

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Mark Taddiken at 8:30 A.M. on March 21, 2005 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research
Lisa Montgomery, Office of Revisor of Statutes
Jacqui Jones, Committee Secretary

Conferees appearing before the committee:

Proponents:

Brad Harrelson, State Policy Director, Kansas Farm Bureau, Govt. Relations (KFB)
Duane Simpson, Director of Govt. Affairs, Kansas Grain & Feed Association (KGFA)
Leslie Kaufman, Governmental Relations Director, Kansas Cooperative Council (KCC)

Opponents:

Others attending:

See attached list.

Continued hearings on:

HB-2280 - Sampling, civil penalties for violations of law and increased fees for grain warehouses

Brad Harrelson, KFB, testified in support of **HB-2280** as amended.

The conferee stated that the state warehouse program oversees the operation of 415 facilities that represent 333 million bushels of capacity, however, due to trading and multiple crops, these elevators handle at least 700 million bushels a year. The grain warehouse program protects the integrity of the depositor's grain and thus it is in the best interest of the public to have a strong program (Attachment 1).

In his written testimony he listed reasons to support the state program.

Funding challenges for the program are the main reason for introduction of this bill. KFB has cooperated with the Kansas Department of Agriculture (KDA) to find reasonable solutions to the funding dilemma. Although KFB supports the Governor's efforts to secure money from the State General Fund to offset costs of program administration, KFB cannot support another fee increase. KFB urges support for sufficient program funding through appropriation of money from the State General Fund.

KFB has strong reservations regarding growth in civil penalty authority outlined in New Section 2 of the original bill believing that it should be the court system's role to enforce laws and regulations and not have so much reliance on agency action. KFB believes that adequate enforcement mechanisms currently exist through the KDA's ability to revoke the license, receivership and the courts. KFB urged the Committee to consider its stated concerns and support the bill as amended.

As part of his testimony, Mr. Harrelson listed enforcement action available to the Kansas Department of Agriculture for the Grain Warehouse Program.

Brad Harrelson offered to stand for questions at the appropriate time.

Duane Simpson, Director of Govt. Affairs, KGFA, testified in support of **HB-2280** stating that the Association firmly believes that KDA should have the authority to sample any commodity in a state-licensed warehouse in order to adequately protect producers. KGFA is confident that the language in the bill will create a system that allows for quality sampling when a problem is suspected without overburdening the Department or licensees with unnecessary sampling. KGFA believes that the bill will strengthen the program (Attachment 2).

KGFA believes that KDA has the authority to make additional examinations of a warehouse at the cost of the warehouseman. KDA can seal a bin if there are outstanding receipts. KGFA feels that this provision could be amended to include quality problems, thereby allowing KDA to seal only those bins that have quality problems without revoking the warehouse license. KDA can place an injunction on a warehouse that refuses to come into compliance, that would not allow the warehouse to deliver or receive grain. KDA can revoke the license of a warehouse that does not come into compliance.

Mr. Simpson offered to stand for questions at the appropriate time.

Leslie Kaufman, Director of Governmental Relations, KCC, testified in support of **HB-2280**. She stated that there are more than 110 grain warehouse cooperatives in the membership of the Council that have multiple facilities that will be directly impacted by **HB-2280**. The Council supports the sampling language in **HB-2280** stating that when a KDA inspector has reason to believe a quality problem exists, there should be a mechanism to further investigate the situation. KCC believes that there should be a basic framework for when and how such sampling will be conducted. (Attachment 3).

KCC stated that **HB-2280** originally contained a provision authorizing civil penalties and they were opposed to expanding such authority, wishing to delete the provision from the bill. Ms. Kaufman stated that four options currently exist to address grain warehousing concerns and they are listed in her written testimony.

Ms. Kaufman offered to stand for questions at the appropriate time.

Senator Lee asked a question regarding the interpretation of the word "discrepancies." Dan Riley, General Counsel for the Kansas Department of Agriculture replied. A question also was asked in regard to the word "injunction" and Mr. Riley's reply stated that it would depend on the judge.

Chairman Taddiken closed the hearings on **HB-2280**.

Chairman Taddiken asked the Committee to work **SB-265 - Requiring a licensed professional engineer to prepare plans and specifications for construction or expansion of confined feeding facilities**

Senator Francisco moved and Senator Pine seconded that SB-265 be moved out of Committee. Motion failed.

Chairman Taddiken asked the Committee to work **HB-2341 - Uniformity and jurisdiction of Kansas fertilizer law.**

Senator Pine moved, and Senator Francisco seconded that the amendment adding agricultural seed to HB-2341 be accepted. Motion carried.

Senator Huelskamp moved, seconded by Senator Pine that the bill pass out favorably as amended. Motion carried.

Chairman Taddiken asked the Committee to work **HB-2280 - Sampling, civil penalties for violations of law and increased fees for grain warehouses.**

Senator Huelskamp moved and Senator Pine seconded that the bill be moved out of Committee favorably without amendments. Motion carried.

Chairman Taddiken asked the Committee to work **HB-2103 - Standards and requirements of commercial weighing and measuring devices**

Senator Pine moved, and Senator Ostmeyer seconded that the bill be moved out of Committee with the language in the amendment to be changed to match that of the bill on lines 24 and 25 regarding *the national institute of standards and technology handbook 44 ...* Motion passed.

Senator Taddiken asked the committee to work **HB-2053**.

Senator Taddiken moved and Senator Lee seconded that the language in the first amendment regarding costs or expenses be adopted with changes made throughout to match this language. Motion carried.

Senator Taddiken moved and Senator Schmidt seconded to approve the language in amendment #2 adopting new Section 2 and renumbering Sections accordingly. Motion carried.

Senator Francisco moved seconded by Senator Lee that Section 2. (I) regarding study groups be eliminated. Motion failed.

Chairman Taddiken advised Committee members that tomorrow's meeting will be held at 9:00 a.m. and he will inform the Livestock Commissioner.

Senator Lee requested the Chairman to write a letter to the Legislative Coordinating Council requesting an interim study of the issue in regard to reviewing the portion of **SB-288 - Kansas pet animal act, rules and regulations, fees and limitation on expenditures**, dealing with Animal Health's authority to promulgate rules and regulations in compliance with the provision of the federal Animal Welfare Act. The Chairman indicated that he would do so.

Senator Francisco moved, seconded by Senator Taddiken that the minutes of March 16 be approved with corrections to include the comment about regulations. Motion passed.

The Agriculture Committee meeting adjourned at 9:30 a.m.

The next meeting is scheduled for 9:00 a.m. on March 22, 2005.

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 3/21

NAME	REPRESENTING
Scott Heidner	ACEC Kansas
Mary Jane Stankiewicz	KGFA
Duane Simpson	KGFA - KARA
Woody Moses	KAPA
Leslie Kaufman	K's Coop Council
Tim Tyson	RDA
Bob Casper	KDA
Dan Ryley	KDA
Ashley McMillan	Senate President's Office
BRAD HARRELSON	KFB
Chris Clarke	LPA
Wendy Adams	KAPA
Woody Moses	KAPA
LA M	HEW Law Firm
SEAN MILLER	KS Dairy Assn



PUBLIC POLICY STATEMENT

SENATE COMMITTEE on AGRICULTURE

RE: HB 2280 – an act concerning agriculture; relating to grain
warehouses; sampling.

March 16, 2005
Topeka, Kansas

Testimony provided by:
Brad Harrelson
State Policy Director
KFB Governmental Relations

Chairman Taddiken, and members of the Senate Committee on Agriculture, thank you for the opportunity to appear in support of HB 2280 as amended. I am Brad Harrelson, State Policy Director—Governmental Relations for Kansas Farm Bureau. KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

The membership of Kansas Farm Bureau supports the continuation of an effective and adequately funded state grain warehouse program. Grain producing depositors at licensed warehouses, our members, are the main beneficiaries of this long-standing program. Since 1907, this program has served to protect the interests of depositors to make sure that the grain that is supposed to be there is there.

Currently, the state warehouse program oversees the operation of 415 facilities that represent 333 million bushels of capacity, however, due to trading and multiple crops, these elevators handle at least 700 million bushels a year. The grain warehouse program protects the integrity of the depositor's grain and thus it is in the best interest of the public to have a strong state program.

Senate Agriculture Committee
Date **3-21-05**

Attachment # **1**

Reasons to support the state program:

1. The state program is more responsive to questions and issues concerning the grain warehouse.
2. Kansas Department of Ag estimates that not all of the state licensees would be able to obtain a federal license.
3. Most of the state licensed grain warehouses took a 22% increase in January of 2004 to support the state grain warehouse program.
4. By having the state and the federal program this provides competition in the warehousing system and does not allow either system to have a monopoly over the industry.
5. Provides a system for state legislators and their constituents to have their questions answered in a timely and responsive manner.
6. The state grain warehouse program is required to conduct an annual examination of the grain elevators. There is no inspection requirement at the federal level.
7. The grain warehouses are beneficial to the local producer. If some of these warehouses are not available, then the producer has fewer options for marketing the grain and must travel a greater distance to store the grain.
8. The grain warehouses employ a number of local workers and pay taxes, which support the rural economy.
9. The state grain warehouse program provides an annual notice of inventory to the depositors, which can assist landlords who have multiple tenants.
10. There are only 2 other states in the nation (WA and MN) that do not put state general funds into the state grain warehouse program. Kansas' neighboring states provide the following level of state general funding:
 - Missouri – approximately \$750,000
 - Iowa – approximately \$1,225,000
 - Nebraska – approximately \$653,600

As you may be aware, funding challenges for this program is the main reason for introduction of this proposed legislation. We have worked diligently with the KDA to find reasonable solutions to this dilemma. To that end, we support the Governors efforts to secure State General Funds to offset costs of program administration. However, we cannot support another fee increase as proposed in the original bill. While it speaks to increased license fees for licensed applicants, in reality, it is grain depositors and our members that ultimately bear the expense. It is our expectation that fee increases will simply be passed on, through increased storage costs for the producer. Therefore, we urge your support for sufficient program funding secured through appropriation of State General Funds.

Additionally, we have strong reservations about the growth in civil penalty authority outlined in New Section 2 of the original bill. It should be the court system's role to enforce laws and regulations, rather than relying so heavily on agency action. We believe that adequate enforcement mechanisms currently exist through the department's ability to revoke the license, receivership and the courts.

In conclusion, Kansas Farm Bureau respectfully urges your support of the Kansas Grain Warehouse Program. Should you take action on HB 2280, we ask for your consideration regarding our stated concerns and support the bill as amended. Thank you, once again, for the opportunity to appear before you and share the policy of our members. KFB stands ready to assist as you consider this measure. Thank you.

Current Grain Warehouse enforcement tools:

- 1 Making false information, non-person felony (KSA 21-3711)
- 2 Warehouse receipt fraud, non person felony (KSA 21-3736)
- 3 Unauthorized delivery of stored goods, non person misdemeanor (KSA 21-3737)
- 4 Secretary has a duty to report to the AG or county/district atty, a finding by an examiner of a substantial shortage of grain and that shortage is not adequately accounted for; In a criminal prosecution, AG has a duty to prosecute to a final determination (KSA 34-111)
- 5 Secretary can adopt rules/regs necessary to enforce laws; investigate complaints and correct, if possible, fraud/oppression of grain trade; investigate; /monitor a facility when sec. believes it is operating without a valid license. (KSA 34-102)
- 6 Secretary may suspend/revoke license for conviction of or non-compliance with act (KSA 34-230(f)) and (KSA 34-298)
- 7 Sec may examine person/books/records of any licensee (NOT "or a person required to be licensed by this act") and District Court/Judge has the authority to enforce a subpoena issued by Secretary. (KSA 34-230a)
- 8 Class C misdemeanor to operate without a license or without displaying the license; Secretary may refuse to renew or grant a license to any person whose license has been revoked within the past year.
- 9 Authority to inspect, Secretary or authorized examiner has full liberty to inspect and examine all property stored in any public warehouse at any time during business hours. Inspections are confidential and any inspector/employee who wrongfully discloses such information is guilty of a misdemeanor. (KSA 34-251)
- 10 Warehouseman gives notice to secretary of out of condition grain. If upon inspection the grain is out of condition and the owner will not remove grain, the warehouseman may sell the grain. The warehouseman is stil liable to preserve grain as best he can and is liable on the bond or letter of credit.
- 11 A warehouseman who issues a receipt for grain in which he has an ownership interest and does not disclose that interest on the receipt is guilty of a non person felony (KSA 34-293)
- 12 A person who takes a negotiable receipt for which he does not have title, with the intent to defraud, is guilty of a non person felony.
- 13 (KSA 34-2,104) Deficit in grain: Secretary may issue an order requiring warehouseman to a)cover any existing shortage; b)give addition bond/ltr of credit; or submit to any examination that secretary considers necessary. If warehouseman fails to comply within 24 hours, secretary may petition district court to take possession. Secretary can conduct audit/other investigations. If insolvent, secretary shall petition the district court for the appointment of a receiver. While temporary receiver, secretary may appoint a special deputy director to take charge until a receiver is appt. The secretary may petition court for expenses related to taking possession/receivership may be recovered.

KANSAS GRAIN AND FEED ASSOCIATION

STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION
BEFORE THE
SENATE AGRICULTURE COMMITTEE
REP. MARK TADDIKEN, CHAIR
REGARDING
HOUSE BILL 2280
March 15, 2005

FOR MORE INFORMATION CONTACT

*DUANE SIMPSON, DIRECTOR OF GOVERNMENT AFFAIRS
(785) 234-0461 OR DUANE@KANSASAG.ORG*

**KGFA, promoting a viable business climate through
sound public policy for more than a century.**



Senate Agriculture Committee

Date **3-21-05**

Attachment # **2**

Chairman Taddiken and members of the Senate Agriculture Committee, I am Duane Simpson testifying on behalf of the Kansas Grain and Feed Association (KGFA). The KGFA is a voluntary state association with membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. KGFA's membership includes over 950 Kansas business locations and represents 99% of the commercially licensed grain storage in the state. Our members include both state and federally licensed warehouses. On behalf of the members of KGFA I am testifying in support of House Bill 2280.

This bill sets out in statute the authority of the Secretary of Agriculture to sample any commodity in a state licensed warehouse whenever there are indications that quality problems exist with the potential to cause a loss of value. KGFA firmly believes that this authority is necessary for the Secretary to have in order to adequately protect producers in the state. KGFA has worked with KDA to develop the language in the bill and we are confident that this will create a system that allows for quality sampling when a problem is suspected without overburdening the department or licensees with costly sampling that is unnecessary. This bill will strengthen the state program giving more confidence to producers in the state that their grain stored in a state licensed warehouse will be there in good condition when they are prepared to sell it. On behalf of KGFA, I urge you to pass HB 2280. Thank you Mr. Chairman, I will stand for questions.

Deane Simpson

Enforcement Action Available to the Kansas Department of Agriculture for the Grain Warehouse Program

HB 2280 gives KDA the same authority to enforce the quality provisions of grain warehouse act as the department currently has to enforce quantity and financial issues. Page 1, lines 40-43 and line 1 of page 2, Section 1, subsection (e) states:

(e) Any failure by a warehouseman to maintain grain quality, comply with any order of the secretary related to quality or to remit funds to cover sampling and grading costs shall be deemed a violation of the provisions of article 2 of chapter 34 of the Kansas Statutes Annotated, and amendments thereto.

KDA has the following tools available under current law to enforce the grain warehouse program should a warehouse fail to comply with an order of the Secretary:

1) **The Secretary has the authority to make additional examinations of a warehouse at the cost of the warehouseman.**

KSA 34-228 (g) The secretary shall examine each warehouse operated by a licensed public warehouseman at least once in each 12-month period. The licensed public warehouseman may request additional examinations of any warehouse operated by the warehouseman. The cost of additional examinations when requested by the warehouseman shall be charged to the warehouseman requesting the examination. The cost of each additional examination requested by a warehouseman shall be an amount determined therefor in accordance with an hourly rate fixed by the secretary of not more than \$50 per hour, subject to a minimum charge of four hours for the examination, plus amounts for subsistence expense at the rate fixed under K.S.A. 75-3207a and amendments thereto and for mileage expense in accordance with the schedule of charges established under K.S.A. 75-4607 and amendments thereto. **The secretary, at the secretary's discretion, may make additional examinations of a warehouse and if a discrepancy is found on that examination, or if one was found on the last previous examination, the cost of the examination shall be paid by the warehouseman. {emphasis added}**

KAR 45-25-16 (c) The charges for each special or requested examination of a warehouse shall consist of the following:

- (1) \$30.00 per hour for each examiner, with a required minimum charge of four hours;
- (2) subsistence expenses for each examiner; and
- (3) mileage expenses for each examiner, which shall be charged, per mile driven, at the rate per mile determined by the secretary of administration pursuant to K.S.A. 75-4607, and amendments thereto.

2) The Secretary can seal a bin if there are outstanding receipts. This 'red-tag' provision could be amended in regulation to include quality problems. This would allow the Secretary to seal only those bins that have quality problems without suspending or revoking the warehouse license.

KAR 4-25-6 Secretary's right to seal bins and weigh grain. Any grain on hand for which there are outstanding warehouse receipts may be weighed and required to be stored in sealed bins or tanks by the secretary.

3) The Secretary can place an injunction on a warehouse that refuses to come into compliance which would not allow the warehouse to deliver or receive grain. This effectively suspends the license until the warehouseman comes into compliance.

KSA 34-230b The secretary may enjoin a warehouseman from violating or continuing to violate the provisions of chapter 34 of the Kansas Statutes Annotated, and amendments thereto, and the rules and regulations adopted by the secretary pursuant to such laws by filing injunction proceedings in the district court. In any such proceedings the district court, if it deems it proper, may order such warehouseman to not receive any more grain into such warehouse or to deliver any grain therefrom except as the court by its order shall direct. Such injunction proceeding shall be prosecuted by the attorney general or the county attorney of the proper county upon request of the secretary.

4) The Secretary can revoke the license of a warehouse that does not come into compliance.

KSA 34-298 (a) Unless otherwise provided in this act, any person or entity that violates any provision of this act is guilty of a class A nonperson misdemeanor.

(b) If, after a hearing conducted in accordance with the provisions of the Kansas administrative procedure act, the secretary finds that the provisions of this act have been violated by any person holding a license to conduct a public warehouse in this state, the secretary shall revoke the person's license. No new license shall be granted to the person whose license is revoked or to anyone engaged, either directly or indirectly, in the public warehouse business with that person for a period of one year.



816 SW Tyler St. Ste. 300
Topeka, Kansas 66612
Phone: 785-233-4085
Fax: 785-233-1038
www.kansasco-op.coop

SENATE AGRICULTURE COMMITTEE

March 16, 2005
Topeka, Kansas

RE: HB 2280 – State Grain Warehousing Program

Chairman Taddiken and members of the Senate Agriculture Committee, thank you for the opportunity to share comments today on HB 2280 for the Kansas Cooperative Council. I am Leslie Kaufman and I serve the Council as Governmental Relations Director. The Council includes more than 223 cooperative business members. Together, they have a combined membership of nearly 200,000 Kansans. Included in our membership are more than 110 grain warehouse cooperatives, many with multiple facilities, which will be directly impacted by the bill before you today.

HB 2280 provides statutory guidance for the Secretary to request a grain quality sample under certain circumstance. The Council supports this sampling language.

It is important to the industry to maintain confidence in the agricultural market place. If a KDA inspector has good reason to believe a quality problem exists, then there should be a mechanism to further investigate the situation.

We also believe it appropriate to include a basic framework for when and how such sampling will be conducted. We believe the bill before you strives to reach an appropriate balance in regard to these procedures. As such, we encourage the Committee to advance favorably HB 2280. Thank you for your consideration.

Senate Agriculture Committee
Date **3-21-05**



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Fax: 785-233-1038
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SENATE AGRICULTURE COMMITTEE

**March 21, 2005
Topeka, Kansas**

Supplemental Testimony RE: HB 2280 – State Grain Warehousing Program

Chairman Taddiken and members of the Senate Agriculture Committee, thank you for the opportunity to share comments today on HB 2280 for the Kansas Cooperative Council. I am Leslie Kaufman and I serve the Council as Government Relations Director. The Council includes more than 223 cooperative business members. Together, they have a combined membership of nearly 200,000 Kansans. Included in our membership are more than 110 grain warehouse cooperatives, many with multiple facilities, which will be directly impacted by the bill before you today.

HB 2280 provides statutory guidance for the Secretary to request a grain quality sample under certain circumstance. The Council supports this sampling language.

It is important to the industry to maintain confidence in the agricultural market place. If a KDA inspector has good reason to believe a quality problem exists, then there should be a mechanism to further investigate the situation.

We also believe it appropriate to include a basic framework for when and how such sampling will be conducted. We believe the bill before you strives to reach an appropriate balance in regard to these procedures.

Last week, a question was posed concerning the KDA's ability to enforce the quality sampling and grain warehousing requirements and the possibility of employing civil penalties. As you know, HB 2280 originally contained a provision authorizing civil penalties. The Kansas Cooperative Council opposed expanding such authority and supported the House Agriculture Committee's action deleting the provision from HB 2280.

Adequate remedies currently exist within the state grain warehousing program to address enforcement needs. We understand the need to have enforcement tools to insure that the state can respond if a problem arises or goes unaddressed. But, government should be cautious in extending civil penalty authority when multiple options exist. As we understand it, four options currently exist to address grain warehousing concerns:

1. Authority to make subsequent examinations and charge the cost to the warehouseman;
2. Sealing a bin;
3. Prohibiting delivery or receipt of grain; and
4. Revocation of a license.

Some may argue that these measures seem very drastic and civil penalties could be an intermediate step. We believe what actually would be accomplished by imposing a fine could be largely accomplished under item 1 above. Additionally, item 1 ensures subsequent visits by the KDA to guarantee appropriate remedies are actually being accomplished at the warehouse.

We suggest the committee advance the new sampling language and give the department time to implement the new authority in conjunction with current enforcement remedies. We encourage the Committee to advance favorably HB 2280 as it came to you.

Thank you for your consideration.