

MINUTES OF THE HOUSE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on February 2, 2004, in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Dan Riley, Chief Legal Counsel, Kansas Department of Agriculture
Tom Tunnell, President and CEO, Kansas Grain and Feed Association
Brad Harrelson, Associate State Director, Governmental Relations, Kansas Farm Bureau

Others attending:

See attached list.

Minutes of the January 14, 21, 26 and 28 meetings were distributed. Members were asked to notify the committee secretary of any corrections or additions prior to 5:00 p.m., February 4, or the minutes will be considered approved as presented.

Representative Thimesch moved to introduce a committee bill concerning GMO wheat. Seconded by Representative Powell, the motion carried.

Hearing on HB 2576 - Application of bond proceeds of public warehouse

Chairman Johnson opened the hearing on **HB 2576**. Raney Gilliland provided a brief history of the grain inspection program in Kansas and the bond or letter of credit required by state licensed grain warehouses. **HB 2576** provides that the proceeds of the bond or letter of credit may be applied to any grain deficit as contemplated by statute, and also to the reasonable costs associated with the process of grain liquidation or claims review and settlement as determined by a court of competent jurisdiction.

Dan Riley, Chief Legal Counsel, Kansas Department of Agriculture, appeared in support of **HB 2576** requested by the department to clarify the intent of the legislature when it created the bond requirement for grain warehouses. Specifically, the bill establishes that the proceeds of a bond or letter of credit may be applied to the grain deficit and the costs of the process of grain liquidation and settlement of producers or depositors' claims when a warehouse fails. He testified that bond proceeds have consistently been used for the costs associated with the liquidation and claims process since the provision became law in the 1980's. In a recent case, a bonding company challenged this authority. There was much committee discussion concerning the word "may" or "shall" on page 1, line 36. Mr. Riley believes the word "may" is correct. (Attachment 1)

Tom Tunnell, President and CEO, Kansas Grain and Feed Association, appeared as neutral on **HB 2576** and does not oppose the bill. The Association had feared that the Department of Agriculture might be attempting to expand the scope of expense items that would be eligible to receive warehouse bond funds. After visiting with the Secretary of Agriculture, the Kansas Grain and Feed Association believes the bill simply clarifies which expenses and costs are chargeable to the warehouse bond. (Attachment 2)

Brad Harrelson, Associate State Director, Governmental Relations, Kansas Farm Bureau, testified in opposition to **HB 2576** questioning the intent behind the bill and its impact on commodity producers. KFB opposes any reallocation of bond proceeds that would diminish the pool of dollars designed to make grain depositors whole in the event of a warehouse failure. They question that if bond proceeds are allowed to be applied to process and legal costs, will bond requirements be increased, or will bond costs be higher. They are concerned that storage fees will, in turn, cost more and negatively impact producers' profitability. KFB requests that the legislature clarify in statute that grain depositors are first in priority in the application of bond

CONTINUATION SHEET

MINUTES OF THE HOUSE AGRICULTURE COMMITTEE at 3:30 p.m. on February 2, 2004, in Room 423-S of the Capitol.

proceeds. When informed by Staff that this requirement is in current statute, Mr. Harrelson thought Kansas Farm Bureau would have no objection to the bill. (Attachment 3)

There being no other conferees, the Chairman closed the hearing on **HB 2576**.

Discussion and action on ERO 32 - Transferring powers, duties and functions of the Department of Health and Environment to the Department of Agriculture

Chairman Johnson opened discussion on **ERO 32**. Gordon Self explained the options in dealing with an ERO provided for in the Kansas Constitution, as well as rules of the House of Representatives. Staff responded to committee questions and concerns.

Representative Larkin moved to draft a resolution in support of ERO 32. Seconded by Representative Powell, the motion carried.

The meeting adjourned at 4:30 p.m. The next meeting is scheduled for February 4, 2004.



KANSAS

DEPARTMENT OF AGRICULTURE
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on House Bill 2576 Regarding Grain Warehouses

to

The House Committee on Agriculture

By

Dan Riley

Chief Legal Counsel

Kansas Department of Agriculture

Good afternoon, Mr. Chairman and members of the committee. Thank you for the opportunity to speak in support of this simple amendment to K.S.A. 34-229.

We believe this legislation will help clarify the intent of the legislature when it created the bond requirement for grain warehouses, as well as the procedure the Secretary of Agriculture must follow when a warehouse fails.

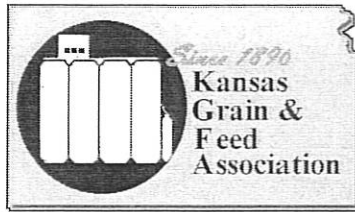
Specifically, this bill establishes that the proceeds of a bond or letter of credit will be applied to the grain deficit and the costs of the process of grain liquidation and settlement of the producer or depositor's claim when a warehouse fails.

Four state-licensed grain warehouses have failed in recent months. In one case, a receivership was filed first, then followed by a bankruptcy. This combination of circumstances resulted in continuing delays in getting proceeds to depositors. Among the delays was a claim by the bond company that K.S.A. 34-229 does not provide for the bond to be applied to the costs associated with the liquidation and claims process.

Bond proceeds have consistently been used for the costs associated with the process since the provision became law in the 1980s. The recent challenge of that use is the first of its kind to our knowledge. Legal staff has reviewed the legislative history of the provisions of the grain warehouse act. We believe this amendment is consistent with that history.

H.B. 276 will assure that bond proceeds are used as intended when a warehouse failure occurs. That means they will be applied to payment for the grain and the costs of liquidation. It should eliminate unnecessary delays in settlement of claims for Kansas producers or depositors. This is important to Kansas agricultural producers.

Thank you for your consideration. I will stand for questions.



STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION

SUBMITTED TO THE
HOUSE AGRICULTURE COMMITTEE
REGARDING HOUSE BILL 2576
REPRESENTATIVE DAN JOHNSON, CHAIR

FEBRUARY 2, 2004

KGFA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTEGRAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

Chairman Johnson and members of the House Agriculture Committee, my name is Tom Tunnell and I am President and CEO of the Kansas Grain and Feed Association (KGFA). The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. Our membership includes nearly 1,100 Kansas business locations and represents 98% of the commercially licensed grain storage in the state. Thank you for the opportunity to appear before you today and offer testimony regarding HB 2576.

Last week, KGFA staff met with Kansas Agriculture Secretary Adrian Polansky seeking clarification on House Bill 2576, which slightly modifies current statutes that prescribe which expenses are covered by a grain warehouse bond in cases related to a grain elevator bankruptcy or receivership. According to Secretary Polansky, "The changes contained in House Bill 2576 will not in anyway change which expenses and losses historically covered by grain warehouse bond funds."

The requested changes simply clarify which costs are specifically covered. Secretary Polansky told us one bonding company had challenged whether certain administration costs are chargeable to the warehouse bond.

While KGFA initially had concerns that the Kansas Department of Agriculture might be attempting to expand the scope of expense items that would be eligible to receive warehouse bond funds, the explanation from Secretary Polansky has alleviated those concerns. Consequently KGFA appears today as "neutral" on HB2576 and will not oppose the bill.

However, Secretary Polansky stated further that if HB2576 did not move through the legislation process and become law, it would not be a problem.

Thank you for this opportunity to offer testimony.



Kansas Farm Bureau

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PUBLIC POLICY STATEMENT

House Committee on Agriculture

RE: HB 2576 – an act concerning application of bond proceeds of public warehouses

**February 2, 2004
Topeka, Kansas**

**Presented by:
Brad Harrelson, Associate State Director
KFB Governmental Relations**

Chairman Johnson and members of the committee, thank you for the opportunity to provide comments on House Bill 2576. I am Brad Harrelson, Associate State Director of Governmental Relations for the Kansas Farm Bureau. KFB is the state's largest general farm organization and represents more than forty thousand agricultural producer families through the 105 county Farm Bureau Associations across Kansas.

Kansas Farm Bureau members have policy supporting strengthened licensing and bonding regulations to protect farmers in the storage of agricultural commodities in private or public storage facilities.

As such, we question the intent behind this bill and it's impact on commodity producers. We oppose any reallocation of bond proceeds that would diminish the pool of dollars designed to make grain depositors whole in the event of a warehouse failure. Furthermore, we ask, if by allowing bond proceeds to be applied to process and legal costs, will bond requirements be increased, or will bonding costs be higher? If so, we suspect that storage fees will, in turn, cost more and negatively impact producer's profitability.

At a minimum, we would ask the committee to clarify in statute that grain depositors are first in priority in the application of bond proceeds. If this cannot be accomplished, we would respectfully urge the committee to not take favorable action on HB 2576. Thank you for the opportunity to speak to you today.

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.

House Agriculture Committee
February 2, 2004
Attachment 3