision of the state board of regents to perform any or all responsibilities of the state historic preservation officer under subsections (a), (b) and (c).

Sec. 3. K.S.A. 75-2721 and K.S.A. 2002 Supp. 75-2724 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Testimony of Mary R. Allman, Executive Director, Kansas State Historical Society, Before the House Agriculture Committee RE HB 2168, February 10, 2003

On behalf of the Kansas State Historical Society, thank you for the opportunity to share some concerns on House Bill 2168, which proposes amendments to K. S. A. 75-2714 through K. S. A. 75-2725. The first section of the bill would amend K. S. A. 75-2714. That statute, which is independent from those that follow, relates only to protection of state historic sites, i.e., the eighteen properties that are owned by the State and operated by the Kansas State Historical Society. Since the intent of House Bill 2168 was to address some concerns about the state historic preservation program, we believe that Section 1 may be an inadvertent inclusion.

The rest of House Bill 2168 proposes amendments to what is commonly referred to as the state historic preservation statute (K.S.A. 75-2715 through K.S.A. 75-2725). That statute relates both to the process of listing properties on the state register of historic places and the protection of those properties. There are approximately 800 Kansas properties listed on the National Register of Historic Places, and those 800 and an additional 100 are included on the state register. These properties are owned by local governments, individuals, non profit organizations, businesses, and corporations. As specified in the statute, all properties listed on the National Register of Historic Places are listed on the state register.

The protective measures of the state preservation statute require the State Historic Preservation Officer to review projects on listed historic buildings or their environs that are carried out by governmental entities or that require permits. For environs projects the boundary of notification is 500 feet from a listed historic property within city limits and 1000 feet for projects in rural areas. The statute and the implementing regulations (K.A.R. 118-3-1 through 118-3-16) make it clear that the state historic preservation officer's comments are rendered in an advisory capacity to local governments on such projects. The final decision belongs to the local governing body. Ninety-eight percent of the projects reviewed by the state office under the statute are approved outright. The vast majority of those projects that are not approved outright are subsequently approved by local governing bodies.

In areas where reviews are required under the state law, the state preservation office will provide comments to the permitting entity. If the preservation office determines that a project will not "encroach upon, damage or destroy" a historic property or its environs, the project may proceed. If the office believes the project will "encroach upon, damage or destroy" a historic property or its environs, the applicant may appeal to the local governing body. In the case of rural areas that might require permits, these projects would be appealed to county commissions.

It is our understanding that the intent of House Bill 2168 is three-fold. First, the bill aims to exempt agricultural properties from falling under the protective measures of the state preservation statute. Secondly, the legislation would require property owner consent prior to "adding such property to the state or national registers." Third, the bill would require the state office to provide notification to all property owners within 500 feet of any property to be nominated to the state or national register.

In practical terms, we don't believe that any agricultural projects are currently being reviewed by the historic preservation office under the state preservation statute. The state preservation statute requires review only for those projects that need permits. Since projects undertaken in the rural areas do not require permits, these projects are not reviewed under the state preservation statute. It should be noted that there are federal laws that will require review of federal agencies' undertakings, including grants, loans, etc., in all areas.

The second purpose of House Bill 2168 is to require owner consent for national and state register listing. Enactment of this provision would pose both a legal and financial challenge for the Kansas State Historical Society. All properties listed on the National Register of Historic Places are, by Kansas law, also listed on the state register (K. S. A. 75-2721(a)(2)). The criteria and the procedures for the National Register of Historic Places are established by the National Park Service under federal law. The regulations for the National Register of Historic Places, which are found in 36 CFR Part 60, allow a private property owner to block the listing of his/her own property on the National Register by following specified procedures. States may not add additional criteria or requirements for National Register nomination. The federal regulations do not require owner consent for nominations. If passed in its present form, House Bill 2168 would be contrary to federal law. In all likelihood the state's historic preservation program would no longer be approved by the National Park Service, and the state would lose the federal historic preservation funding. Currently we receive between \$600,000 and \$800,000 per year from the National Park Service; that number compares to the approximately \$118,000 in state general funds that go into the program. If the state's National Register program diverges from the federal program, this federal funding is in jeopardy.

It may interest you to know that the Kansas Historic Sites Board of Review, the gubernatorially appointed board which must evaluate and recommend every nomination from the state, has made it a practice not to recommend private properties for National Register listing unless the owner supports the nomination.

Requiring notification of property owners within the environs would also have a financial impact on the agency. We estimate that it would cost between \$25,000 and \$30,000 per year to notify property owners within the environs of the several dozen properties nominated each year for listing on the state and/or national registers.

We have identified for you our concerns about the current language of House Bill 2168, but we recognize that from time to time it is necessary to revisit and revise the authorizing language for agency programs. After the enactment of the state historic preservation law in 1977, at least a half-dozen amendments have been made over the years. For example, the provision that requires review of projects within 500 feet of a listed property was not part of the original language. It evolved through amendments sought by others, not the Historical Society, in the 1980s. The Historical Society is quite willing to work with the committee and other interested parties to seek solutions that will not jeopardize the federal funding for the historic preservation program.



Since 1894

TESTIMONY

To: House Agriculture Committee
From: Derenda J. Mitchell, Assistant Counsel
Subject: HB 2168
Date: February 10, 2003

Mr. Chairman and members of the committee, my name is Derenda J. Mitchell. I am representing the Kansas Livestock Association. The Kansas Livestock Association (KLA) is a trade organization that represents all segments of the livestock industry and has approximately 6,500 members.

On behalf of the KLA, I testify in favor of a substitute for HB 2168 that would encompass two concepts. First, we ask that the legislature eliminate the environs language in K.S.A. 75-2724 and clarify that the jurisdiction of the Historical Society is over historical property itself and not some arbitrary "environ" around historical property. Second, we ask that the practice of the Historical Society be codified so that no property is placed on the state register without the support and approval of the landowner.

The best way to preserve the heritage and history of our ancestors is to respect the rights and freedoms for which our ancestors fought. The right to hold property and to be free from undue governmental interference in the enjoyment and lawful use of that property is one of our basic civil liberties. Substitute of HB 2168 will further our ancestor's vision.

Thank you.

House Agriculture Committee
February 10, 2003
Attachment 7



Kansas Farm Bureau

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PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON AGRICULTURE

RE: HB 2168 – Historic Environs.

**February 10, 2003
Topeka, Kansas**

**Presented by:
Leslie Kaufman, State Director
KFB Governmental Relations**

Chairman Johnson and members of the House Agriculture Committee, thank you for the opportunity to appear today in support of HB 2168. I am Leslie Kaufman and I serve as the State Director for Kansas Farm Bureau Governmental Relations.

Our members have a long history of treasuring and protecting their private property rights. *We vigorously support landowners' rights.*

Through one of our local county farm bureaus, we have come to understand that individuals' rights can potentially be restricted under current law, should their property abut a registered historical site. Furthermore, the restriction covers a rather large zone of impact (environs). It is possible that normal farming and ranching activities, or construction of facilities to carryout those activities could be negatively impacted. The bill before you today seeks to correct this over-extension of governmental authority.

We understand the original bill's text is one way to accomplish this protection. We are also aware that a more simplified approach may be offered, possibly in the form of a substitute bill. We have been involved in discussions concerning possible substitute language and are supportive of that concept, as well.

Again, we appreciate the opportunity to speak to you today.



TO: HOUSE AGRICULTURE COMMITTEE
FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS
DATE: February 10, 2003
SUBJECT: House Bill 2168, Proposed Substitute for House Bill 2168

The Kansas Association of REALTORS® strongly supports efforts by the Kansas State Historical Society and other individuals to preserve Kansas's significant historical assets.

However, our members have encountered the negative impacts of the state's 500 ft environs requirement. We believe that it is time for Kansas to consider alternatives to preserving the context of historical assets through a rote 500 ft requirement.

The 500 ft requirement does not take into account the unique nature of certain historical assets. The requirement also impacts adjoining property owners in a way that may affect their rights as property owners.

Our Association believes that by relieving the KSHS of the burden of environs enforcement, the more positive (tax incentives etc.) aspects of historical preservation will be more effectively pursued.

We urge the committee to pass favorably House Bill 2168.



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House Agriculture Committee
February 10, 2003
Attachment 9

My name is Kermit Kalb. I live in eastern Douglas County right next to the historical Black Jack battlefield and the Santa Fe Trail ruts.

I am the fourth generation of my family to live on our property, and my son has joined our farming operation to become the fifth generation to farm our land.

I would like to speak out in favor of the changes in the environs laws concerning historic sites. Having lived in this area all my life, I have a great respect for the preservation of this historical site. However, I feel that the current environs laws infringes on my rights as a property owner.

We were quite surprised to learn that a group of people, who had no direct contact with the Black Jack site could petition for the historical designation that would put such constraints on our property. Because of the current environs law, and the fact that we are the contiguous landowner of 240 acres that falls within that 1000 feet environs, this current law puts undue restrictions on us.

Our main concern is that we want to be able to continue in our farming operation the way it is today, and even expand that operation if we so choose. With the current environs regulations this will require more paper work and more headaches for us to deal with if we do expand our operation. We have already dealt with the growing paperwork involved with our cattle feedlot operation permits. This would be just one more agency that we would have to answer to. It gets to the point that we don't know who we will have to answer to next concerning what we will want to do with our own property.

The rights of property owners is the most important factor to us. Most people don't seem to understand that we have been in the area continuing our farming operation for many generations and have always had the upmost respect for the historical aspects of the community. Theses environs restrictions just seem to limit our rights as property owners.

The farming community in our area is going older and not many are returning to the farm. Because of this, much of the farm ground in our part of the county is being sold for development purposes. That is not our intention, especially with my son joining our farming operation. But with the current environs laws this would restrict what we could do with our land if we were forced to sell some of our land because of this rural development.

We support the changes in the environs regulations and thank you for the opportunity to speak today.

February 10, 2003

My name is Bob Rhoton and I work as an agricultural lender for Frontier Farm Credit. My primary job responsibilities are making agricultural loans in Douglas, Johnson, Leavenworth, and Wyandotte counties and I also have training as an appraiser. I would like to make some comments about the historical preservation environs rule.

The current law specifies that in rural areas there is a 1,000 foot environs on any state or national historical site. This has a great adverse affect on properties in the areas where I conduct my business. In the urban area that I currently work, property values are determined by non-agricultural influences, but a property that has this environs more than likely will have values closer to the income capabilities of the property. Properties are typically valued by their highest and best use, which means that the property can be used for anything that is physically possible, legally permissible, maximally productive, and financially feasible. But when we have the Kansas Historical Society controlling through a review process what can happen or what is legally permissible on properties that are within the 1,000 foot environs, this principle of appraisal is changed dramatically. Since the other 3 determinations for highest and best use are no longer as important.

I have customers that depend on their real estate as being one of their major assets for retirement. If they are unlucky enough to be located next to a state historical site, this can all change due to the arbitrary discretion of the review committee. As an agricultural lender this disturbs me, since I have not come across this prior to this winter. Properties that I thought had significant value on my customers' balance sheets and had great potential for other purposes other than ag production are no longer possibly worth as much if they are within this 1,000 foot environ. Therefore, with the economic conditions of farming being what they are today, I would recommend that we amend the current preservation law as it refers to the environs rule to remove this restriction not to discourage preservation, but to protect the rights of the landowners. A considerable number of these landowners have had these farms in their family for generations and only wish to continue their agricultural interest, but someday may need to rely on the real estate asset for at least a portion of their retirement.

The other issue I see with the environs rule is that any action that requires permitting such as building permits, KDHE permits, or conditional use permits would be reviewed by the Kansas State Historical Society Review Committee. How can we assure ourselves that this review process will be done in a timely manner and will continue to allow our farmers the rights to handle their operations in a prudent and profitable manner? Adding paperwork and roadblocks to the processes that farmers go through to maintain their farms and operate them in the most profitable manner is counter-productive. Constructing a house, enlarging a feeding facility, or requesting permission to sell non agriculture products through your greenhouse facility should not be things that have the Historical Review Committee making decisions for the operator.

Farmers are bogged down too much presently in documenting their farming practices. The present law does not stop at a 1,000 foot environ. The interpretation that I have received from the current rule is that if any portion of a farmer's land lies within the 1,000 foot environ, the entire property is subject to the rule. For example, your neighbor has his house accepted as a state historical site. Your 640 acre farm lies one foot within the 1,000 foot environ limit. Your entire farm would be subject to the review process, even though none of the farm lies within the 1,000 feet. Therefore, if you applied for a conditional use permit, a building permit to remodel or build your home, or you applied for a KDHE permit to expand your feeding operations, the entire process would be subject to the Historical Review Committee.

Most property owners are not adverse to historical preservation. However, having a historical site located in close proximity to the land you own could be a great detriment to the way your future agricultural production may be handled and, in my opinion, greatly diminishes the potential value of the farm you own. Therefore, I recommend that we change or do away with the current environs rule. Thank you for your time.