Approved: 2/21/07
Date

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Mark Taddiken at 8:30 a.m. on February 14, 2007 in Room 423-S of the Capitol.

All members were present except:
Derek Schmidt- excused

Committee staff present:
Raney Gilliland, Kansas Legislative Research
Art Griggs, Office of Revisor of Statutes
Judy Seitz, Committee Assistant

Conferees appearing before the Committee:
Proponents:

Tim Barker, Executive Vice President, Orion Ethanol
Duane Simpson, Vice President of Governmental Affairs, Kansas Association of Ethanol Processors (KAEP)

Opponents:

Ken Peterson, Executive Director, Kansas Petroleum Council
Tom Palace, Executive Director, Petroleum Marketers and Convenience Store Association of Kansas (PMCA)
Brad Harrelson, State Policy Director - Governmental Relations, Kansas Farm Bureau (KFB)

Neutral:

Jere White, Executive Director, Kansas Corn Growers Association/Kansas Grain Sorghum Producers Association

Others attending:
See attached list.

The Chairman said that copies of the Fiscal Note on **SB 262** –**Motor vehicle purchases by state agencies; E85 fuels,** have been distributed to the Committee members. Hearings were held on **SB 262** yesterday, February 13.

He also noted that the Committee has copies of the minutes of February 7 which will be acted upon later in the meeting.

Chairman Taddiken opened the hearing on **SB 303 - Kansas fuel ethanol act.**

Raney Gilliland, Legislative Research, reviewed **SB 303.** This bill would enact the Kansas fuel ethanol act. The second section of the bill defines terms used in the bill. Section 3, page 2, states that on or after January 1, 2009 all gasoline sold for retail in the state would be fuel ethanol blended gasoline and the fuel would be obtained from qualified Kansas producers. There is a requirement in Section 4 that all fuel retailers, wholesalers, distributors and marketers be allowed to purchase ethanol from any terminal, position holder, fuel ethanol producer, fuel ethanol wholesaler or supplier. Section 5 states that upon request of the department of agriculture or the department of revenue certain individuals are required to provide documentation regarding sales and price of ethanol. There is also a list of exemptions to this act. Section 6 lists the fines for violating this provision.

Mr. Gilliland took questions from the Committee.

Jarrod Forbes, Legislative Counsel, Orion Ethanol, introduced Tim Barker, Executive Vice President, Orion Ethanol. Mr. Barker presented testimony in favor of **SB 303** (Attachment 1). He said that although there is political support for ethanol incentives the business climate in Kansas is lagging. Mr. Barker said that it is necessary to communicate to the investment community that the protection of their capital is a top priority. He also said supporting **SB 303** and legislation similar to that of other states to further the goal of stimulating economic development in Kansas, reducing dependence on foreign ethanol and helping reduce harmful emissions.

Mr. Barker stood for questions.

Jere White, Executive Director, Kansas Corn Growers Association/Kansas Grain Sorghum Producers Association, presented neutral testimony on **SB 303** (Attachment 2). He expressed some concerns with the requirement that ethanol be obtained from a Kansas qualified ethanol producer because it may not be feasible at all times. Another concern is the rationale for requiring that all terminals offer for sale gasoline of premium grade or at least 91 octane. Mr. White said the Kansas Corn Growers Association likes the direction taken in Section 4 that would preclude the prohibition of a retailer from selling ethanol blended fuels due to franchise or other restrictions.

Chairman Taddiken requested questions be held for conferees until all conferees had testified.

Duane Simpson, Vice President of Government Affairs, Kansas Association of Ethanol Processors (KAEP), offered statements in support of **SB 303** (Attachment 3). He said that KAEP has not endorsed **SB 303** or an E-10 mandate. Another bill, **SB 327** is being heard in Senate Assessment and Taxation that attempts to do what **SB 303** does through financial incentives rather than through a state mandate. He also said that **SB 303** does not cost the state any money while **SB 327** has a fiscal note of $1.5 to $5 million.

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

Ken Peterson, Director, Kansas Petroleum Council, spoke in opposition to **SB 303** (Attachment 4). He said that states should not mandate the sale of ethanol and it could interfere with a reliable supply of fuels during times of disruptions which would lead to higher consumer prices.

Tom Palace, Executive Director, Petroleum Marketers and Convenience Store Association of Kansas (PMCA), testified in opposition of **SB 303** (Attachment 5). He said that although PMCA favors the expanded use of ethanol they do not support mandating ethanol. He further stated that if ethanol is priced right (lower than regular gasoline) consumers would buy ethanol. Mr. Palace said the PMCA encourages the use of renewable fuels through increased consumer awareness, tax credit incentives for the retailers to sell ethanol and producer incentives.

Brad Harrelson, State Policy Director-Governmental Relations, Kansas Farm Bureau, spoke in opposition to **SB 303** (Attachment 6). He said that the KFB remains consistent and committed to supporting good public policy that encourages bio-fuel consumption, but have yet to conclude that a mandate is the best path for the state or fuel consumers at this time. Mr. Harrelson stated that the KFB would be more supportive of incentives than mandates.

Conferees took questions from the Committee.

Hearing on **SB 303** was concluded.

The Committee requested information from conferees regarding wording on Section 4 that specifically address the franchise question.

Senator Pine moved the approval of the minutes of February 7, seconded by Senator Ostmeyer. Motion carried to approve the minutes.

Meeting was adjourned at 9:30 a.m..

SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-14-07

NAME	REPRESENTING
Brad Harrelson	KFB
Carole Jordan	KDA
[illegible]	Orion Ethanol
Frank Moore	Orion Ethanol
Jim Barker	Orian Ethanol/Director KAEP
Tom Palace	PMCA of KS
Robyn Horton	KMCA
Ken Peterson	KS Petroleum Council
Duane Simpson	KAEP
Leslie Kaufman	Ks Co-op Council
Brianna Landon	———
Jere White	KCGA – KGSPA
Cindy Scott	University of Kansas School of Education
Emily Williams	University of Kansas School of Edu.
Thomas Fulbright	University of Kansas School of Education
Gregory Wellnitz	University of Kansas School of Education
Mike Beam	Ks. Livestock Assn.
Corey Mohn	KDOC
Lindsey Douglas	Hein Law Firm

Sandy Braden — Alliance of Auto Manufacturers

Testimony On

SB 303

Senate Committee on Agriculture

February 14, 2007

Thank you Mr. Chairman and distinguished Committee Members for the opportunity to address you this morning regarding SB 303. My name is Tim Barker, my title is Executive Vice President of Orion Ethanol, an ethanol company based in Pratt, Kansas. Orion is a renewable fuels company focusing on ethanol production. It is nearing completion of its first ethanol refinery in Pratt, Kansas and has locations secured to build 5 more refineries, 3 of which are in rural Kansas, including Hugoton. I have been with Orion since its inception and we have successfully financed and are nearing completion of our first ethanol refinery in Pratt, Kansas. We became involved with the Pratt project, now called Gateway Ethanol, in 2003 and have endured numerous obstacles on the road to completion. These obstacles have come primarily in the form of price volatility due to our dual commodity structure, that is to say that we face commodity price risk both in the feedstocks that we use and in the finished products that we sell. The industry is currently facing numerous headwinds which include near record high corn prices, declining oil prices, rising construction costs, and poor investor sentiment. Although there is widespread political support for ethanol incentives, my personal experience has lead me to the conclusion that the business climate in Kansas is lagging with respect to potential business development. As Kansas companies like Orion Ethanol and other ethanol producers strive to compete for capital looking to invest in ethanol, we need to show them more state support for the products that we produce. In fact, Mr.

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Attachment 1

Chairman, failing to support SB 303 will divert investment capital away from rural Kansas and to State's that offer mandated protection.

As a native Kansan, born and raised in Pratt, I have seen dramatic socioeconomic deterioration during my lifetime. This is evident in the aging population and subsequent decrease in school class size, increased participation in the school systems free and reduced lunch program, as well as the reduced number of single family operated farm operations in western Kansas. Pratt is currently and will continue to enjoying many economic benefits because of the ethanol plants construction. These impacts are felt throughout the community, including restaurants, hotels, doctors offices, dentists, insurance agents, as well as the new and existing housing markets and many more businesses that have been impacted.

President Bush as well as Governor Sebelius have asked us all to come up with solutions to our dependence on foreign oil. SB 303 is a step in the right direction. Ethanol development benefits the State of Kansas in three ways. Ethanol production spurs local economic development, reduces dependence on foreign oil, and is environmentally friendly. However, Pratt's ethanol production, as well as ALL other Kansas ethanol production is vulnerable to decreasing domestic support and therefore vulnerable to imported ethanol, which is produced more cheaply than ours. Unless State governments act to support domestic producers of ethanol, we will become as dependant on foreign ethanol as we are on foreign oil today. Through legislation, you have the power to keep Kansas energy dollars in Kansas rather than shipping them to the Middle East or South America. Supporting SB 303 sends a clear message that you support the

Kansas rural economy and the Kansas workforce without a fiscal impact to the State General Fund (SGF)—unlike other proposals you will hear this session.

Both the Federal and State governments are using mandates and tax incentives to mitigate the risk associated with price volatility and enhance the competitive position for Domestic producers of ethanol in a global market place.

Although the federal ethanol program has been an unmitigated success, state governments must create a development climate that both encourages new ethanol production and continues to support existing ethanol producers. From just 175 million gallons in 1980, the industry has increased more than ten-fold to more than 5.5 billion gallons today. Approximately 30% of the nation's gasoline is now blended with ethanol - reducing the demand for imports, stimulating economic benefits across the country, and reducing air pollution. The federal government realizes a positive budgetary impact from the program. The U.S. Department of Agriculture has concluded the ethanol tax incentive program actually saves the government money by reducing farm program costs and stimulating rural economies. USDA has stated the net impact of the tax incentive and farm programs is a net savings of more than $2 billion annually.

A Renewable Fuels Association study[1] on the economic impacts of a 40 million gallon ethanol facility on local communities found:

- During construction, capital spending generates $142.2 million in gross output to a local economy and $46 million in new household income (one-time impact);
- More than $56 million is spent locally on its daily operations each year;
- The local economy is expanded by $110.2 million each year;
- Local farmers receive an additional 5–10 cents per bushel in increased revenue at the

farm gate (whether delivered to the ethanol facility or not);

- The plant creates 41 permanent direct jobs and 694 permanent jobs throughout the entire economy; and,
- The ethanol plant will generate $19.6 million in annual household income for the community.

By supporting an SB 303 and legislation similar to that of other states, you will further the goal of stimulating economic development in Kansas, reducing dependence on foreign ethanol, and helping reduce harmful emissions.

Orion Ethanol respectfully requests, Mr. Chairman, that you give due consideration to SB 303 and support the continued economic stimulus in rural Kansas.

Kansas Grain Sorghum Producers Association

Kansas Corn Growers Association

WRITTEN STATEMENT

TO: **Senate Agriculture Committee**

FROM: **Jere White, Executive Director**

DATE: **February 14, 2007**

SUBJECT: **Senate Bill No. 303**

The Kansas Corn Growers Association and Kansas Grain Sorghum Producers wish to submit this brief testimony in regards to S.B. 303, a bill that would place a requirement to use ethanol blended fuels in Kansas. Neither organization has adopted policy that supports a requirement to use ethanol blended fuels, such as those found in this bill. While not standing in support or opposition of the bill, we do have some specific concerns with a couple provisions of this bill, and will address them at this time.

First, in Section 3, the requirement that fuel ethanol be obtained from a Kansas qualified ethanol producer may not be feasible at all times. We have seen many times where local blending opportunities, based on economics, give way to more lucrative ethanol markets a long ways from the plant.

Second, in the same section, we simply do not understand the rationale for requiring that all terminals offer for sale gasoline of premium grade, or at least 91 octane. I am not sure if the suggestion is that ethanol blended fuels cannot be premium grade or if it is merely an attempt to ensure a supply of non ethanol blended gasoline which would then be illegal to sell.

We do like the direction taken in Section 4 that would preclude the prohibition of a retailer from selling ethanol blended fuels due to franchise or other restrictions. We would suggest that other language found in Senate Bill 327 might accomplish the same through incentives, but clearly this practice is holding back the expansion of ethanol use in Kansas.

Mr. Chairman, members of the committee, our members have consistently stood in support of virtually all pro-ethanol legislation considered by this legislature. While we find ourselves in a unique, lack of position on this bill, as always, we stand ready to work with this body to find positive outcomes that would further promote the use of biofuels in Kansas. Thank you.

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www.ksgrains.com • jwhite@ksgrains.com

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Attachment 2

Kansas AEP

Association Of Ethanol Processors

Ethanol - *Made in Kansas*

Statement on SB 303
Senate Agriculture Committee
Mark Taddiken, Chair
February 14, 2007

Thank you, Mr. Chairman and Members of the Senate Agriculture Committee, for this opportunity to testify on SB 303. My name is Duane Simpson; I am the Vice President of Government Affairs for the Kansas Association of Ethanol Processors. KAEP is the trade association that represents ethanol plants and their affiliated industries in the state.

I am officially testifying as a proponent of SB 303, but I want to stress that KAEP has not endorsed SB 303 or an E-10 mandate. We do, however, believe that the time has come for the state to start considering whether or not we are going to be a state that either through incentives or mandates requires the petroleum industry to provide ethanol access to the wholesale market. The oil industry has limited resources throughout the nation to upgrade terminal facilities to provide ethanol. Understandably, they are focusing their attention on states that mandate ethanol blended fuel. If Kansas is to attract the capital from these companies to upgrade our fuel distribution facilities, we must compete with other states that are passing mandates.

That being said, you do not legislate in a vacuum. There is another bill that KAEP supports that has a hearing in the Senate Assessment and Taxation Committee tomorrow. SB 327 attempts to do what SB 303 does through financial incentives rather than through a state mandate. KAEP believes that the goal of improving distribution chains and increasing ethanol sales is obviously in the state's interest. The method to achieve those goals is what the Legislature must decide. We have worked diligently to build a political coalition that supports SB 327. Many of those supporters are opponents to SB 303. On the other hand, SB 303 does not cost the state any money, SB 327 has fiscal note of $1.5 to $5 million.

Ultimately, the Legislature will have to decide whether it prefers to pass a controversial bill that does not have a fiscal note, or if it wants to pass a politically popular bill that costs up to $5 million per year. Unfortunately, our association cannot provide you guidance on this issue because it does not have set policy. However, we do believe that providing a market for ethanol in Kansas, either through incentives or mandates is a goal that should be supported and we urge this committee to look at both SB 303 and SB 327 and to pass at least on of them.

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KAEP, 816 SW Tyler, Topeka, KS 66612, 785-234-0461, Fax 785-234-2930, www.ethanolkansas.org

Kansas
Petroleum
Council

COMMENTS TO THE SENATE AGRICULTURE COMMITTEE
ON SENATE BILL 303

February 14, 2007

Submitted by Ken Peterson, Director
Kansas Petroleum Council

Mr. Chairman and members of the Committee, I appreciate the opportunity to offer comments on Senate Bill 303, legislation to mandate the retail sale of ethanol in the state starting January 1, 2009.

The Kansas Petroleum Council is a trade association whose membership includes refiners that provide fuel in Kansas. We oppose this legislation because it is a mandate - and mandates seldom create good public policy.

Our companies are the leading user of ethanol and a key player in increasing the use of ethanol. Often overlooked or ignored is the fact that our industry has blended ethanol into gasoline for more than a decade.

Ethanol plays an important role in meeting the nation's transportation fuel need. Our industry supported the uniform, national Renewable Fuels Standard enacted by Congress to integrate more ethanol into the national gasoline pool and provide a secure, reliable and seamless integration of growing ethanol supplies to consumers.

The industry has made significant investments to meet and exceed the existing federal requirement for ethanol-blended gasoline in the RFS.

In 2006, we were required to use 4 billion gallons; in fact, we used 5.4 billion gallons.

An additional federal RFS seems likely based on what the President has proposed and how Congress has reacted. The figure is anybody's guess, but the key is a national fuel standard.

State-by-state mandates collide with the flexibility that Congress provided in the national RFS program. Flexibility is the key to success.

A comment by the Renewable Fuels Association in testimony November 16, 2005, before the U.S. Senate Environment and Public Works Committee should be noted:

"Importantly, the RFS does not require that any renewable fuels be used in any particular area, allowing refiners to use these fuels in those areas where it is most cost-effective."

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The current RFS provides the ethanol industry with incentives to increase volumes. Further mandates at the state level are unnecessary and counterproductive.

States should not mandate the sale of ethanol. A patchwork of state-by-state mandates beyond a national RFS will create additional boutique fuel needs in an already tight national distribution system. A state mandate will interfere with the flexibility Congress provided in the national program.

A state mandate also could interfere with a reliable supply of fuels during times of disruptions and will lead to higher consumer prices.

Let the market place work. Current federal levels, in concert with market forces, have attracted substantial and significant investment capital to grow ethanol supplies based on market factors.

Mandates and other dictates seldom add efficiency or opportunity to the marketplace.

Members of the Committee, we respectfully request that you let the free market work by rejecting Senate Bill 303.

Thank you for your courtesy and attention.

PMCA
of Kansas

Testimony

To: Senate Agriculture Committee
From: Thomas M. Palace
Date: February 14, 2007
Re: Comments on SB 303

Mr. Chairman and members of Senate Agriculture Committee:

My name is Tom Palace. I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 300 independent Kansas petroleum distribution companies and numerous convenience store owners throughout Kansas.

PMCA supports the expansion of renewable fuels for both ethanol and biodiesel fuel. We feel Kansas has made great strides in the past few years promoting the use of ethanol by way of tax incentives to build state-of-the art ethanol plants, and by requiring the state's vehicle fleet to use these products if the price of the fuel is within the acceptable levels.

Senate Bill 303 mandates that all gasoline sold in Kansas after January 1, 2009 shall be blended with ethanol. Although PMCA favors the expanded use of ethanol, we do not, however, support mandating ethanol.

Consumers today are "price sensitive" and ethanol today is not "price sensitive." A recent report by the National Association of Convenience Stores released this month states that: "To save only one penny per gallon, 27 percent of drivers say they would take a left-hand turn across a busy street; 20 percent would drive five minutes out of their way; and 11 percent would even drive 10 minutes out of their way*...."

If ethanol is priced right (by that I mean lower than the price of regular gasoline) consumers will buy ethanol. If SB 303 would guarantee the price of ethanol would always be lower than the cost of gasoline, PMCA would support this bill 100%.

Petroleum Marketers and Convenience Store Association of Kansas
115 SE 7th • Topeka, KS 66603
PO Box 678 • Topeka, KS 66601-0678
785-233-9655 • Fax: 785-354-4374

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Mr. Chairman, petroleum retailers will sell whatever the consumer demands. If we had guarantees that Kansas will have ample supply of ethanol, and the price were right, our opinion of SB 303 would probably be different. Today, petroleum marketers are becoming more receptive to ethanol, and we attribute that to the price that was showing up at the pump when we took the pump labels off in 2005. As an example, in July of 2005, the spread between ethanol and gasoline was so great that marketers who had never before sold ethanol were forced to do so because they were not competitive pricewise at the pump compared to regular gasoline.

Here we are in February 2007, and that example has changed dramatically. For the past 12 months, the price of ethanol has consistently been higher than regular gasoline.

Mandates are seldom looked upon favorably by any industry, even under the best of circumstances. PMCA would rather encourage the use of renewable fuels through increased consumer awareness, incentives (tax credit) for the retailers to sell ethanol, producer incentives and the combined result of all these factors: the free market place operating as it should and does.

Thank you.

*2007 NACS Consumer Fuels Report (National Association of Convenience Stores)

KANSAS FARM BUREAU
The Voice of Agriculture

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PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON AGRICULTURE

RE: SB 303 – an act enacting the Kansas fuel ethanol act.

February 14, 2007
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 today and offer testimony on SB 303. 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.

On behalf of Kansas Farm Bureau (KFB) I would like to extend our appreciation to the Kansas Legislature for it's past support for bio-fuels. You undoubtedly share our firm commitment to this valuable, renewable energy resource. We at KFB stand ready to assist you in your mission to promote these alternative fuels.

Ethanol is unquestionably, one of the most notable success stories in agriculture today. Ethanol demand continues to surge, and the industry is setting unprecedented production records. Consumption of this high-octane, low-emission fuel not only reduces our dependence on foreign oil; it enhances market demand for corn and other grains, which is good for Kansas producers, and the rural Kansas economy.

In the 2005 session KFB successfully supported repeal of the ethanol labeling requirement (E-10 or less). As a consequence, ethanol consumption increased nearly 700 percent in corresponding months from the prior year. We also continue statewide

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promotional programs that provide factual product information to consumers refuting common myths and educating about the benefits of bio-fuel. Ethanol is now, a refined, consistent, high-quality product, much improved from the early "gasohol" days. In fact, all automobile manufacturers warranty the use of ethanol-blended fuel, which is found in over 30% of all fuel sold nationwide. Similar successes are being experienced with broader acceptance and availability for bio-diesel, which is particularly important when agricultural input and transportation costs continue to rise in staggering proportions. While these statistics are most encouraging, we believe there is more that can be done to promote bio-fuel production and consumption.

However, we are not prepared today to seek a 100% ethanol mandate by 2009 as contemplated in SB 303. KFB remains consistent and committed to supporting good public policy that encourages bio-fuel consumption, but have yet to conclude that this is the best path for the state of Kansas or fuel consumers at this time. Logical assumptions would lead you to conclude such a mandate would be good for Kansas farmers. But, important questions should be answered first. Among these: Does the infrastructure exist to meet the demand?; What is the anticipated impact on overall fuel price?; Is there public support for such a policy?; and, What experiences have been realized in other states where similar policies have been adopted? Until answers to these questions and others are resolved, we prefer that market forces, and other proactive legislative initiatives build demand for bio-fuels in Kansas.

In summary, thank you for your consideration, your support of bio-fuels and Kansas agricultural producers. We stand ready to assist as you consider these important measures. Thank you.