

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE.

The meeting was called to order by Chairman Senator Robert Tyson at 8:30 a.m. on February 21, 2003 in Room 423-S of the Capitol.

Members present: Senator Schmidt, Senator Lee, Senator Tyson, Senator Taddiken, Senator Umbarger, Senator Adkins, Senator Corbin, Senator Huelskamp

Committee staff present: Raney Gilliland, Legislative Research
Lisa Montgomery, Revisor of Statutes
Shannon Stone, Secretary

Conferees appearing before the committee:

Bill Bider, Director of Bureau of Waste Management, Kansas Department of Health and Environment
Judy Moler, Kansas Association of Counties
Jim Beason, Farmer, Chatauqua County
Leslie Kaufman, State Director, Kansas Farm Bureau
Todd Johnson, Governmental Affairs Staff, Kansas Livestock Association
Shawn Harding, Legislative Chairman, Kansas State Bowhunter's Association
Mike Hayden, Kansas Department of Wildlife and Parks
Will Carpenter, Commissioner, Wildlife and Parks Commission

Others attending: See attached guest list

Hearing on SB 216

Raney Gilliland, Staff, presented the overview of **SB 216**. Senator Taddiken gave comments as to the reason for the bill.

Bill Bider of the Department of Health and Environment presented testimony opposing **SB 216**. The Department stated that open burning of any material, including clean wood could adversely impact human health...by increasing airborne contaminants. Furthermore, the agency believes enactment of the bill would put the state out of compliance with federal regulations which state: *The facility or practice shall not engage in open burning of residential, commercial, institutional, or industrial solid waste.* (Attachment 1) Mr. Bider provided a handout on open burning at KDHE approved tree and brush sites. (Attachment 2)

Judy Moler, speaking on behalf of Kansas Association of Counties, gave testimony supporting **SB 216**. KAC gave their approval of the bill because it would allow counties to free up space in landfills. They urged the Committee to move favorably on the passage of the bill. (Attachment 3)

Both conferees stood for questions from the Committee following their testimony.

Senator Tyson closed the hearing on **SB 216**.

Hearing on SB 125

Staff, Raney Gilliland briefed the Committee on the details of **SB 125**.

Jim Beason, a farmer from Chatauqua County, was the first conferee to give testimony supporting passage of the bill. Mr. Beason described his area an "island of cropland in an ocean of timber" and shared with the Committee the difficulties he and his brother have encountered both practically and legally, in keeping the deer off of their land. The Beasons are advocates of the bill because they feel the deer problem cannot

CONTINUATION SHEET

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE at 8:30 a.m. on February 21, 2003 in Room 423-S of the Capitol.

be solved by the Kansas Department of Wildlife and Parks, alone. They also reasoned that it was unfair for farmers to continue to foot the bill for crop damages caused by state-owned wildlife. ([Attachment 4](#))

Leslie Kaufman of Kansas Farm Bureau said losses to certain individuals can reach up to \$30,000 annually. While KFB supported **SB 125** because it compensates landowners for losses due to big game, they did have some concerns with the bill. Among those concerns were:

Will KDWP investigate/verify claims against the fund?

Will KDWP be expected to administer the fund with existing FTEs?

KFB also had concerns about KDWP's involvement in selling deer parts at fair market value. ([Attachment 5](#))

Kansas Livestock Association representative, Todd Johnson said his organization sees **SB 125** as a step in the right direction because it addressed members' concerns dealing with "compensation to those aggrieved by the wildlife". ([Attachment 6](#))

Secretary Mike Hayden of the Department of Wildlife and Parks shared the agency's view of the bill. They Department did not see the bill as offering a solution to the problem. They also felt that 1) the bill penalized the agent of deer herd reduction, hunters and 2) that landowners already had significant legal options. Finally, KDWP stated that the U.S. Fish and Wildlife Service had reviewed the bill and determined that the legislation would place the department in diversion and make the state ineligible to receive certain federal funding. For these reasons, the department opposed the bill. ([Attachments 7 and 8](#))

Wildlife and Parks Commissioner, Will Carpenter also gave testimony opposing **SB 125**. He stated that the Commission has approved regulations that have more than tripled the number of deer permits available to hunters. Mr. Carpenter felt that access to private land was the answer to reducing deer numbers and that the compensation set forth in the bill could be a disincentive to some landowners to take effective action. ([Attachment 9](#))

Shawn Harding of the Kansas Bowhunter's Association gave final testimony on **SB 125**. The Association opposed the bill feeling that it would force the state to act as an insurance agent. Like KDWP, they also felt the bill unfairly penalized hunters. ([Attachment 10](#))

Review of Minutes/Adjournment

Senator Taddiken moved to approve the minutes as they stood. Senator Huelskamp seconded the motion and the motion carried. The meeting was adjourned at 9:33 a.m.

SENATE NATURAL RESOURCES COMMITTEE

GUEST LIST

DATE: Feb 21, 2003

NAME	REPRESENTING
Joad Johnson	KLA
Ron Hammerschmidt	KDHE - Div of Environment
Mary Jane Stattelman	KGFA/KARA
Vick Cooper	KDHE - Div of Environment
Judy Shaw	Waste Mgmt of Ks
Waddy Mason	Ks. Agg. Prod Assoc.
Shawn W. Harding	Kansas Boundarist Assoc.
Royal Fox	KDWP
Chad Luce	KDWP
Will Chepenter	KDWP Commissioner
Mike Hyder	KDWP
Chris Litch	SB/25 LANDOWNER
Jim Beason	Beason Farm
Herb Beason	Beason Farm
Chris Tymeson	KDWP
Ye Ann Schmitt	LPA
Wendy Matlam	KAPA
Jessie Kaufman	KFB



K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

Testimony on Senate Bill 216
presented to
Senate Natural Resources Committee
by

Bill Bider, Director, Bureau of Waste Management
February 21, 2003

The Department of Health and Environment appreciates this opportunity to present testimony on Senate Bill 216. Even though KDHE opposes this bill, we recognize that some benefits could be gained by burning untreated wood and sawdust rather than disposing of such waste in a construction and demolition landfill. The burning of clean wood, such as pallets and old boards, in tree and brush burn sites would conserve landfill space and it could save money for the generator of the waste and the landfill owner.

However, open burning of any material, including clean wood, can adversely impact human health and the environment by increasing airborne contaminants, especially fine particulate matter. Children, the elderly, and persons with respiratory problems are at the greatest risks from exposure to fine particulate matter. Furthermore, human exposures to generated pollutants could significantly increase in some areas because this bill would allow open burning at any C & D landfill, regardless of location. Many C & D landfills are located in areas of high population density with likely dispersion of pollutants into nearby neighborhoods.

Proponents of this bill could point out that state and federal rules allow open burning of larger quantities of trees and brush at C & D landfills; thus there would be little added impact caused by the addition of some clean wood or sawdust to the burn pile. While this may be true at some C & D landfills; a few locations would like to burn large volumes of clean wood which is routinely generated by nearby businesses. Such ongoing combustion activity would significantly add to undesirable air pollution emissions. Regardless of this aspect of the debate, the point becomes moot because federal solid waste rules prohibit the open burning of solid waste at any permitted solid waste facility. This restriction can be found in 40 CFR Part 257.3-7. It states: ***"The facility or practice shall not engage in open burning of residential, commercial, institutional, or industrial solid waste."*** Open burning means that the combustion is carried out without: (1) controls of combustion air, (2) contained combustion, or (3) emissions controls. This federal requirement would not prohibit burning of clean wood using a control device such as an air-curtain destruct unit.

Senate Natural Resources Committee
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Attachment 1-1

DIVISION OF ENVIRONMENT
Bureau of Waste Management

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Voice 785-296-1600 Fax 785-296-8909 [Http://www.kdhe.state.ks.us/waste](http://www.kdhe.state.ks.us/waste)

KDHE Testimony for SB 216 to Senate Natural Resources Committee

Despite the federal prohibition on the open burning of untreated wood and sawdust, KDHE believes it is impractical and unnecessary to enforce a zero tolerance standard for such material in approved tree and brush burn sites. For this reason, the department has recently completed a Division of Environment policy which allows for the presence of "incidental amounts" of unpainted or untreated wood. "Incidental amounts" is defined in the policy as a small number of boards or wooden pallets mixed with a much larger volume of tree and brush. This policy advises internal staff to use enforcement discretion when they inspect burn sites allowing for small amounts of clean wood in a burn pile without citing the currently applicable state regulations that prohibit such open burning. Staff will also provide technical guidance on alternative disposal and recycling options to operators who routinely receive greater than incidental amounts of clean wood. Special assistance will be provided, including help from the Pollution Prevention Program at Kansas State University, when a one or two large generators of wood waste exist in a city or county. A copy of this KDHE policy is attached.

KDHE would like to point out that the language proposed in SB 216 appears to inadvertently require that C & D landfills either: (1) dispose of C & D waste or (2) burn untreated wood or sawdust. We believe that the intent of the bill is to allow both activities at C & D landfills, but the current wording does not seem to allow disposal and burning.

In summary, KDHE opposes this bill because we believe it would be a step backward in preventing pollution in Kansas and because it would allow a waste management activity that is prohibited by federal regulations.

Thank you for this opportunity to provide testimony on SB 216.

Kansas Department of Health and Environment
Division of Environment Policy

Related to
Open Burning at KDHE Approved Tree and Brush Sites
January 16, 2002

Background

Kansas currently has over 400 active open burn sites approved by KDHE primarily for burning trees and brush. Some sites have also been approved to burn other materials such as clean lumber and pallets. Many sites that are approved to burn only trees and brush have routinely added some clean wood to the burn pile and until recently, KDHE inspectors have not cited this practice. In 2000, the Bureau of Air and Radiation prepared a technical guidance document on Open Burning of Waste Wood (BAR 00-02) which explained that the open burning of waste lumber and pallets shall only occur when specifically approved following the department's determination that such burning is necessary or in the public's interest. That guidance document also states that the burning of clean wood waste is generally approved on a "one-time" basis only, implying that ongoing burning of such waste may not be conducted at permanent open burn sites.

Over the past year, KDHE began notifying owners and operators of approved open burn sites that the burning of clean lumber and pallets is prohibited. The shift in KDHE enforcement philosophy regarding open burning has led to confusion and concern, particularly when only small amounts of clean wood are burned with much larger volumes of trees and brush. In response, KDHE has reevaluated this issue and prepared this policy to clarify acceptable open burning practices at tree and brush sites.

Applicable Regulations and Environmental Considerations

Kansas Administrative Regulation (K.A.R.) 28-19-645 prohibits the open burning of any wastes, structures, vegetation, or any other materials on any premises except as authorized by K.A.R. 28-19-647. K.A.R. 28-19-647 provides a mechanism for persons to request an exception to obtain an approval from KDHE to conduct an open burning operation not specifically falling under the listed exceptions. The purpose of the Kansas open burning regulations is to reduce the release of air contaminants in the ambient air through prohibiting or controlling the amount and type of open burning conducted in the state. Typical air contaminants resulting from open burning of materials including clean wood include fine particulate matter (PM), carbon monoxide, sulfur oxides, nitrogen oxides, and many organic compounds.

Federal solid waste regulations also prohibit the open burning of any residential, commercial, institutional, or industrial solid waste (40 CFR Part 257.3-7). This requirement does not apply to the burning of trees and brush generated in land clearing activity or as part of storm clean-up operations, or to the burning of grasses or other agricultural wastes in the field.

There are many health concerns associated with breathing the air pollutants found in wood smoke, including PM which can be inhaled and easily lodge in the deepest recesses of the lungs.

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Children, the elderly, and persons with respiratory problems are at the greatest risks from high exposure to this fine particulate matter. The emissions of air contaminants, especially the finer PM into the ambient air, are also a concern due to airborne transport of fine PM across the state and the country.

Management Methods for Clean Wood Waste

There is a very large volume of trees, brush, and other clean wood waste generated each year in Kansas. The vast majority of this waste is trees and brush. Management methods for this waste include landfilling, burning, or recycling, primarily through grinding into mulch. While recycling is most desirable, it is not feasible to convert all clean wood waste to mulch. While landfilling trees and brush is feasible, it is not desirable because landfill space is limited and new facility siting is difficult. Burning can be carried out with or without air pollution controls, such as using an air curtain destruct unit. Burning without controls does contribute to air pollution.

Policy Decision

Based upon all factors, KDHE will continue to allow open burning of trees and brush without air pollution controls at most locations. Emissions controls may be required at some sites located in sensitive areas or near population centers. The burning of commercial and industrial-generated waste is prohibited at all tree and brush open burn sites with one exception - - incidental amounts of unpainted or untreated wood is allowed. For the purposes of this policy and associated inspection and enforcement procedures, "incidental amounts" shall mean a small number of boards or wooden pallets mixed with a much larger volume of trees and brush. In addition, the minor flow of boards or pallets into the site shall be random and associated with miscellaneous generators rather than a routinely generated commercial waste stream.

The owners or operators of open burn sites without emission controls shall not accept clean wood waste for burning from businesses which generate such waste as part of routine commercial or industrial operations. Such waste must be rejected or diverted for temporary storage and managed in one of the following ways:

- Landfilled in a facility permitted by KDHE
- Burned at a site with approved air pollution controls (e.g., air curtain destructor)
- Recycled or reused

Owners and operators may obtain assistance in evaluating recycling, reuse, and energy recovery by contacting KDHE's pollution prevention program (contact (785) 296-0669 or e-mail ccolglaz@kdhe.state.ks.us).

Tree and Brush Open Burn Application Process

Guidelines for obtaining KDHE approval to operate tree and brush open burn follow:

1. Written application shall be made to the appropriate KDHE District Office (Chanute, Dodge City, Hays, Lawrence, Salina, or Wichita) or to the appropriate Local Agency Programs (Johnson, Sedgwick, Shawnee, and Wyandotte Counties only).

2. Written applications shall include the type of materials to be burned at the site (trees and brush only with incidental amounts of clean lumber or pallets), frequency of open burning, location, etc., to demonstrate compliance with K.A.R. 28-19-647;
Exceptions to prohibition on open burning.
3. Written approvals from KDHE or the local agency may include additional and appropriate restrictions as conditions for the site-specific approval.
4. New approvals will state "The open burning of commercial and industrial-generated waste is prohibited, except for incidental amounts of clean wood wastes, including, but not limited to wooden pallets and/or discarded lumber."
5. Each currently approved Tree and Brush Burn Sites with an exemption to burn clean lumber will be given written notice of this KDHE policy and informed that future burning of such waste shall be limited to incidental amounts, as described above.

Inspection and Enforcement Procedures

This policy provides owners and operators with limited flexibility related to burning minor amounts of commercially generated clean wood. The policy and applicable regulations shall be enforced by KDHE as follows:

1. KDHE staff (or AQ contracted local agency staff) will inspect approved Open Burn Sites for Tree and Brush Only for compliance with K.A.R. 28-19-645 through 647, and specifically for site-specific approval conditions and restrictions contained in K.A.R. 28-19-647;
Exceptions to prohibition on open burning. Site inspections may be routine site inspections or generated by complaint received by KDHE or contracted Local Agency staff.
2. KDHE/Local Agency staff field inspectors will note and document the presence of any commercial and industrial generated clean wood waste in the open burning area. When only "incidental amounts" of clean wood are present, no violation shall be cited; however, the inspector's report will include written comment about the presence of this material and instructional information about acceptable limits in uncontrolled burn sites. When an inspector identifies unacceptable materials (e.g., furniture, painted lumber, etc.) or greater than incidental amounts of clean wood in a burn pile, the site operator will be informed of the violation(s) and KDHE's intent to issue a Notice of Non Compliance (NON) for any observed non-compliance with K.A.R. 28-19-645 through 647. Site operators shall also be directed to contact the KDHE pollution prevention office to receive information on alternative management methods for excess clean wood waste in the burn pile. A NON will be issued and mailed to the responsible official for the open burn site.
3. Inspectors will document all identified non-compliance activities at approved tree and brush open burn sites in a written report including photographs. All documentation shall be referred to the Central Office in Topeka for enforcement decisions.

Questions and Answers

1. If a facility receives greater than incidental amounts of commercially generated clean wood, is it acceptable to store the wood on-site and feed it little by little into the burn pile?

No. Such wood waste may be temporarily diverted from the burn pile and stored but only until an alternative disposal method is selected.

2. Can a facility sort good lumber and fix pallets for giving or selling to the public?

Yes; however, large volume processing could require a solid waste processing facility permit.

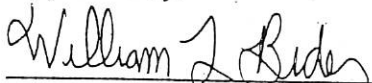
3. If a business generates wood waste as part of its routine commercial or industrial activity can any of that waste be burned?

No, such businesses must evaluate disposal and recycling options and select a management method other than uncontrolled open burning.

4. Is KDHE going to fine site owners or operators whenever greater than incidental amounts of waste wood are identified?

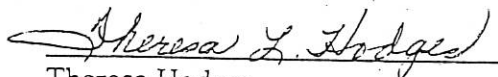
KDHE's approach to identified non-compliance will be to warn and educate first. Repeat non-compliance could lead to enforcement actions which may include penalties.

Approved by:




William L. Bider
Director, Bureau of Waste Management

1-16-03
Date



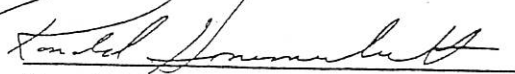
Theresa Hodges
Director, Bureau of Environmental Field Services

1-16-03
Date



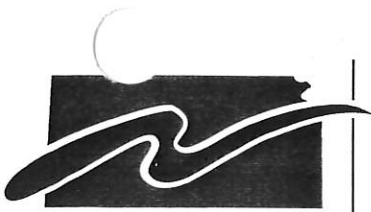
Ronald F. Hammerschmidt, Ph.D.
Acting Director, Bureau of Air and Radiation

1-16-03
Date



Ronald F. Hammerschmidt, Ph.D.
Director, Division of Environment

1-16-03
Date



KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY

Before the Senate Natural Resources Committee
SB 216

February 21, 2003

By Judy A. Moler, General Counsel/Legislative Services Director

Thank you, Chairman Tyson and Members of the Senate Natural Resources Committee allowing the Kansas Association of Counties to provide testimony on SB 216.

The Kansas Association of Counties is in support of SB 216. The KAC has worked with KDHE on this bill which would allow limited flexibility for counties for burning of small amounts of clean wood brought to construction and demolition landfills. This would allow counties to rid themselves of clean wood that takes up valuable space in the landfills while not harming the environment. As you know space at many landfills is at a premium and this would alleviate some of that concern.

The Kansas Association of Counties urges the committee to move favorably on the passage of SB 216.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

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Senate Natural Resources Committee
Date: February 21, 2003
Attachment 3

Natural Resources
Senate Bill 125
February 21, 2003
State Capitol

Thank you Senator Tyson and thank you all for listening to our comments. My brother Herb and I farm in Chautauqua County, east of Sedan and north of Niotaze. We have had and still have a serious problem with crop loss caused by deer. As you are well aware there is a snarl of political and financial interests swirling around the deer population in Kansas. While the debate goes on about what to do, we as crop producers unwillingly serve up a large amount of our profit to feed these animals.

The solution for my problem is to reduce the herd size to a level that existed in the early '80's. But, the Kansas Dept. of Wildlife and Parks (KDWP) has cultivated and protected the growing herd for decades. Sec. Hayden has a list of programs designed to solve the deer problem. Wildlife and Parks has always had a list of programs and means to address the overpopulation, but the problem never goes away in my area. **We no longer have any reason to believe the deer problem will be solved by the actions of KDWP alone. That's based on a 15 year relationship with them. KDWP has shown what they are capable of and they have failed.** They have failed to control the herd and prevent serious crop loss in our area. And if this problem is left to them to solve, without the guidance of S. B. 125, they will continue to fail.

In my area, we have what I would describe as "islands" of cropland in an "ocean" of pasture and timber. There is no way I can control enough property to prevent the deer from moving out of the "ocean" on to my "islands". And it is not my responsibility to provide incentives for my neighbors to harvest lots of deer to solve the problems created by Wildlife and Parks. It's Wildlife and Parks responsibility. I really don't believe the average Kansan understands how serious the problem is for those involved with crop production. However, Wildlife and Parks knows. They know exactly what's going on. So do many of the organizations who support the actions of Wildlife and Parks and oppose this bill. And the only way---THE ONLY WAY---this problem will be communicated clearly to everyone is to pay for the damage done by the deer. We expect nothing more from this bill than what is going to be taken from us.

While we continue to wait for a solution, the state should compensate us for the crop loss. I'm sure this would hasten the process. **The pleasure and profit created by the deer are not currently being offset by the cost of supporting this herd. Until that happens, those who enjoy the herd and gain the benefits will never have reason to prefer less deer.** And that is exactly the situation that exists now. **WE have been paying the bill for the last 20 years.** This amounts to nothing less than a deer tax on farmers and landowners!

The state should take it from here until a solution comes. This compensation will show everyone where the problems exist. Somehow it seems when we talk about transferring the cost of feeding the deer to those who most directly enjoy their presence

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it's unfair and wrong. But when we as a state sit by and allow crop producers to take the hit, that's OK. That's exactly what has happened up to now---and it's not OK, it's wrong.

Some would argue that the damages caused by the deer are exaggerated. Well, if that is the case, this bill would be easily funded and the truth of the matter will be revealed. I look forward to the truth. It would be such a relief to see an honest solution.


In Amendment XIV, Section 1. of the U. S. Constitution it says this. "No state shall make or enforce any law which shall abridge the privileges of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Kansas is currently enforcing laws which "abridge the property" of crop producers. Kansas is denying crop producers of "equal protection of the laws".

Sec. Hayden told me in Chanute on Nov. 18, 2002 at a meeting of the Kansas Natural Resources Legacy Alliance, "Some problems can't be solved." That's what he told me. That to me clearly expressed his approach to the problems of crop loss in Unit 12. He is in effect saying, "Forget it, it's not worth fixing!" It is worth fixing. It can be solved. This bill is a giant leap in the right direction. Please support Senate Bill 125.

Jim Beason



Herb Beason



Beason Farm

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(620) 926-0109 cell pho.



Kansas Farm Bureau

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800 S.W. Jackson, Suite 817, Topeka, Kansas 66612 • 785.234.4535 • Fax 785.234.0278

PUBLIC POLICY STATEMENT

Senate Natural Resources Committee

RE: SB 125- creating big game depredation fund

February 21, 2003
Topeka, Kansas

Presented by:
Leslie Kaufman, State Director
KFB Governmental Relations

Chairman Tyson and members of the committee, thank you for this opportunity to present comments on SB 125 creating a management stamp for a big game depredation fund. I am Leslie Kaufman, State Director of Governmental Relations for Kansas Farm Bureau (KFB). KFB is a grassroots organization that develops policy through the input of our 105 county organizations and the more than 41,000 farmer and rancher members across the State.

Farmers and ranchers experience hundreds of thousands of dollars of crop damage from big game every year, primarily from deer and turkey. Although damage is sometimes hard to quantify, it is estimated in some areas of the State, where animal densities are extremely high, losses to individual producers can reach \$20,000 to \$30,000 annually. These losses are difficult for most agricultural producers to recoup. Some producers are able to offset losses by selling hunting opportunities or selling non-resident transferable deer tags. However, the limited number of transferable deer permits has hampered farmer and rancher efforts to recoup crop losses from big game damage.

Kansas Farm Bureau members clearly have a financial stake in losses due to big game damage. Our members have developed the following policy statement that expresses their desire to recoup the cost of wildlife damages:

To further develop the hunting industry in Kansas, and until the damage caused by big game is significantly reduced, Kansas Department of Wildlife and Parks (KDWP) should expand the hunting seasons, increase the number of in-state and out-of-state big game hunting permits, aggressively promote the landowner hunting referral program, and explore the development of a system to compensate landowners experiencing considerable damage.

SB125 proposes to create a management stamp to be sold with all big game hunting permits, apply a surcharge to hunting licenses and guide permits, and establish the big

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game animal depredation management fund with the revenues generated from the stamp sales/surcharges. Clearly, we support the concept of establishing of a system to compensate landowners for losses due to big game damage. Our members have been seeking such a program for several years. However, we have some practical concerns with the current wording of this bill and the Department of Wildlife and Parks' abilities to administer the fund established herein. We respectfully raise the following questions for the committee to consider:

- Will KDWP investigate/verify claims against the fund? If so, how will this be accomplished?
- Will KDWP be expected to administer the fund with existing FTEs?
- Will revenues generated by fines, penalties and forfeitures that are currently deposited in the State General Fund and proposed under SB 125 to be shifted to the Big Game Animal Depredation Fund be replaced? If so, what will be the source of the revenue needed?
- Is there a fiscal note? If so, what is the fiscal impact of the bill on the state?

Additionally, we have concerns about KDWP selling wildlife parts, particularly deer antlers and capes, at a fair market value. It may not be in KDWP's best interests or put the Department in conflict of interest situations to make determinations as to what fair market value or an acceptable price for wildlife parts may be.

We also read page 5, lines 3-18 to place two limits on property damage for vehicle accidents but no limit on crop damage? We draw that section to your attention.

Clearly, many Farm Bureau members have been frustrated by the level of damage their operations have sustained from wildlife. Agriculture producers have provided abundant food and habitat to the state wildlife populations, for the benefit of all Kansans. We look forward to working with you to establish a workable mechanism to compensate farmers and ranchers sustaining significant wildlife damage, some for years and years. 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.



Since 1894

TESTIMONY

To: Senate Natural Resources Committee
Senator Robert Tyson, Chairman

From: Todd Johnson, Governmental Affairs Staff

Subject: **SB 125** – Big Game Animal Depredation Management Fund

Date: February 21, 2003

Mr. Chairman and committee members, thank you for the opportunity to appear before your committee today. I am Todd Johnson, Governmental Affairs staff for the Kansas Livestock Association. The Kansas Livestock Association (KLA) consists of over 6,000 members, representing all segments of the livestock industry.

During my tenure with KLA, few issues have been on the agenda more times at our meetings than deer management. Through standing committees, appointed work groups and one-on-one conversations, members continue to discuss the deer population at length. The common thread among all conversations is the amount of property damage (vehicle accidents and crop losses) that can result from large deer populations. No silver bullet to control the problem has been discovered. However, our members' discussions tend to return to two general concepts, 1) increased access to, and greater flexibility with, hunting permits and 2) compensation to those aggrieved by the wildlife. The bill before your committee today deals with compensation aspect. KLA supports SB 125 and the compensation it aims to provide property owners.

You have heard testimony from one of our members today regarding the significant damages at his farm. Many others share the same frustration and desire to be compensated for essentially feeding deer, that belong to the state, all year long.

KLA recognizes the challenges the state faces when dealing with this issue, and applauds the ongoing efforts to address the problem in many different ways. SB 125 may not be the silver bullet we are all looking for, but it certainly takes a step in the right direction of assisting the landowners most aggrieved by this problem.

I appreciate your time to share our input on this issue. Thank you.

*Senate Natural Resources Committee
Date: February 21, 2003
Attachment 6*



STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
1020 S Kansas Ave., Room 200
Topeka, KS 66612-1327
Phone: (785) 296-2281 FAX: (785) 296-6953



SENATE BILL 125
Testimony provided to
Senate Committee on Natural Resources
February 21, 2003

Thank you for the opportunity to testify on Senate Bill 125. The department opposes the bill for the following reasons:

The bill offers no solution to the current problem.

Hunting access is the key to reducing crop damage and deer/vehicle accidents. If a landowner does not allow hunting, even if the areas around their property do allow hunting, a refuge is created. Deer quickly learn where these safe havens are located. Deer in these specific areas will continue to multiply, regardless of the number of permits issued.

Simply paying landowners and motorists damage claims will not alleviate crop damage or deer/vehicle accidents.

The bill penalizes the only agents of deer herd reduction.

Hunters are the only group that are addressing the problem. It seems inappropriate to penalize the very people who are reducing the deer population.

Landowners already have significant legal options.

Where crop damage is a problem, landowners may receive deer damage control permits. These permits allow the landowner to harvest a prescribed number of deer on his or her property outside of the normal season dates, free of charge (with the emphasis on doe harvest). In conjunction with normal seasons, these permits allow nearly unlimited harvest, 365 days per year. Last year, in the entire state, only 80 landowners took advantage of this program, harvesting only 254 deer.

In an effort to put hunters in touch with landowners who wish to increase harvest on their property, the department implemented a landowner referral system. Under this system, a landowner may obtain from the department a list of hunters who have registered an interest in harvesting does in the area. While thousands of hunters have signed up for the program, only two landowners asked for this list in 2002.

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The department has set up a toll-free number (888-497-8661) for landowners to contact the department to report deer damage. This phone number is advertised in the major newspapers of the state and the department's weekly press release four times annually, and is printed in the Hunting Regulations Summary. In 2002, we received only 37 calls to this number.

The agency does not cite these numbers to indicate that crop damage isn't a problem in many areas of the state, but to illustrate that most landowners are not taking advantage of department programs that are already in place.

The bill would require additional staff and training

Any compensation program would require additional staff time and training, yet no additional positions or funds are mentioned in the proposed legislation.

Diversion of Federal Funds

The U.S. Fish and Wildlife and Service has reviewed the bill and has determined that this legislation would place the department in diversion, thus ineligible to receive funds from the Federal Aid in Wildlife and Restoration grant program. Therefore, the department would stand to lose over \$3-million dollars annually in federal excise monies. Without these federal funds, many department programs would be eliminated, or placed in serious jeopardy.

For all of the reasons listed above, the department opposes SB 125.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Mountain-Prairie Region



IN REPLY REFER TO:

FWS/R6/FA
KS Proposed
Legislation

MAILING ADDRESS:
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Denver Federal Center
Denver, Colorado 80225-0486

STREET LOCATION:
134 Union Blvd.
Lakewood, Colorado 80228-1807

FEB 19 2003

Mike Hayden, Secretary
Kansas Department of Wildlife and Parks
Landon State Office Building
900 Jackson, Room 502
Topeka, Kansas 66612

Dear Mr. Hayden:

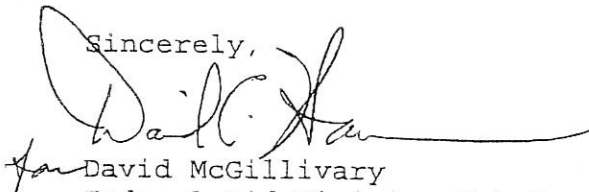
At the request of Terry Denker, we have reviewed the proposed legislation, S.B. 125, Big Game Animal Depredation Management to create a fund to compensate persons for costs from automobile collisions or damage to agricultural crops by, deer, elk, turkey, and antelope. The fund would be created from revenues of a big game animal depredation management stamp and a surcharge added to the big game hunting license fees.

As proposed, passage of this legislation would have serious consequences to funding of wildlife projects under the Federal Aid in Wildlife Restoration Act. To participate in the benefits of the program, States must assent to the provisions of the Act and have passed laws for the conservation of wildlife including prohibitions against the diversion of license fees paid by hunters for any other purpose than the administration of the State fish and game department.

The stamp and surcharge as proposed would be considered license revenue, and therefore, subject to the provisions of the Act and Federal Aid rules and Service Manual Chapter 521 FW 1.8 (see enclosure). If the funds raised by the surcharge do not contribute to the wildlife management goals of the Kansas Department of Wildlife and Parks and are not used for wildlife management purposes, the State would be found in diversion and ineligible to participate in the Federal Aid in Wildlife Restoration grant program (50 CFR 80.4). Based on 2003 apportioned program funds, Kansas would be ineligible to receive approximately \$3.7 million annually.

If you need additional information or clarification on eligibility requirements for the Federal Aid programs, please let Otto Jose or me know at 303/236-8155.

Sincerely,


David McGillivray
Federal Aid Division Chief

Enclosure

cc: Carl Magnuson, FA Coordinator

Senate Natural Resources Committee
Date: February 21, 2003
Attachment 8-1

POLICY CLARIFICATION STATEMENT

As approved by the Director, Fish and Wildlife Service, May 13, 1999

SUBJECT: Use of Federal Aid in Wildlife and Sport Fish Restoration funds for wildlife damage management

Federal Aid funds may not be used for wildlife damage management activities, including removal or control of predatory, nuisance, or depredating animals, purchase or application of repellants or toxicants, installation of control pipes, culverts, fences, or other barrier or exclusion structures, or compensation for damage caused by predatory or depredating animals, if any one or more of the following apply :

- a) Conservation measures such as hunting and trapping have been prohibited or restricted for the species causing damage to a level that compromises the ability of the state fish and wildlife agency to reasonably attain its wildlife management objectives (excepting circumstances where firearms, archery, or trapping restrictions for valid public safety reasons as verified by the agency preclude hunting or trapping, or the restrictions are the result of federal primary legal authority); or
- b) State management authority for the animals in question has been specifically delegated to an agency or entity other than the state fish and wildlife agency; or
- c) The state fish and wildlife agency does not have control and expenditure authority over use of license fees for wildlife damage management; or
- d) The primary purpose of the wildlife damage management activity is not an eligible activity in the Wildlife Restoration or Sport Fish Restoration programs.

Under conditions where either a, b, c, or d apply, a state fish and wildlife agency may still use Federal Aid funds to monitor wildlife damage and provide technical guidance, exclusive of actual management activities, if it is documented and approved within a Federal Aid grant. Payments for wildlife damages are not an eligible use of Federal Aid funds.

Will Carpenter
Wildlife and Parks Commissioner
Testimony on SB 125
February 21, 2003

Thank you for the opportunity to testify on Senate Bill 125. As a Wildlife and Parks Commissioner, I am keenly aware of the many challenges that face the department in managing Kansas' deer resource.

Our resident hunters should be recognized for the excellent job they have done in reducing the state's deer herd. Without their cooperation, the gains we have made would not be possible. While more work needs to be done to reduce deer numbers in problem areas, Senate Bill 125 is certainly not the answer.

The Wildlife and Parks Commission has approved regulations over the past six years that has more than tripled the number of deer permits available to hunters. I can assure you that the Commission and the department will continue to aggressively manage the deer resource; however, in a state that is more than 97-percent privately held, access to private land is the real key in reducing deer numbers. Compensation as set out in this bill could certainly be viewed as a disincentive to some landowners to take effective action. If some form of hunting is not allowed on a property experiencing damage, how is that damage ever going to subside?

Without utilizing effective methods to reduce deer numbers, compensation only provides a long-term expenditure of sportsmen's dollars with no apparent end or solution in sight. Senate Bill 125 has nothing to do with managing or controlling our deer resource. It would simply turn the department into an insurance agency, devoting manpower and sportsmen's dollars to investigate and pay out claims.

On behalf of the entire Wildlife and Parks Commission, I urge the Committee to oppose Senate Bill 125.

*Senate Natural Resources Committee
Date: February 21, 2003
Attachment 9*

I want to thank you for allowing the Kansas Bowhunters Association the opportunity to voice their collective opinion on this bill.

This is my seventh session as the legislative chair for the KBA. I have had more than my share of opportunities to address this committee in the past and I'm sure many of you think of the KBA and myself as "extreme" in our position on the States hunting resources. I will tell you, that our efforts to promote sensible management of wildlife, not only benefits the States bowhunters but it is also benefits the firearm hunters, turkey and upland bird hunters.

WE PROMOTE RESPECT AND AN ACTIVE ROLE WITH LANDOWNERS AND THEIR PROPERTIES.

Leasing is up in our State and the amount of land available to the average hunter is down. The State is currently entertaining a bill to purchase or lease land for public use – last week we listened to that hearing in this very room.

New public lands paid for by the hunter if passed. Hunters see the value in this proposal and have shown support.

Those same resident hunters have again answered the call and antlerless deer numbers are down. The deer/auto collisions statistics are on a decline for the 4 straight year and only 37 calls were made to

Senate Natural Resources Committee
Date: February 21, 2003
Attachment 10-1

Wildlife and Parks for depredation permits. Only 254 permits were issued to those requesting them.

Now we have a bill in front of us that most certainly challenges the States ability to control the deer population and should have you concerned with the legal and financial obligations of our State. This bill frustrates me on many levels – as a taxpayer – as a hunter and as father.

Does the State of Kansas need to act as an insurance agent? Who will check and verify claim values. Does this new policy create a new State department or grow an existing departments staff to handle the new increase in claims? Can our State justify the expense this bill will create for the taxpayer? If you want to grow the States government, I'm sure Secretary Hayden could use some more Conservation Officers to protect our valuable deer herd. The State could then aggressively pursue poachers and tag violations to raise money for the State and the Wildlife and Parks budget for the new hires.

The KBA as taxpayers oppose this bill.

Speaking of the valuable deer herd. Who controls the deer population if 125 is enacted? If landowner's crops are paid for by the State then there is really no need for hunting. The deer, now fed by our State, are managed by whom?

Review my attachment #1.

Food plots are part of the deer management process. The State needs to recognize this and understand that if outfitters grow alfalfa, oats, soy beans etc... to improve the habitat and hold the deer and turkey it's going to be hard to determine what is crop and what is food plot. The State will be asked to pay for them even though they were never intended to be harvested for agricultural use.

The KBA as taxpaying hunters oppose this bill.

Accidents that result in death are paid how much? Is the State charged with a wrongful death suit? Is this committee or the department charged? If an animal creates an accident and isn't hit - is that paid from this fund? How is that proven? The liability that this bill creates for our State is overwhelming.

The KBA as concerned citizens oppose the bill.

The State of Kansas has one of the highest priced hunting permit programs in the United States and this bill creates a greater burden for that privilege.

~~\$100.00 tags for a resident hunter is ridiculous and We believe that it is a ploy to lower tag sales in the State and increase the availability of leftover permits to lease outfitters for sale to hunters abroad. This bill is a vehicle for improving leasing operations and paying them to do so. The KDWP "Pass it On" program is nothing but history if a bill like this is passed and so is our lauded game management program. What Kansas accomplished in the shortest period of time in the game management field is again in jeopardy of being destroyed by bad legislation.~~

The KBA as hunters and parents of future hunters oppose this bill.

We ask that the Natural resources committee consider the bigger picture, look at the legal and financial ramifications that this bill could create. We ask this committee to vote against this bill because:

It is bad for the State. Can't afford to be an insurance company. Can't afford a bigger Government, Can't afford more liability

It is bad for the hunters. Another burden for the only group that has actively pursued reducing the deer numbers when asked - the resident hunter of Kansas.

It is bad for deer management. More privatization equals less control. Leasing as we have said many, many times will create more problems down the road.

Please vote NO on Senate Bill 125.

Thank you.

**To: Kansas State Senate Committee on Energy and Natural Resources
Robert Tyson, 12 District, Chairman**

RE: Senate Bill 125

**From: Kansas State Bowhunters Association
Shawn W. Harding, Legislative Chairman**

Senate Bill 125 is poor legislation. The bill itself is badly thought out and creates a "Pandora's box" of legal issues for the State.

*How do we "control" deer if payments are made for crop damage? If the payments are to equal the price for the crop, why "control" deer - there is a payout either way. The benefit for those wanting this legislation will be the "selling" of the deer that they are being paid (by the State) to feed. (See Attachment One)

*This is a new "vehicle" to promote leasing which eliminates the ability to enforce the management that KDWP tries to implement. Leasing doesn't promote the removal of antlerless animals it promotes the sale of trophy deer to a paying clientele. Ask, and many people (including farmers in many areas), will tell you the deer numbers are down. The timing of this bill seems to be related to creating opportunities for outfitting businesses and the sale of buck deer. (See Attachment Two)

*Why does the State promote a "Pass it on" program if we just price ourselves out of letting the average family hunt? The State of Kansas has one of the highest priced resident hunting permits in the Nation and this bill raises the price even more. This increase affects the only group of people that actively work at reducing the deer problem - YOUR RESIDENT HUNTERS.

*Who is charged when a person is killed in an accident that was (or wasn't) caused by a deer on a county road? What is the charge? Who serves the time? The KBA feels this bill will expose the State to greater liability then the funds will allow payment. The State doesn't need to be in the insurance business.

Senate Bill 125 seeks to punish the only group of people that have answered the States call and lowered the deer /vehicle collision rates over the last few years. The hunters of our State have utilized the liberal number of tags the State has made available and severely reduced the antlerless whitetail deer population. The only areas that KDOT shows having high collision rate problems occur in our states metropolitan areas. These are areas where access is less easily obtained and deer are viewed differently than in rural areas.

The Kansas Bowhunters Association feels that SB-125 will create unwarranted legal and financial ramifications that our State cannot afford at this time. The designer of this bill only wishes to reward a small number of persons that do not have the States interests at heart and punishes the people of the State that have worked to bring a balance back to the public temperament of the deer herd in Kansas. Vote **NO** on SB-125.

ATTACHMENT 2 3
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potential. I am a very ethical hunter and believe in taking care of the land. These leases would be year
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10-7



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ATTACHMENT TWO

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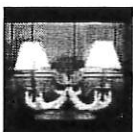
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Deer Butt, Rump Cape, Taxidermy, Craft, Antlers

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Deer Butt, Rump Cape, Taxidermy, Craft, Antlers

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