

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE

The meeting was called to order by Chairperson Joann Freeborn at 3:30 P.M. on February 21, 2006 in Room 231-N of the Capitol.

All members were present except:  
Representative Ted Powers- excused

Committee staff present:  
Raney Gilliland, Legislative Research Department  
Emalene Correll, Legislative Research Department  
Lisa Montgomery, Revisor of Statutes Office  
Pam Shaffer, Committee Secretary

Conferees appearing before the committee:  
Brent Haden, Kansas Livestock Association  
Jim Koelliker, Kansas Society of Professional Engineers  
Constantine Cotsoradis, Assistant Secretary-Agriculture

Others attending:  
See attached list.

Chairperson Freeborn asked that all guests sign the guest log, she announced the agenda for the next committee meeting, March 2<sup>nd</sup> had not been decided yet and that it would be published in the calendar this Thursday.

Chairperson Freeborn opened final action on **HCR 5030 - Congress and President urged to allow offshore drilling for natural gas**. Ken Peterson pointed out during testimony at the hearing that sometimes when they are drilling for natural gas they also find oil and he asked if the resolution could be amended to include oil. A copy of the substitute for HCR5030 was given to all committee members (See attachment 1).

Representative Johnson moved to adopt the balloon which was a substitute for HCR5030, Representative Olson seconded, motion carried.

Representative Sloan moved to recommend substitute for HCR5030 favorable for passage, Representative Hayzlett seconded, motion carried. Chairperson Freeborn will carry the resolution.

**HB2556 - Farm and ranch land protection program; grants; open spaces preservation fee.** Representative Sloan offered a balloon (See attachment 2). Representative Sloan moved to adopt the balloon, Representative Johnson seconded motion carried. Representative Freeborn offered a balloon (See attachment 3). Representative Sloan moved to adopt the balloon, Representative Johnson seconded. Discussion followed, a copy of the statute dealing with eminent domain was given to each committee member (See attachment 4). Final action for **HB2556** was placed on hold so the revisor could complete work on conceptual language.

Chairperson Freeborn said we would proceed with final action on **HB2875 - Concerning inspection fees for works constructed for appropriation for water for beneficial use,** and return to final action on **HB2556** when the revisor has completed the conceptual language.

**HB2875-** During final Action a balloon from Woody Moses, Kansas Aggregate Producers Association, was given to all committee members (See attachment 5). Representative Sloan moved to strike "the" from the fourth line of the proposed balloon and to insert "for a sand and gravel pit" after the word completion in the 6<sup>th</sup> line of the proposed balloon and to adopt the balloon with these changes, Representative Svaty seconded, motion carried.

Representative Svaty moved to recommend HB2875 favorable for action, as amended, Representative Flora seconded, motion carried. Representative Sloan will carry the bill.

Chairperson Freeborn opened the hearing on **HB2867 - Concerning dam safety.** The chairperson said the

CONTINUATION SHEET

MINUTES OF THE House Environment Committee at 3:30 P.M. on February 21, 2006 in Room 231-N of the Capitol.

proponents notified the chairperson ahead of time that they have a significant balloon to present with their testimony.

Brent Haden, Kansas Livestock Association, proponent, testified (See attachment 6).

Written testimony was given to each committee member from Phyllis and Dee Scherich Merrill Ranch, Comanche County, Kansas, proponent (See attachment 7).

Written testimony was also given to each committee member from Steve Swaffar, Kansas Farm Bureau, proponent, (See attachment 8).

Jim Koelliker, Kansas Society of Professional Engineers, opponent, testified (See attachment 9).

Constantine Cotsoradis, Assistant Secretary-Agriculture, opponent, testified (See attachment 10).

Written testimony was given to each committee member from Herbert Graves, State Association of Kansas Watersheds, opponent (See attachment 11).

Copy of the fiscal note written on the original bill was given to all committee members (See attachment 12).

Questions and discussion followed.

Chairperson Freeborn closed the hearing on **HB2867**.

Chairperson Freeborn returned to considerations of final action on **HB2556**, Representative Sloan withdrew the motion to adopt the balloon introduced by Chairperson Freeborn, Representative Johnson who had seconded, also withdrew and so the motion was withdrawn.

The revisor had the completed conceptual language, a copy was given to each committee member (See attachment 13). Representative Schwartz moved to adopt the conceptual language passed out for the new section 7, Representative Svaty seconded, motion carried.

Representative Sloan moved to adopt the language in the balloon that Chairperson Freeborn proposed, Representative Johnson seconded, motion carried.

Representative Sloan moved to recommend **HB2556** favorable for passage as amended, motion carried. Representative Sloan will carry the bill.

Final action on **HB2867**

Representative Svaty moved adoption of the balloon introduced by Brent Haden in his testimony today, Representative Johnson seconded, motion carried.

Representative Burgess proposed language be added to include liability signs to be placed in inundation zones, motion failed for lack of a second.

Representative Sloan made a motion refining the language on page 3, line 25-29, line 25 after shall add the words "inspect but" and on line 28 before endangered, add the word "normally" and after endangered add "in the breach inundation zone." Representative Burgess seconded, motion carried.

Representative Sloan made a motion for conceptual language clarifying that the landowner has been notified and informed of the risks, and acknowledges the risk and accepts such risk, seconded by Representative Hawk, motion carried.

Representative Svaty moved to recommend **HB2687** favorable for passage as amended and allow for staff technical changes, seconded by Representative George, division was requested, motion carried.

CONTINUATION SHEET

MINUTES OF THE House Environment Committee at 3:30 P.M. on February 21, 2006 in Room 231-N of the Capitol.

Chairperson Freeborn adjourned the meeting at 5:15. Next meeting scheduled March 2.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: 02-21/00

NAME	REPRESENTING
James A Koelliker	KS Soc. Prof. Engrs
Ron Gaches	KSPE
Jesse Kaufman	KS Coop Council
Ken Prew	KS Petroleum Council
Mark Tomb	LKM
Brent Haden	KLA



## Substitute for HOUSE CONCURRENT RESOLUTION NO. 5030

By

A CONCURRENT RESOLUTION urging the federal government to lift the moratorium on offshore drilling for oil and natural gas.

WHEREAS, Policies of the federal government have placed much of the coastal Outer Continental Shelf off limits to oil and natural gas production; and

WHEREAS, Development of oil and natural gas resources, where allowed off our shores, has coexisted for decades with recreational and commercial activities while benefiting the entire nation; and

WHEREAS, Offshore oil and natural gas operations have a long history of environmentally sensitive and safe performance; and

WHEREAS, Offshore development of oil and natural gas has provided needed supplies of American energy, generated substantial local, state and federal revenues and created thousands of jobs and economic development; and

WHEREAS, America's increased dependence on foreign energy supplies and global competition for oil and natural gas will create a threat to our national security; and

WHEREAS, The nation's farming and ranching sector depend on a reliable and affordable supply of energy to run equipment, fertilize crops and transport products to market; and

WHEREAS, The Economic Research Service of the United States Department of Agriculture estimates that farmers' fuel expenses for 2005 will have exceeded their 2004 fuel expenses by 41 percent, and higher energy prices mean increased costs to farmers and ranchers, who already face tremendous economic challenges; and

WHEREAS, The fertilizer industry depends on natural gas, and since 2002, 36 percent of the U.S. fertilizer industry has been shut down or mothballed and the industry has been forced to move production to other countries, creating a threat to our food security; and

WHEREAS, The Energy Information Administration of the United States Department of Energy projects that the average residential

customer this winter will spend approximately 48 percent more on natural gas than last winter, creating a serious hardship for those who lived on a fixed or limited income, especially senior citizens; and

WHEREAS, Today, the Outer Continental Shelf represents one of the brightest spots in terms of potential United States energy resources: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the State of Kansas urges the Minerals Management Service of the United States Department of Interior to include all Outer Continental Shelf planning areas in its proposed five-year plan for 2007 through 2012 and approve the broadest possible plan for offshore development; and

Be it further resolved: That the Secretary of State is directed to send enrolled copies of this resolution to the United States Secretaries of Commerce, Interior and Energy, and to the administrators of the Minerals Management Service, Federal Energy Regulatory Commission, National Oceanic and Atmospheric Administration, and the Environmental Protection Agency, and to the President and Congressional leadership, and to each member of the Kansas congressional delegation.

## HOUSE BILL No. 2556

By Representative Sloan

12-28

Representative Sloan  
January 25, 2006

AN ACT concerning the conservation commission; relating to conser-  
vation easements; establishing the farm and ranch land protection pro-  
gram; amending K.S.A. 2-1904 and repealing the existing section.

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

Section 1. K.S.A. 2-1904 is hereby amended to read as follows: 2-  
1904. (a) There is hereby established, to serve as an agency of the state  
and to perform the functions conferred upon it in this act, the state con-  
servation commission. The state conservation commission shall succeed  
to all the powers, duties and property of the state soil conservation com-  
mittee. The commission shall consist of nine members as follows:

(1) The director of the cooperative extension service and the director  
of the state agricultural experiment station located at Manhattan, Kansas,  
or such persons' designees shall serve, ex officio, as members of the  
commission.

(2) The commission shall request the secretary of agriculture of  
United States of America to appoint one person and the secretary of the  
Kansas department of agriculture to appoint one person, each of whom  
shall be residents of the state of Kansas to serve as members of the com-  
mission. These members shall hold office for four years and until a suc-  
cessor is appointed and qualifies, with terms commencing on the second  
Monday in January beginning in 1973.

(3) Five members of the state commission shall be elected by the  
conservation district supervisors at a time and place to be designated by  
the state conservation commission. The method of electing such members  
to be conducted as follows: The state is to be divided into five separate  
areas. Area No. I to include the following counties: Cheyenne, Rawlins,  
Decatur, Norton, Phillips, Smith, Osborne, Rooks, Graham, Sheridan,  
Thomas, Sherman, Wallace, Logan, Cove, Trego, Ellis and Russell. Area  
No. II to include: Greeley, Wichita, Scott, Lane, Ness, Rush, Pawnee,  
Hodgeman, Finney, Kearny, Hamilton, Edwards, Ford, Gray, Haskell,  
Grant, Stanton, Morton, Stevens, Seward, Meade, Clark, Comanche and  
Kiowa. Area No. III to include: Jewell, Republic, Mitchell, Cloud, Lin-  
coln, Ottawa, Ellsworth, Saline, Rice, McPherson, Reno, Harvey, King-  
man, Sedgwick, Sumner, Harper, Barber, Pratt, Barton and Stafford. Area

1 No. IV to include: Washington, Marshall, Nemaha, Brown, Doniphan,  
2 Clay, Riley, Pottawatomie, Jackson, Atchison, Jefferson, Leavenworth,  
3 Wyandotte, Johnson, Douglas, Shawnee, Wabaunsee, Geary, Dickinson,  
4 Morris, Osage, Franklin and Miami. Area No. V to include: Marion,  
Chase, Lyon, Coffey, Anderson, Linn, Bourbon, Allen, Woodson, Green-  
wood, Butler, Elk, Wilson, Neosho, Crawford, Cowley, Chautauqua,  
5 Montgomery, Labette and Cherokee. Areas II and IV will elect in even  
6 number years and Areas I, III and V shall elect in odd number years for  
7 two year terms. The elected commission members from Areas I, III and  
8 V shall take office on January 1, of the even number years. The remaining  
9 two elected members of the state commission from Areas II and IV shall  
10 take office on January 1, of the odd number years. The method of election  
11 is to be by area caucus of the district supervisors of each of the five  
12 separate areas of Kansas. The commission shall give each district notice  
13 of the time and place of such annual election meeting by letter if a mem-  
14 ber is to be elected to the commission from that area that year. The  
15 selection of a successor to fill an unexpired term shall be by appointment  
16 by the commission. The successor who is appointed to fill the unexpired  
17 term shall be a resident of the same area as that of the predecessor.

18 (b) The commission shall keep a record of its official actions, shall  
19 adopt a seal which seal shall be judicially noticed, and may perform such  
20 acts, hold such public hearings and adopt rules and regulations necessary  
21 for the execution of its functions under this act.

22 (c) The state conservation commission may employ an administrative  
23 officer and such technical experts as it may require and shall determine  
24 their qualifications and duties. Such officer and experts shall be in the  
25 unclassified service of the Kansas civil service act and shall receive annual  
26 salaries fixed by the commission and approved by the state finance coun-  
27 cil. All other agents and employees, permanent or temporary, required  
28 by the state conservation commission, shall be within the classified service  
29 of the Kansas civil service act. The commission may call upon the attorney  
30 general of the state for such legal services as it may require. It shall have  
31 authority to delegate to its chairperson, to one or more of its members  
32 or to one or more agents or employees, such powers and duties as it  
33 deems proper. It shall be supplied with suitable office accommodations  
34 at the state capital, and shall be furnished with the necessary supplies and  
35 equipment. Upon request of the commission, for the purpose of carrying  
36 out any of its functions, the supervising officer of any state agency or of  
37 any state institution of learning, insofar as may be possible under available  
38 appropriations and having due regard to the needs of the agency to which  
39 the request is directed, shall assign or detail to the commission members  
40 of the staff or personnel of such agency or institution of learning and  
41 make such special reports, surveys or studies as the commission may  
42  
43

1 request.

2 (d) The commission shall designate its chairperson and, from time to  
3 time, may change such designation. A majority of the commission shall  
4 constitute a quorum, and the concurrence of a majority in any matter  
5 within their duties shall be required for its determination. Members of  
6 the state conservation commission attending meetings of such commis-  
7 sion or attending a subcommittee meeting thereof authorized by such  
8 commission shall be paid compensation, subsistence allowances, mileage  
9 and other expenses as provided in K.S.A. 75-3223, and amendments  
10 thereto. The commission shall provide for keeping of a full and accurate  
11 record of all proceedings and of all resolutions, regulations and orders  
12 issued or adopted.

13 (e) In addition to the duties and powers hereinafter conferred upon  
14 the state conservation commission, it shall have the following duties and  
15 powers:

16 (1) To offer such assistance as may be appropriate to the supervisors  
17 of conservation districts, organized as provided hereinafter, in the carry-  
18 ing out of any of their powers and programs;

19 (2) to keep the supervisors of each of the several districts organized  
20 under the provisions of this act informed of the activities and experience  
21 of all other districts organized hereunder and to facilitate an interchange  
22 of advice and experience between such districts and cooperation between  
23 them;

24 (3) to coordinate the programs of the several conservation districts  
25 organized hereunder;

26 (4) to secure the cooperation and assistance of the United States and  
27 any of its agencies and of agencies of this state, in the work of such districts  
28 and to contract with or to accept donations, grants, gifts and contributions  
29 in money, services or otherwise from the United States or any of its agen-  
30 cies or from the state or any of its agencies in order to carry out the  
31 purposes of this act;

32 (5) to disseminate information throughout the state concerning the  
33 activities and programs of the conservation districts organized hereunder  
34 and to encourage the formation of such districts in areas where their  
35 organization is desirable;

36 (6) to cooperate with and give assistance to watershed districts and  
37 other special purpose districts in the state of Kansas for the purpose of  
38 cooperating with the United States through the secretary of agriculture  
39 in the furtherance of conservation pursuant to the provisions of the wa-  
40 tershed protection and flood prevention act, as amended;

41 (7) to cooperate in and carry out, in accordance with state policies,  
42 activities and programs to conserve and develop the water resources of  
43 the state and maintain and improve the quality of such water resources;

2-4

1 (8) to enlist the cooperation and collaboration of state, federal, regional, interstate, local, public and private agencies with the conservation districts: ~~and~~

4 (9) to facilitate arrangements under which conservation districts may serve county governing bodies and other agencies as their local operating agencies in the administration of any activity concerned with the conservation of natural resources; and

8 (10) to facilitate the conservation of private working farm and ranch lands in Kansas through grants to eligible entities for the administration of ~~lease or purchase of perpetual conservation easements, or other interests, of eligible farm and ranch lands.~~

and

12 New Sec. 2. As used in this act:

13 (a) "Commission" means the state conservation commission.

14 (b) "Conservation easement" means a conservation easement, as defined in K.S.A. 58-3810, and amendments thereto, which is a permanent deed restriction.

17 (c) "Eligible entity" means any organization that is an organization as described in section 170(h)(3) of the internal revenue code of 1986.

19 (d) "Eligible farm and ranch lands" means cropland, rangeland, grassland, pastureland or forestland which: (1) Is an incidental part of an agricultural operation on a farm or ranch; (2) has prime, unique or other productive soil or contains historical or archaeological resources; and (3) is subject to a pending offer for purchase or permanent conservation easements from an eligible entity.

25 ~~(e) "Heart of the Flint Hills" means the area bounded on the north by U.S. highway 24, on the east by Kansas highways 99 and 4, on the south by Kansas highway 400 and on the west by Kansas highway 77, encompassing all or part of Pottawatomie, Riley, Shawnee, Wabawance, Geary, Morris, Lyon, Dickinson, Marion, Chase, Greenwood and Butler counties.~~

31 New Sec. 3. (a) There is hereby established a Kansas farm and ranch land protection grant program, to be administered by the commission, for the purpose of limiting loss of agricultural lands to nonagricultural uses.

35 (b) The commission may make available matching grants to be offered in cooperation with the United States department of agriculture under the farm and ranch land protection program or the United States department of defense, or any other federal or private entity, to eligible entities for the administration, costs and purchase of permanent conservation easements on eligible farm and ranch lands. Such costs shall include, but not be limited to, appraisals, surveys and title searches.

43 (c) The commission may adopt rules and regulations to administer and implement the Kansas farm and ranch land protection grant program.

(d) The commission shall not be the holder of conservation easements.

2.5

1 New Sec. 4. To receive grants pursuant to the Kansas farm and ranch  
2 land protection grant program ~~for other program administered by the~~  
3 ~~commission~~, eligible entities must make application to the commission in  
4 the manner prescribed by the commission and shall provide to the  
commission:

7 (1) Documentation from the internal revenue service that the entity  
8 meets the requirement of subsection (c) of section 2, and amendments  
9 thereto;

10 (2) a copy of the conservation easement agreement negotiated with  
11 the United States department of agriculture ~~and the landowner of the~~  
12 property for which funding is sought;

United States department of defense or other agency

13 (3) a ~~legally binding~~ written statement that creation and recordation  
14 of appropriate deed restrictions will occur upon disbursement of the  
funds to the landowner;

15 (4) a ~~legally binding~~ written agreement to implement the terms of  
16 the conservation easement and to report the status of the conservation  
17 easement as the commission deems necessary; and

18 (5) any other relevant information the commission deems necessary  
19 to assure the appropriate use of grant funds.

20 New Sec. 5. (a) The commission shall evaluate and rank each appli-  
21 cation based upon the following criteria:

22 (1) Contiguous acres of farm and ranch land to be conserved and its  
23 ability to economically sustain agricultural activities;

24 (2) historic agricultural use and condition of the property;

25 (3) proximity of the property to: (A) A military installation or facility  
26 under the supervision of the United States secretary of the army or the  
27 United States secretary of the air force, (B) a military installation or facility  
28 under the supervision of the Kansas national guard; ~~or (C) a state park,  
29 state lake, recreational area, wildlife area and sanctuary, fish hatchery,  
30 natural area or other lands, waters or facilities under the jurisdiction of  
31 the secretary of wildlife and parks.~~

32 (4) imminent threat of development for residential or commercial  
33 purposes;

34 ~~(5) proximity of the property within a designated area for conserva-  
35 tion or preservation by public policy at the local, state or federal level.~~

and by renumbering the remaining subsections accordingly

36 (6) the property ~~lies within the heart of the Flint Hills and~~ was previ-  
37 ously subject to ~~a~~ contract for development of wind energy;

an unfulfilled

38 (7) commitment of eligible entity and landowner to the long-term  
39 conservation of the property;

provide an educational opportunity regarding

40 (8) ~~public access to~~ the land's scenic value, plant and animal biodi-  
41 versity, historic and cultural characteristics; and

42 (9) other factors the commission deems critical for fulfillment of the  
43 purposes of this act.



2-6

1 (b) ~~Because public moneys are expended to protect open space and~~  
2 ~~environmentally important flora and fauna and land, provision for full or~~  
3 ~~limited public access to land for which a grant is awarded pursuant to this~~  
4 ~~act shall be a condition of receipt of such grant.~~

5 ~~(c) Upon completion of the evaluations and rankings, the commission~~  
6 ~~shall timely award funds to successful applicants.~~

7 New Sec. 6. Failure of a property owner to observe and fulfill the  
8 terms of a conservation easement shall render the property liable to the  
9 commission for all grant moneys received ~~by the property owner pursuant~~  
10 ~~to this act and liable to the purchaser of the property for all moneys paid~~  
11 ~~to the property owner by the purchaser.~~

12 New Sec. 7. (a) ~~There is hereby imposed on the change in classifi-~~  
13 ~~cation of real property for purposes of ad valorem taxation from agricul-~~  
14 ~~tural use to a use other than agricultural use or use as a city, county or~~  
15 ~~state park an open space preservation fee in an amount equal to 0.015%~~  
16 ~~of the fair market value of such property, as determined by the county~~  
17 ~~assessor pursuant to law, if such property is reclassified at the time of or~~  
18 ~~within seven years after transfer of the property.~~

19 (b) The fee imposed by this section shall be ~~collected by the county~~  
20 ~~assessor~~ and remitted to the state treasurer. Upon receipt of the remit-  
21 tance, the state treasurer shall deposit the entire amount in the state  
22 treasury and credit it to the agricultural land conservation program fund.

23 (c) (1) ~~There is hereby established in the state treasury the agricul-~~  
24 ~~tural land conservation program fund. Moneys in the fund shall be ex-~~  
25 ~~pended only for the purpose of matching federal moneys available for~~  
26 ~~agricultural land conservation programs.~~

27 (2) On or before the 10th of each month, the director of accounts  
28 and reports shall transfer from the state general fund to the agricultural  
29 land conservation program fund interest earnings based on: (A) The aver-  
30 age daily balance of moneys in the agricultural land conservation pro-  
31 gram fund for the preceding month; and (B) the net earnings rate for the  
32 pooled money investment portfolio for the preceding month.

33 (3) All expenditures from the agricultural land conservation program  
34 fund shall be made in accordance with appropriation acts upon warrants  
35 of the director of accounts and reports issued pursuant to vouchers ap-  
36 proved by the chairperson of the commission, or a person designated by  
37 the chairperson, for the purposes set forth in this section.

Sec. 8. K.S.A. 2-1904 is hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its  
40 publication in the statute book.

New Sec. 7. Notwithstanding the provisions of K.S.A. 58-3816, and amendments thereto, no city shall use eminent domain to acquire land placed in a conservation easement under the Kansas farm and ranch land protection grant program.

renumber sections accordingly

On July 1, 2007, there

1.5%

appraiser

determined by the county clerk and the certified amount shall be provided to the county treasurer for collection

There is hereby established in the state treasury the agricultural land conservation program fund. Moneys in the fund shall be expended only for the administration, costs and the purchase of permanent conservation easements on agricultural lands. Moneys may be used for matching grants with federal agencies or private entities to conserve agricultural lands, but may not be used to acquire fee title to land.

## HOUSE BILL No. 2556

By Representative Sloan

12-28

9 AN ACT concerning the conservation commission; relating to conser-  
10 vation easements; establishing the farm and ranch land protection pro-  
11 gram; amending K.S.A. 2-1904 and repealing the existing section.  
12

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

14 Section 1. K.S.A. 2-1904 is hereby amended to read as follows: 2-  
15 1904. (a) There is hereby established, to serve as an agency of the state  
16 and to perform the functions conferred upon it in this act, the state con-  
17 servation commission. The state conservation commission shall succeed  
18 to all the powers, duties and property of the state soil conservation com-  
19 mittee. The commission shall consist of nine members as follows:

20 (1) The director of the cooperative extension service and the director  
21 of the state agricultural experiment station located at Manhattan, Kansas,  
22 or such persons' designees shall serve, ex officio, as members of the  
23 commission.

24 (2) The commission shall request the secretary of agriculture of  
25 United States of America to appoint one person and the secretary of the  
26 Kansas department of agriculture to appoint one person, each of whom  
27 shall be residents of the state of Kansas to serve as members of the com-  
28 mission. These members shall hold office for four years and until a suc-  
29 cessor is appointed and qualifies, with terms commencing on the second  
30 Monday in January beginning in 1973.

31 (3) Five members of the state commission shall be elected by the  
32 conservation district supervisors at a time and place to be designated by  
33 the state conservation commission. The method of electing such members  
34 to be conducted as follows: The state is to be divided into five separate  
35 areas. Area No. I to include the following counties: Cheyenne, Rawlins,  
36 Decatur, Norton, Phillips, Smith, Osborne, Rooks, Graham, Sheridan,  
37 Thomas, Sherman, Wallace, Logan, Gove, Trego, Ellis and Russell. Area  
38 No. II to include: Greeley, Wichita, Scott, Lane, Ness, Rush, Pawnee,  
39 Hodgeman, Finney, Kearny, Hamilton, Edwards, Ford, Gray, Haskell,  
40 Grant, Stanton, Morton, Stevens, Seward, Meade, Clark, Comanche and  
41 Kiowa. Area No. III to include: Jewell, Republic, Mitchell, Cloud, Lin-  
42 coln, Ottawa, Ellsworth, Saline, Rice, McPherson, Reno, Harvey, King-  
43 man, Sedgwick, Sumner, Harper, Barber, Pratt, Barton and Stafford. Area

1 No. IV to include: Washington, Marshall, Nemaha, Brown, Doniphan,  
2 Clay, Riley, Pottawatomie, Jackson, Atchison, Jefferson, Leavenworth,  
3 Wyandotte, Johnson, Douglas, Shawnee, Wabaunsee, Geary, Dickinson,  
4 Morris, Osage, Franklin and Miami. Area No. V to include: Marion,  
5 Chase, Lyon, Coffey, Anderson, Linn, Bourbon, Allen, Woodson, Green-  
6 wood, Butler, Elk, Wilson, Neosho, Crawford, Cowley, Chautauqua,  
7 Montgomery, Labette and Cherokee. Areas II and IV will elect in even  
8 number years and Areas I, III and V shall elect in odd number years for  
9 two year terms. The elected commission members from Areas I, III and  
10 V shall take office on January 1, of the even number years. The remaining  
11 two elected members of the state commission from Areas II and IV shall  
12 take office on January 1, of the odd number years. The method of election  
13 is to be by area caucus of the district supervisors of each of the five  
14 separate areas of Kansas. The commission shall give each district notice  
15 of the time and place of such annual election meeting by letter if a mem-  
16 ber is to be elected to the commission from that area that year. The  
17 selection of a successor to fill an unexpired term shall be by appointment  
18 by the commission. The successor who is appointed to fill the unexpired  
19 term shall be a resident of the same area as that of the predecessor.

20 (b) The commission shall keep a record of its official actions, shall  
21 adopt a seal which seal shall be judicially noticed, and may perform such  
22 acts, hold such public hearings and adopt rules and regulations necessary  
23 for the execution of its functions under this act.

24 (c) The state conservation commission may employ an administrative  
25 officer and such technical experts as it may require and shall determine  
26 their qualifications and duties. Such officer and experts shall be in the  
27 unclassified service of the Kansas civil service act and shall receive annual  
28 salaries fixed by the commission and approved by the state finance coun-  
29 cil. All other agents and employees, permanent or temporary, required  
30 by the state conservation commission, shall be within the classified service  
31 of the Kansas civil service act. The commission may call upon the attorney  
32 general of the state for such legal services as it may require. It shall have  
33 authority to delegate to its chairperson, to one or more of its members  
34 or to one or more agents or employees, such powers and duties as it  
35 deems proper. It shall be supplied with suitable office accommodations  
36 at the state capital, and shall be furnished with the necessary supplies and  
37 equipment. Upon request of the commission, for the purpose of carrying  
38 out any of its functions, the supervising officer of any state agency or of  
39 any state institution of learning, insofar as may be possible under available  
40 appropriations and having due regard to the needs of the agency to which  
41 the request is directed, shall assign or detail to the commission members  
42 of the staff or personnel of such agency or institution of learning and  
43 make such special reports, surveys or studies as the commission may

1 request.

2 (d) The commission shall designate its chairperson and, from time to  
3 time, may change such designation. A majority of the commission shall  
4 constitute a quorum, and the concurrence of a majority in any matter  
5 within their duties shall be required for its determination. Members of  
6 the state conservation commission attending meetings of such commis-  
7 sion or attending a subcommittee meeting thereof authorized by such  
8 commission shall be paid compensation, subsistence allowances, mileage  
9 and other expenses as provided in K.S.A. 75-3223, and amendments  
10 thereto. The commission shall provide for keeping of a full and accurate  
11 record of all proceedings and of all resolutions, regulations and orders  
12 issued or adopted.

13 (e) In addition to the duties and powers hereinafter conferred upon  
14 the state conservation commission, it shall have the following duties and  
15 powers:

16 (1) To offer such assistance as may be appropriate to the supervisors  
17 of conservation districts, organized as provided hereinafter, in the carry-  
18 ing out of any of their powers and programs;

19 (2) to keep the supervisors of each of the several districts organized  
20 under the provisions of this act informed of the activities and experience  
21 of all other districts organized hereunder and to facilitate an interchange  
22 of advice and experience between such districts and cooperation between  
23 them;

24 (3) to coordinate the programs of the several conservation districts  
25 organized hereunder;

26 (4) to secure the cooperation and assistance of the United States and  
27 any of its agencies and of agencies of this state, in the work of such districts  
28 and to contract with or to accept donations, grants, gifts and contributions  
29 in money, services or otherwise from the United States or any of its agen-  
30 cies or from the state or any of its agencies in order to carry out the  
31 purposes of this act;

32 (5) to disseminate information throughout the state concerning the  
33 activities and programs of the conservation districts organized hereunder  
34 and to encourage the formation of such districts in areas where their  
35 organization is desirable;

36 (6) to cooperate with and give assistance to watershed districts and  
37 other special purpose districts in the state of Kansas for the purpose of  
38 cooperating with the United States through the secretary of agriculture  
39 in the furtherance of conservation pursuant to the provisions of the wa-  
40 tershed protection and flood prevention act, as amended;

41 (7) to cooperate in and carry out, in accordance with state policies,  
42 activities and programs to conserve and develop the water resources of  
43 the state and maintain and improve the quality of such water resources;

1 (8) to enlist the cooperation and collaboration of state, federal, re-  
2 gional, interstate, local, public and private agencies with the conservation  
3 districts; ~~and~~

4 (9) to facilitate arrangements under which conservation districts may  
5 serve county governing bodies and other agencies as their local operating  
6 agencies in the administration of any activity concerned with the conser-  
7 vation of natural resources; and

8 (10) to facilitate the conservation of private working farm and ranch  
9 lands in Kansas through grants to eligible entities for the administration,  
10 lease or purchase of perpetual conservation easements, or other interests,  
11 of eligible farm and ranch lands.

12 New Sec. 2. As used in this act:

13 (a) "Commission" means the state conservation commission.

14 (b) "Conservation easement" means a conservation easement, as de-  
15 fined in K.S.A. 58-3810, and amendments thereto, which is a permanent  
16 deed restriction.

17 (c) "Eligible entity" means any organization that is an organization as  
18 described in section 170(h)(3) of the internal revenue code of 1986.

19 (d) "Eligible farm and ranch lands" means cropland, rangeland, grass-  
20 land, pastureland or forestland which: (1) Is an incidental part of an ag-  
21 ricultural operation on a farm or ranch; (2) has prime, unique or other  
22 productive soil or contains historical or archaeological resources; and (3)  
23 is subject to a pending offer for purchase or permanent conservation  
24 easements from an eligible entity.

25 (e) "Heart of the Flint Hills" means the area bounded on the north  
26 by U.S. highway 24, on the east by Kansas highways 99 and 4, on the  
27 south by Kansas highway 400 and on the west by Kansas highway 77,  
28 encompassing all or part of Pottawatomie, Riley, Shawnee, Wabaunsee,  
29 Geary, Morris, Lyon, Dickinson, Marion, Chase, Greenwood and Butler  
30 counties.

31 New Sec. 3. (a) There is hereby established a Kansas farm and ranch  
32 land protection grant program, to be administered by the commission,  
33 for the purpose of limiting loss of agricultural lands to nonagricultural  
34 uses.

35 (b) The commission may make available matching grants to be of-  
36 fered in cooperation with the United States department of agriculture  
37 under the farm and ranch land protection program or the United States  
38 department of defense, or any other federal or private entity, to eligible  
39 entities for the administration, costs and purchase of permanent conser-  
40 vation easements on eligible farm and ranch lands. Such costs shall in-  
41 clude, but not be limited to, appraisals, surveys and title searches.

42 (c) The commission may adopt rules and regulations to administer  
43 and implement the Kansas farm and ranch land protection grant program.

1 New Sec. 4. To receive grants pursuant to the Kansas farm and ranch  
2 land protection grant program or other program administered by the  
3 commission, eligible entities must make application to the commission in  
4 the manner prescribed by the commission and shall provide to the  
5 commission:

6 (1) Documentation from the internal revenue service that the entity  
7 meets the requirement of subsection (c) of section 2, and amendments  
8 thereto;

9 (2) a copy of the conservation easement agreement negotiated with  
10 the United States department of agriculture and the landowner of the  
11 property for which funding is sought;

12 (3) a legally binding written statement that creation and recordation  
13 of appropriate deed restrictions will occur upon disbursement of the  
14 funds to the landowner;

15 (4) a legally binding written agreement to implement the terms of  
16 the conservation easement and to report the status of the conservation  
17 easement as the commission deems necessary; and

18 (5) any other relevant information the commission deems necessary  
19 to assure the appropriate use of grant funds.

20 New Sec. 5. (a) The commission shall evaluate and rank each appli-  
21 cation based upon the following criteria:

22 (1) Contiguous acres of farm and ranch land to be conserved and its  
23 ability to economically sustain agricultural activities;

24 (2) historic agricultural use and condition of the property;

25 (3) proximity of the property to: (A) A military installation or facility  
26 under the supervision of the United States secretary of the army or the  
27 United States secretary of the air force, (B) a military installation or facility  
28 under the supervision of the Kansas national guard; or (C) a state park,  
29 state lake, recreational area, wildlife area and sanctuary, fish hatchery,  
30 natural area or other lands, waters or facilities under the jurisdiction of  
31 the secretary of wildlife and parks;

32 (4) imminent threat of development for residential or commercial  
33 purposes;

34 (5) proximity of the property within a designated area for conserva-  
35 tion or preservation by public policy at the local, state or federal level;

36 (6) the property lies within the heart of the Flint Hills and was pre-  
37 viously subject to a contract for development of wind energy;

38 (7) commitment of eligible entity and landowner to the long-term  
39 conservation of the property;

40 (8) public access to the land's scenic value, plant and animal biodiv-  
41 ersity, historic and cultural characteristics; and

42 (9) other factors the commission deems critical for fulfillment of the  
43 purposes of this act.

(10) For fiscal years 2007 and 2008, the commission shall give funding priority to applications meeting the provisions of subsections (a)(3)(A) and (a)(3)(B) of this section.



1 (b) Because public moneys are expended to protect open space and  
2 environmentally important flora and fauna and land, provision for full or  
3 limited public access to land for which a grant is awarded pursuant to this  
4 act shall be a condition of receipt of such grant.

5 (c) Upon completion of the evaluations and rankings, the commission  
6 shall timely award funds to successful applicants.

7 New Sec. 6. Failure of a property owner to observe and fulfill the  
8 terms of a conservation easement shall render the property liable to the  
9 commission for all grant moneys received by the property owner pursuant  
10 to this act and liable to the purchaser of the property for all moneys paid  
11 to the property owner by the purchaser.

12 New Sec. 7. (a) There is hereby imposed on the change in classifi-  
13 cation of real property for purposes of ad valorem taxation from agricul-  
14 tural use to a use other than agricultural use or use as a city, county or  
15 state park an open space preservation fee in an amount equal to 0.015%  
16 of the fair market value of such property, as determined by the county  
17 assessor pursuant to law, if such property is reclassified at the time of or  
18 within seven years after transfer of the property.

19 (b) The fee imposed by this section shall be collected by the county  
20 assessor and remitted to the state treasurer. Upon receipt of the remit-  
21 tance, the state treasurer shall deposit the entire amount in the state  
22 treasury and credit it to the agricultural land conservation program fund.

23 (c) (1) There is hereby established in the state treasury the agricul-  
24 tural land conservation program fund. Moneys in the fund shall be ex-  
25 pended only for the purpose of matching federal moneys available for  
26 agricultural land conservation programs.

27 (2) On or before the 10th of each month, the director of accounts  
28 and reports shall transfer from the state general fund to the agricultural  
29 land conservation program fund interest earnings based on: (A) The av-  
30 erage daily balance of moneys in the agricultural land conservation pro-  
31 gram fund for the preceding month; and (B) the net earnings rate for the  
32 pooled money investment portfolio for the preceding month.

33 (3) All expenditures from the agricultural land conservation program  
34 fund shall be made in accordance with appropriation acts upon warrants  
35 of the director of accounts and reports issued pursuant to vouchers ap-  
36 proved by the chairperson of the commission, or a person designated by  
37 the chairperson, for the purposes set forth in this section.

38 Sec. 8. K.S.A. 2-1904 is hereby repealed.

39 Sec. 9. This act shall take effect and be in force from and after its  
40 publication in the statute book.



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## 58-3816

### Chapter 58.--PERSONAL AND REAL PROPERTY

#### Part 6.--MISCELLANEOUS PROVISIONS

#### Article 38.--EASEMENTS

**58-3816. Same; certain utility and water district easements not impaired.** Nothing in this act shall be construed so as to impair the rights of a public utility or city with respect to the acquisition of rights-of-way, easements or other property rights, whether through voluntary conveyance or eminent domain, upon which facilities, plants, systems or other improvements of a public utility or city are located or are to be located or so as to impair the rights of a watershed district under K.S.A. 24-1201 *et seq.* and amendments thereto with respect to rights-of-way, easements or other property rights upon which watershed structures are located or are to be located.

**History:** L. 1992, ch. 302, § 17; July 1.

House Environment Committee  
February 21, 2006  
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KANSAS AGGREGATE PRODUCERS ASSOCIATION  
Proposed Amendment  
HB 2875 2/21/2006

1 (2) before July 1, 2006, in such cases in which an abandonment pro-  
ceeding was pending pursuant to K.S.A. 82a-718, and amendments  
thereto, on July 1, 2004; or

4 (3) not later than five years after the date the applicant notifies the  
5 chief engineer of the completion of construction of the works and the  
6 actual application of water to the proposed beneficial use within the time  
7 allowed, in all other cases.

8 If the chief engineer fails to issue a certificate within the time provided  
9 by this subsection, the applicant may request review, pursuant to K.S.A.  
2005 Supp. 82a-1901 and amendments thereto, of the chief engineer's  
failure to act.

12 (d) Except for works constructed to appropriate water for domestic  
13 use ~~or for existing works previously inspected~~, each notification to the  
14 chief engineer under subsection (a) shall be accompanied by a field in-  
15 spection fee of \$200, or commencing July 1, 2002, and ending June 30,  
16 2010, a fee of \$400. ~~For works constructed pursuant to 82a-734, and~~  
17 ~~amendments thereto, each notification to the chief engineer under subsection~~  
18 ~~(a) shall be accompanied by a field inspection fee of \$100.~~ Failure  
19 to pay the field inspection fee, after reasonable notice by the chief en-  
20 gineer of such failure, shall result in the permit to appropriate water being  
21 revoked, forfeiture of the priority date and revocation of any appropria-  
22 tion right that may exist.

(e) Upon examination of the diversion works the chief engineer or the chief engineer's duly authorized representative shall, within 90 days, notify the applicant of the the results, including any requested changes. If the chief engineer fails to examine the diversion works within two years of the notice of completion. The applicant shall not be required to forfeit priority date as a result of any requested changes.

23 ~~(f) A request for an extension of time to: (1) Complete the diversion~~  
24 ~~works; or (2) perfect the water right, shall be accompanied by a fee of~~  
25 ~~\$50, or commencing July 1, 2002, and ending June 30, 2010, a fee of~~  
26 ~~\$100.~~

Deleted: (e)

27 ~~(g) A request to reinstate a water right or a permit to appropriate~~  
28 ~~water which has been dismissed shall be filed with the chief engineer~~  
29 ~~within 60 days of the date dismissed and shall be accompanied by a fee~~  
30 ~~of \$100, or commencing July 1, 2002, and ending June 30, 2010, a fee of~~  
31 ~~\$200.~~

Deleted: (f)

32 ~~(h) All fees collected by the chief engineer pursuant to this section~~  
33 ~~shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and~~  
34 ~~amendments thereto.~~

Deleted: (g)

35 Sec. 2. K.S.A. 2005 Supp. 82a-714 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its  
37 publication in the statute book.



Since 1894

## TESTIMONY

To: House Environment Committee  
Representative Joann Freeborn, Chair

From: Brent Haden, Assistant Counsel, Kansas Livestock Association

Date: February 21, 2006

Re: HB 2867

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.*

Good afternoon Madame Chair and members of the Committee. My name is Brent Haden, and I serve as Assistant Counsel for the Kansas Livestock Association. I appreciate the opportunity to testify this afternoon to discuss KLA's support for HB 2867.

KLA supports HB 2867 because we are concerned about the rising cost of dam inspections and repairs caused by third party downstream development. HB 2867 seeks to amend K.S.A. 82a-303b to prevent dams from being placed in a new hazard class merely because of downstream development, over which the dam owner has no control. HB 2867 also amends K.S.A. 82a-303b and 82a-303c to eliminate the inspection and repair requirements for dams that endanger only the lives of the dam's owner or operator, or their immediate families.

To aid in understanding the problems K.S.A. 82a-303b and 82a-303c are causing for dam owners, I'd first like to explain the provisions of both statutes. Current law grants the Department of Water Resources (DWR) the power to promulgate safety regulations for the construction and maintenance of dams. Under current DWR guidelines, dams that are not a threat to human life are classified as hazard class A dams. Any dam at which a failure would endanger one human life is classified as a hazard class B dam, and any dam at which a failure would endanger two or more human lives is classified as a hazard class C dam. .

Under the current provisions of K.S.A. 82a-303b, hazard class A dams are not required to be inspected. A dam owner who owns a dam that is classified as a hazard class B dam is required to have an inspection performed by a licensed engineer at the owner's expense once every five years. The owner of a hazard class C dam is required to have licensed engineer at the owner's expense once every three years. The pr 303c in turn require the repair of any structural defects in a dam th

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February 21, 2006

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discover. So class A dams are generally the cheapest to maintain because no inspections are required for those dams, while class B and C are respectively more expensive to maintain because of the increased inspections requirements for each class.

The regulatory arrangement set out in these statutes is causing two problems for dam owners around the state. The first problem that has arisen for some dam owners with respect to these statutes is that downstream construction by third parties within a dam's breach inundation area causes the dam's hazard class to be changed to a higher classification. Dams that were once hazard class A dams have become hazard class B or C dams with the construction of downstream homes. Thus the dam owner, through actions beyond his or her control, may be subjected to significantly increased inspection costs and repair liabilities.

HB 2867 seeks to remedy this problem by prohibiting the re-classification of dams to a higher hazard classification when the only cause of re-classification is third party downstream construction. The bill amends the current K.S.A 82a-303b to state that the chief engineer shall not change a dam's hazard classification, regardless of downstream construction, so long as the owner has notified local emergency management personnel of the dam's presence.

The bill also amends the current statute to state that any dam at which the chief engineer has changed the hazard classification due to downstream development shall have its hazard classification rolled back to its original classification, so long as the owner has notified local emergency management personnel of the dam's presence. KLA believes these changes are necessary to protect dam owners against the expense that currently being caused by third party downstream development

The second problem caused by these statutes is that some dams have been classified as hazard class C even though the only lives or homes they threaten are those of the dam's owner or operator, or their immediate families. For example, KLA has a member in south-central Kansas whose farm dam has been classified as a hazard class C dam because two houses, both of which belong to him, sit below the dam. Under current law, the owner is responsible for hiring an engineer to inspect the dam every three years, and to repair any defects in the dam to DWR specifications. This has created a situation in which it would be cheaper for the landowner to move both houses from their current locations than to repair the dam to DWR's satisfaction.

KLA believes dam owners should not be subjected to the inspection and repair requirements of K.S.A. 82a-303b and 82a-303c when the only lives endangered by a dam are those of the dam's owner or operator, or their immediate families, and HB 2867 amends both statutes to remove those requirements.

In conclusion, KLA believes that dam owners should not be subjected to the expense of increased dam inspections that come with hazard re-classification when the cause is downstream development that is beyond control of the dam owner. Furthermore, KLA believes that dam owners should not be subjected to expensive inspection and repair requirements when the only lives endangered by the dam in question are those of the dam owner or operator or their immediate families. I appreciate the chance to discuss our concerns with you this afternoon, and KLA stands ready to assist the Committee in any way we can with this important issue. Thank you.

## HOUSE BILL No. 2867

By Committee on Environment

2-9

9 AN ACT concerning water and watercourses; relating to dams; amending  
10 K.S.A. 82a-303c and K.S.A. 2005 Supp. 82a-303b and repealing the  
11 existing sections.  
12

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

14 Section 1. K.S.A. 2005 Supp. 82a-303b is hereby amended to read  
15 as follows: 82a-303b. (a) (1) In order to secure conformity with adopted  
16 rules and regulations and to assure compliance with the terms, conditions  
17 or restrictions of any consent or permit granted pursuant to the provisions  
18 of K.S.A. 82a-301 through 82a-303, and amendments thereto, the chief  
19 engineer or an authorized representative of the chief engineer shall have  
20 the power and the duty to inspect any dam or other water obstruction.  
21 Upon a finding pursuant to subsection (a) of K.S.A. 82a-303c, and amend-  
22 ments thereto, by the chief engineer that a dam is unsafe, the chief en-  
23 gineer shall order an annual inspection of the dam until it is either in  
24 compliance with all applicable provisions of this act, any rules and regu-  
25 lations promulgated pursuant to this act, permit conditions and orders of  
26 the chief engineer; or the dam is removed. The safety inspection shall be  
27 conducted by the chief engineer or authorized representative and the  
28 cost shall be paid by the dam owner. ~~Except as provided in subsection~~  
29 ~~(a)(4) of K.S.A. 82a-303b, and amendments thereto,~~ the class and size of  
30 a dam provided for by the provisions of this act shall be defined by rules  
31 and regulations adopted by the chief engineer pursuant to K.S.A. 82a-  
32 303a, and amendments thereto. Inspection fees are as follows:

33 Size of Dam	Inspection fee
34 Class 1	\$1,500
35 Class 2	\$1,500
36 Class 3	\$2,500
37 Class 4	\$4,000.

38 (2) ~~Except as provided in subsection (a)(5) of K.S.A. 82a-303b, and~~  
39 ~~amendments thereto,~~ each hazard class C dam shall be required to have  
40 a safety inspection conducted by a licensed professional engineer quali-  
41 fied in design, construction, maintenance and operation of dams once  
42 every three years, unless otherwise ordered by the chief engineer.

43 (3) ~~Except as provided in subsection (a)(5) of K.S.A. 82a-303b, and~~



1 ~~amendments thereto~~, each hazard class B dam shall be required to have  
2 a safety inspection conducted by a licensed professional engineer quali-  
3 fied in design, construction, maintenance and operation of dams once  
4 every five years unless otherwise ordered by the chief engineer.

5 ~~(4) (A) The chief engineer shall not change the size or hazard class~~  
6 ~~of any dam to a larger size class or higher hazard class after the dam has~~  
7 ~~been built, regardless of downstream development or construction, unless~~  
8 ~~the dam in question has been voluntarily structurally modified to a larger~~  
9 ~~size or impoundment after the downstream construction in question.~~

10 ~~(B) Any dam in existence, prior to the passage of this act, that the~~  
11 ~~chief engineer has re-classified to a larger size or hazard class due to~~  
12 ~~downstream development or construction shall be re-classified to its as-~~  
13 ~~signed classification at the time of the dam's construction or its most recent~~  
14 ~~voluntary structural modification.~~

15 ~~(C) The provisions of subsections (A) and (B) shall only apply after~~  
16 ~~the owner or operator of the dam in question has notified local emergency~~  
17 ~~management personnel of the presence of the dam.~~

18 ~~(5) A dam is not required to have a safety inspection if the only lives~~  
19 ~~or property continuously endangered by the dam are the lives or property~~  
20 ~~of the dam owner or operator or their immediate family.~~

21 ~~(4) (6) Within 60 days of the date of inspection, a report of the in-~~  
22 ~~spection shall be provided to the chief engineer by the licensed profes-~~  
23 ~~sional engineer who conducted the inspection. The report shall document~~  
24 ~~the physical condition of the dam, describing any deficiencies observed,~~  
25 ~~an analysis of the capacity of the dam and its spillway works, compliance~~  
26 ~~of the dam with approved plans and permit conditions, changes observed~~  
27 ~~in the condition of the dam since the previous inspection, an assessment~~  
28 ~~of the hazard classification of the dam including a statement that the~~  
29 ~~engineer either agrees or disagrees with the current classification, and~~  
30 ~~any other information relevant to the safety of the dam or specifically~~  
31 ~~requested by the chief engineer.~~

32 ~~(5) (7) Upon failure of a dam owner to comply with the applicable~~  
33 ~~inspection interval, the chief engineer or such chief engineer's authorized~~  
34 ~~representative shall conduct a mandatory inspection of the dam and the~~  
35 ~~costs as established by this act for the inspection shall be paid by the~~  
36 ~~owner, in addition to any other remedies provided for violations of this~~  
37 ~~act.~~

38 ~~(6) (8) The failure to file a complete and timely report as required~~  
39 ~~by the provisions of this act, or the failure to submit the fees assessed for~~  
40 ~~inspections conducted by the chief engineer or such chief engineer's au-~~  
41 ~~thorized representative shall be deemed a violation of this act and subject~~  
42 ~~to the penalties provided by K.S.A. 82a-305a, and amendments thereto.~~

43 (b) For the purpose of inspecting any dam or other water obstruction,

1 the chief engineer or an authorized representative of the chief engineer  
 2 shall have the right of access to private property. Costs for any work which  
 3 may be required by the chief engineer or the authorized representative  
 4 prior to or as a result of the inspection of a dam or other water obstruction  
 5 shall be paid by the owner, governmental agency or operator of such dam  
 6 or other water obstruction.

7 (c) All fees collected by the chief engineer pursuant to this section  
 8 shall be remitted to the state treasurer as provided in K.S.A. 2005 Supp.  
 9 82a-328, and amendments thereto.

Insert "(d) To facilitate dam safety compliance and conduct accurate dam risk analysis, the chief engineer shall utilize all maps available from state or federal sources to create breach inundation maps for existing dams.'

10 Sec. 2. K.S.A. 82a-303c is hereby amended to read as follows: 82a-

11 303c. (a) *Except as otherwise provided in subsection (b) of K.S.A. 82a-*  
 12 *303c, and amendments thereto,* whenever the chief engineer finds that:

13 (1) The construction, modification, operation or maintenance of a dam  
 14 or other water obstruction is in violation of adopted rules and regulations  
 15 or of terms, conditions or restrictions of a permit or consent granted by  
 16 the chief engineer or, (2) conditions exist in the construction, modifica-  
 17 tion, operation or maintenance of a dam or other water obstruction which  
 18 may present a hazard to the public's safety, he or she shall issue an order  
 19 to require the correction of any such violation or condition existing in the  
 20 construction, modification, operation or maintenance of a dam or other  
 21 water obstruction by the owner or operator thereof. An order may be  
 22 issued to require the removal of a dam or other water obstruction. The  
 23 order shall contain the chief engineer's findings concerning any violation  
 24 or conditions existing and shall prescribe the corrective action to be taken.

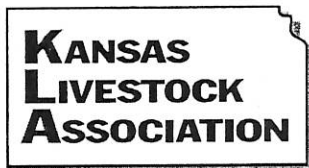
25 (b) *The chief engineer shall not require the correction of any violation*  
 26 *or condition existing in the construction, modification, operation or main-*  
 27 *tenance of a dam or other water obstruction if the only lives or property*  
 28 *endangered by the dam are the lives or property of the dam owner or*  
 29 *operator, or their immediate family.*

30 ~~(b)~~(c) Whenever the condition of any dam or other water obstruction  
 31 is so dangerous to the safety of life or property as not to permit time for  
 32 the issuance and enforcement of an order relative to construction, mod-  
 33 ification, maintenance or operation thereof, or, the passing of imminent  
 34 floods threaten the safety of any dam or other water obstruction, the chief  
 35 engineer shall immediately employ any remedial means necessary to pro-  
 36 tect the safety of life or property. The chief engineer shall continue in  
 37 full charge and control of any such dam or other water obstruction until  
 38 the same is rendered safe or the emergency occasioning the remedial  
 39 action has ceased.

40 Sec. 3. K.S.A. 82a-303c and K.S.A. 2005 Supp. 82a-303b are hereby  
 41 repealed.

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





Since 1894

## TESTIMONY

To: House Environment Committee  
Representative Joann Freeborn, Chair

From: Phyllis & Dee Scherich, Merrill Ranch, Comanche County, Kansas

Date: February 21, 2006

Re: HB 2867

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.*

We'd like to help you understand the issues we are dealing with concerning an existing dam on private property. We have managed this property for a Trust since 1976, taking over from my father, who had managed it since 1945. The pond created by the dam covers approximately 5 surface acres. This dam has been categorized as a Class C (high hazard) structure because of two homes that are located below it. These homes are privately owned and house only the ranch operators and their families. One of the homes has been located at its present site since the early 1900's or before, and the other since the early 1940's.

The dam was built probably in the 1930's. No record of a permit seems to exist. We assume the dam was built for two purposes: flood control and as the only water source for cattle in the pasture in which it is located. We have considered eliminating the pond, but feel that would only increase the chances for damage to the homes, and persons living in them, when we receive high run-off rains. The watershed area above the dam is limited. We feel it is even less of a problem now that it is a mature CRP grass pasture than when it was farm land. There is not currently any development downstream of this dam, and all downstream drainage from this dam to the Salt Fork River is also privately owned by the same owner.

The problem with the dam was first brought to our attention by the Department of Agriculture several years ago after the dam was discovered using air surveillance. At that time the laws governing dam safety were brought to our attention. We have been working with the Department of Agriculture and the Water Resources Board since that time. We have paid a \$1500 "inspection fee", received a report on what needs to be done to bring the dam into compliance, and have contacted a consulting engineering firm con  
firm has estimated it would cost us between \$8,560 and \$12,350 – JU House Environment Committee  
the engineering is approved by KDWR. Add to that the costs of ge  
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and we believe it will be less expensive to either move or replace the existing homes. In addition, the present law would require an inspection of this dam every three years with a minimum of a \$1500 inspection fee hereafter.

We recognize that the dam could be a potential hazard and would like to be able to proceed to make it safer, but with the rising costs of operations, we don't feel the Ranch can stand the prohibitive cost of the engineering and inspections, plus the repairs.

We have contacted a local contractor who has had extensive experience in building and repairing dams. He has assessed the situation and feels we can make the recommended changes for safety to the existing structures and lives at a reasonable cost, which we are willing to do. We would like to be able to proceed with these repairs in a timely fashion as the pond is at a low level at this time, but are hesitant to go ahead not knowing if the work he would perform would pass inspections. If it did not, we would have to redo the work to meet the requirements. We now have another meeting scheduled with a representative of the Kansas Department of Water Resources, a representative of the Department of Agriculture and a professional engineer regarding the dam, and while we would like to ensure the dam is safe, we are concerned that this cannot be done in a way that is both cost effective and will satisfy DWR.

To help avoid this expense for landowners in the future, we support the legislation supported by the Kansas Livestock Association (SB 524 and HB 2867) that would exempt this type of dam from inspection and repair requirements. We believe that dams that only pose a threat to the dam's owner or operator or their immediate families should be exempt from inspection and repair requirements, and that the safety and risk management for such dams should be left to their owners and operators. Thank you for listening to our concerns.

**Kansas Farm Bureau**  
**POLICY STATEMENT**

**House Environment Committee**

**HB 2867 an act concerning water and watercourses;**  
**relating to dams**

**February 21, 2006**

**Submitted by:**

**Steve M. Swaffar**

**Director of Natural Resources**

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Chairperson Freeborn and members of the committee, thank you for this opportunity to provide testimony today on House Bill 2867. I am Steve Swaffar, Director of Natural Resources for the Kansas Farm Bureau. We stand today in partial support for HB 2867 as some of the provisions of the bill address problems our members are experiencing.

Our members have expressed much frustration and concern over the issue of dam safety regulations and expenditures. Dams built to provide public good by affording flood and sediment control, in addition to creating water supply for landowners domestic and recreational needs are now being viewed as a public liability. Many of these dams are decades old and in need of attention to keep them structurally sound.

Due to no fault of the dam owners, development below the dam in the breach inundation zone causes hazard classification increases resulting in increased inspection costs and potentially devastating dam upgrade expenses. Many dam owners and watershed districts simply cannot afford these expenses and as a result face serious threat of being driven out of existence.

Our members do not believe dam owners should be held liable for the action of others causing dam classification upgrades. Buildings or dwellings in existence prior to dam construction should not cause a dam hazard upgrade post-construction. KFB policy does not directly speak to reclassification due to post-dam construction development, but our members do believe that costs associated with post-dam construction should be borne by the individual(s) responsible for that development. Our policy states:

***Buildings that existed as well as development within the inundation zone of a watershed dam prior to the construction of a dam should not cause the up grading of the dam from its original classification.***

House Environment Committee

February 21, 2006

Attachment 8

***Those developing land within the inundation zone of a pre-existing watershed dam must be responsible for any additional costs to the watershed district for required upgrading of a dam.***

It is clear that the issue of dam safety and the costs associated with upgrades, inspections and liabilities for landowners needs to be addressed in some fashion. HB 2867 attempts to address some of these issues but may not provide some of the certainty needed by landowners and the agency for protection and cost control. However it does serve as a good starting point. Thank you for this opportunity to provide testimony.





# **Kansas Society of Professional Engineers**

*A state society of the National Society of Professional Engineers*

House Environment Committee  
HB 2867 – Dam Inspections  
Testimony of Kansas Society of Professional Engineers  
Submitted by James K. Koelliker, P.E., and Ph.D.  
Biological and Agricultural Engineering - Kansas State University  
Tuesday, February 21, 2006

Thank you Representative Freeborn for the opportunity to express the concerns of the Kansas Society of Professional Engineers regarding HB 2867. KSPE is opposed to HB 2867. I have engineering expertise in water resources including water control structures. However, my main objection to the HB 2867 is that it is in direct conflict with the Code of Ethics of the National Society of Professional Engineers.

The preamble of our Code of Ethics states:

“Engineering is an important and learned profession. As members of this profession, engineers are expected to exhibit the highest standards of honesty and integrity. Engineering has a direct and vital impact on the quality of life for all people. Accordingly, the services provided by engineers require honesty, impartiality, fairness, and equity, and must be dedicated to the protection of the public health, safety, and welfare. Engineers must perform under a standard of professional behavior that requires adherence to the highest principles of ethical conduct.”

Further, the Fundamental Canons of our profession state:

“Engineers, in the fulfillment of their professional duties, shall: 1. Hold paramount the safety, health and welfare of the public. Finally, the Rules of Practice state, 1. Engineers shall hold paramount the safety, health, and welfare of the public. a. If engineers' judgment is overruled under circumstances that endanger life or property, they shall notify their employer or client and such other authority as may be appropriate.”

This bill, specifically Page 2, Lines 4-17, would require that the Chief Engineer of the Division of Water Resources, a person required to be a licensed professional engineer, to ignore his/her dedication to the protection of the public health, safety, and welfare. If a dam, according to the chief engineer, presents a hazard to the safety, health or welfare of any person, then the act of notifying local emergency management personnel does not materially reduce the hazard that the dam imposes to the general public.

Also, Page 2, Lines 18-20, while well intended, also is a concern to the general public. It is difficult to see how a dam owner can assure that no other person(s) or their property might from time to time be subject to the hazard that a dam presents. Therefore, we oppose exempting any dam that falls under the inspection system that has been established to protect the public health, safety, and welfare.

KSPE is the largest statewide society of professional engineers in Kansas, with approximately 750 members statewide.



# KANSAS

DEPARTMENT OF AGRICULTURE  
ADRIAN J. POLANSKY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on HB 2867  
to  
the House Environment Committee**

**by  
Constantine Cotsoradis  
Assistant Secretary  
Kansas Department of Agriculture**

**February 21, 2006**

Good Afternoon Chairman and members of the committee. I am Constantine Cotsoradis, assistant secretary of agriculture. I am here to testify in opposition to House Bill 2867.

This bill would make three significant changes to the Obstructions in Streams Act, all of which are contrary to our mission to protect the public, and could very well lead to the loss of life.

- First, it would prohibit the chief engineer from changing a dam's hazard classification, or size class, once it was constructed, unless the owner voluntarily enlarged the dam.
- Second, it would require the chief engineer to revert to the original hazard classification all previous changes that resulted in a higher classification.
- Third, once a dam is constructed, if it poses a potential threat only to the owner or operator, or his or her immediate family, it would be exempt from all requirements. Specifically, inspections mandated by the existing statute would not be required, nor could the owner be required to correct any violations of regulations or permit conditions, or to fix any conditions that threaten public safety.

Like most other states, Kansas has adopted a risk management approach to dam regulation. Different standards of design and construction are applied to different hazard classes to account for the unique risks they pose. When a dam has a higher hazard classification, it must meet more stringent design and construction requirements and it must be inspected more frequently.

High- and significant-hazard dams earn their classification because their failure is more likely to result in injury or loss of life or property than the failure of a low-hazard dam. Because of this risk, high- and significant-hazard dams currently are required to be inspected periodically by a licensed professional engineer to detect problems that could lead to a failure, and the engineer's report must be filed with the chief engineer.

Freezing or rolling back hazard classifications, as proposed by this bill, will prevent the chief engineer from adjusting a hazard classification in response to downstream changes that increase the threat to public safety. The chief engineer also will not be able to require that a dam be made safer than it was originally designed to be, even if the consequences of its failure are far more serious now than when it was first built.

Currently, high-hazard dams must be inspected once every three years and significant-hazard dams once every five years. However, if a hazard classification cannot be changed once a dam is built, or if the current hazard classification is rolled back to match the risk the dam posed when it was first built, dams that pose the greatest risk will not be inspected. These are the dams that were constructed to meet less stringent design and construction standards, and the hazard classification will not accurately reflect the consequences of a dam failure.

We are well aware that changing a dam's hazard classification from low-hazard to high- or significant-hazard can result in extra costs for the dam owner. The costs can be ongoing, such as for required periodic inspections, or they can be one-time costs to upgrade the dam to meet the standards appropriate for the hazard classification. To address this issue, we put together a work group of dam owners, industry associations, federal agencies, the Kansas Water Office and the State Conservation Commission.

The work group agreed that defining the problem is easy but finding a single, workable solution that doesn't compromise public safety is a significant challenge. Eliminating inspection requirements, eliminating the dam owner's responsibility to properly and safely maintain a dam, and removing the chief engineer's authority to regulate dams and structures, including bridges, alleviates the cost to dam owners, but only at a cost to public safety.

To help you understand the consequences of this bill, I would like to describe for you a dam in Junction City. Rimrock Dam is a relatively small dam built in the early 1950s. The original owner obtained a permit for the dam and it was approved as a stock pond in 1952. Had we been assigning hazard classifications in 1952, it likely would have been classified as a low-hazard dam.

The dam has deteriorated somewhat through the years due to poor maintenance and ill-advised changes to the dam. Today, it is owned by Junction City, and the city is working with the division of water resources to remedy the situation.

As required by statute, Junction City hired an engineer to perform a dam safety inspection late in 2004. The inspection documented that two day care centers, a pharmacy and an important local street would be inundated if the dam failed. The dam has been classified as a high-hazard dam since 1979 for these reasons.



If this bill were to pass, the chief engineer would be required to revise the dam's hazard classification to what would have been appropriate when it was built – low hazard. The impact of this revision is twofold. First, the chief engineer could require only that the dam be restored to its originally approved condition based on it being built to provide stock water in a pasture. Second, even though the dam's failure would endanger many people, periodic safety inspections would no longer be required and the dam would not have to meet more stringent design and construction standards appropriate to ensure public safety.

No one solution will completely remove the monetary burden dam owners' face, but we are making steps in the right direction. With time, we believe we will be able to solve this problem without endangering the public.

I will answer questions at the appropriate time.



Honorable Representative Freeborn,  
Chairperson House Environment Committee

SAKW stands in opposition of HB-2867 as written. Even though we applaud the intentions of the bill, we feel the language of the bill adversely restricts the chief engineer from administering the Dam Safety program in Kansas.

Development has occurred downstream of dams since they were constructed. This development has put human lives in danger. Reconstructing the dam to the standard required for the hazard created though not guarantying the dam will not fail, does improve the dam's chances of remaining intact.

SAKW would support an amendment to HB-2867 that would not allow the chief engineer to reclassify dams just because of changes to rules and regulations. This means that a structurally sound dam that has had no development downstream since construction should not be reclassified just because of changed rules and regulations. Rules and regulations constantly change. Changed rules and regulations accompanied with appropriated funds to do the dam upgrades would be more acceptable.

One other provision of HB-2867 that SAKW opposes is that landowners owning the dam site and all downstream property should be allowed to accept the consequences of a failed dam. Selective enforcement of rules and regulations never should be allowed. Independence is a great virtue in our country, but not to the extent that society accepts or condones unnecessary lose of life.

Rehabilitation or upgrades of dams along with required frequent inspections of higher classed dams is expensive. Prevention of more dams being reclassified through proper flood plain management should be the top priority of Kansas. Until Kansas takes that big step to require every county to manage the area below dams to prevent unwise development, we will see the problem continue to grow.

SAKW appreciates the opportunity to present this written testimony and we wish your committee the best in the difficult days ahead.

Herbert R. Graves Jr.  
SAKW Executive Director

# KANSAS

DIVISION OF THE BUDGET  
DUANE A. GOOSSEN, DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

February 16, 2006

The Honorable Joann Freeborn, Chairperson  
House Committee on Environment  
Statehouse, Room 143-N  
Topeka, Kansas 66612

Dear Representative Freeborn:

SUBJECT: Fiscal Note for HB 2867 by House Committee on Environment

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2867 is respectfully submitted to your committee.

HB 2867 would require the Chief Engineer of the Division of Water Resources of the Department of Agriculture to review the files of safety inspections for all dams and adjust those files to reflect the hazard classification that was on the original application for each dam.

The bill would clarify that the Chief Engineer would be prohibited from changing the size or hazard class of any dam to a larger size class or higher hazard class after the dam has been built, regardless of downstream development or construction, unless the dam has been structurally modified to a larger size or impoundment after the downstream construction in question. Any dam that had been re-classified because of downstream development or construction would be re-classified to its assigned classification at the time of the dam's construction or its most recent structural modification. Owners and operators of dams would be required to notify local emergency management personnel of the presence of all dams. A safety inspection would not be required if the only lives or property endangered by the dam are those of the dam owner or the dam owner's immediate family. Likewise, the Chief Engineer would not require the correction of any violation existing in the construction, modification, operation, or maintenance of a dam if the only lives or property endangered by the dam are those of the dam owner or dam owner's immediate family.

The Honorable Joann Freeborn, Chairperson  
February 16, 2006  
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The Department of Agriculture indicates that existing staff in the Water Resources Program would review and adjust all files for 451 dams as required within existing resources.

Sincerely,



Duane A. Goossen  
Director of the Budget

cc: Max Foster, Agriculture  
Mark Heim, Conservation Commission

New Sec. 7

(b) - If land placed in a conservation easement under the KS farm and ranch land protection grant program is taken for public use, then the state of Kansas

from the  
~~settlement~~  
monies

shall be paid <sup>an</sup> amount ~~of~~ equal to the amount ~~of~~ ~~the~~ state contributed under this act.