

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman John Faber at 3:30 P.M. on March 24, 2008, in Room 783 of the DSOB.

All members were present except:

Representative Clay Aurand - excused
Representative Vaughn Flora - excused
Representative Josh Svaty - excused

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Hank Avila, Kansas Legislative Research Department
Gordon Self, Revisor of Statutes
Kristen Kellems, Revisor of Statutes
Florence Deeter, Committee Assistant

Conferees appearing before the committee:

Scott Carlson, Assistant Director, State Conservation Commission
Jeff Keating, Directorate of Public Works, Environmental Division, Fort Riley, Kansas
Alan Pollom, Kansas Chapter of Nature Conservancy
Mike Beam, Kansas Livestock Association
Luke Bell, Director of Governmental Relations, Kansas Association of Realtors
Woody Moses, Managing Director, Kansas Aggregate Producers Association
Clint Patty, Attorney, Frieden & Forbes
Joe Marney, Owner and Vice-President, Concrete Supply of Topeka
Jeffrey Wietharn, Attorney, Kaw River Drainage District
Larry Brennan, Kaw Valley Drainage District
Stephen Dailey, General Manager, Fairfax Drainage District, Wyandotte County
Steve Swaffar, Director Natural Resources, Kansas Farm Bureau {Written Only}
Chris Wilson, Executive Director, Kansas Building Industry {Written Only}
Lenny Meier, President, Vegetable Growers Association {Written Only}

Others attending:

See attached list.

Hearing on: SB 538 - Conservation commission relating to easements; establishing the farm and ranch land protection program

Chairman Faber called the meeting to order, announced the agenda for the day, and opened the hearing on **SB 538**. Scott Carlson, Assistant Director, State Conservation Commission (SCC), spoke as a proponent of the bill and said the proposed **SB 538** would amend **K.S.A. 2-1904**, allowing the SCC to provide state funded grants to eligible entities for the administration, lease or purchase of perpetual conservation easements (Attachment 1). Mr. Carlson provided details for the implementation of the conservation easement program and outlined the fiscal impact on the SCC budget, saying the program is contingent upon the amount of funding appropriated.

Jeff Keating, Directorate of Public Works, Environmental Division, Fort Riley, stated the division's position is supportive of the aspects of **SB 538** (Attachment 2). He said the new section adequately serves the interest of Fort Riley when ranking projects for conservation easement funding. Mr. Keating commented on the allotment of funds by stating that the full amount had not been used so that other entities could use the state funds for easements in the Flint Hills. He expressed appreciation for the protection provided through the Army Compatible Use Buffer area for the habitat of declining grassland bird species.

Alan Pollom, Kansas Chapter of Nature Conservancy, spoke in favor of **SB 538**, saying the conservancy owns six preserves in Kansas encompassing more than 46,000 acres (Attachment 3). He said the work with Kansas landowners has netted over 20,000 acres using the program of conservation easements. Mr. Pollom commented on the opportunities this bill may provide for the state to receive matching resources from federal agencies, nonprofit land trusts and landowners who are interested in long-term preservation of their farms and

CONTINUATION SHEET

MINUTES OF THE House Agriculture and Natural Resources Committee at 3:30 P.M. on March 24, 2008, in Room 783 of the DSOB.

ranches.

Mike Beam, Kansas Livestock Association (KLA), said that in the past the Legislature has provided funding in the State Conservation Commission budget for conservation easements of approximately \$311,000 annually. He said that putting a statutory program in place to preserve farm and ranch land in Kansas is recommended by agreement of several agencies (Attachment 4). He reported the number of acres lost nationwide from 1992-1997 amounts to an area the size of Maine. Mr. Beam said that members of KLA have formed an agricultural land trust called the Kansas Livestock Association Ranchland Trust, Inc. He noted that no funding mechanism is indicated at this time in **SB 538**.

Luke Bell, Director of Governmental Relations, Kansas Association of Realtors (KAR), offered neutral testimony on **SB 538** (Attachment 5). He provided a definition of conservation easements and said that, once restrictions are in place, they are binding on all future landowners in perpetuity. Mr. Bell said the intent of this legislation is to establish a state level grant program for leveraging federal moneys to purchase conservation easements. He indicated that KAR is not in agreement with any attempt to levy new excise taxes on real property or new real estate development.

Written testimony in opposition to the bill was provided by:

Chris Wilson, Executive Director, Kansas Building Industry (Attachment 6).

Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau (Attachment 7).

Dave Webb, Kansas Livestock Association, Stillwell, Kansas (Attachment 8).

The Chairman closed the hearing on **SB 538**.

Hearing on: HB 2982 - Drainage district excavation limitations

Clint Patty, Attorney, Frieden and Forbes, Topeka, representing the Kansas Aggregate Producers Association (KAPA), spoke in support of clarifying **K.S.A. 24-132** (Attachment 9). He explained there is a need in the sand and gravel industry for some regulatory certainty. Mr. Patty said since the statute was amended in 1995, the Corps of Engineers, the Kansas Division of Water Resources and all other drainage districts except one have properly interpreted the amendment and limit their work to 1,000 feet from a flood control facility. He said the KAPA recommends passage of **HB 2982**.

Joe Marney, Vice-President of Concrete Supply of Topeka, presented personal testimony regarding his dredging business, which has been in his family for twenty-five years (Attachment 10). He indicated that the Corps of Engineers informed the company five years ago that the permits for sand dredging operations on the river would be cancelled. Mr. Marney said misinterpretation of the statute has delayed his dredging project. The lawsuit filed against his company by the Kaw River Drainage District claims that they have authority to prohibit him from dredging in an inland pit extraction operation. Mr. Marney submitted a document of testimony given in 1995, on behalf of the Kaw Valley Drainage District of Kansas City, Kansas, for verification of working within the boundaries of 1,000 feet landward or riverward (Attachment 11). Mr. Marney requests clarification be made regarding this issue.

Woody Moses, Managing Director, KAPA, spoke in favor of **HB 2982**, giving some background in the dredging operations of various businesses (Attachment 12). He said approximately 70-80% of sand and gravel is used by state and local governments and only one new operation has been opened since 1992; this area is not open to public usage. Mr. Moses said there is only one producer in Shawnee County and sand prices have increased from \$3.75 to \$6.50 per ton during that time period. Businesses who must transport material from the Kansas City area will pay \$7.50 per ton; if purchased from Sedgwick or Reno County, the amount is \$3.00 per ton. Mr. Moses indicated that inserting the language of **K.S.A. 19-3309** (Attachment 13) into **K.S.A. 24-132** will clarify the intent of authority suggested in **HB 2982**.

Jeffery Wietharn, Attorney, representing the Kaw River Drainage District, spoke in opposition to **HB 2982**. He indicated the amendment to **K.S.A. 24-132** contained in the bill seeks to limit the authority of drainage districts' governing bodies to regulate excavations within their districts. Mr. Wietharn respectfully requested the committee to reject acting on the bill (Attachment 14).

CONTINUATION SHEET

MINUTES OF THE House Agriculture and Natural Resources Committee at 3:30 P.M. on March 24, 2008, in Room 783 of the DSOB.

Larry Brennan, Administrator of Kaw Valley Drainage District of Wyandotte County, Kansas, spoke in opposition to **HB 2982**. He indicated that the permit process has been quite successful in this district. He expressed concern for improper excavations and the risk they pose in relation to land and flood control facilities (Attachment 15).

Stephen Dailey, General Manager, Fairfax Drainage District, Wyandotte County, Kansas, expressed opposition to **HB 2982**, saying the district believes the proposed change in regulatory authority will compromise the ability of drainage districts to continue to provide necessary flood protection for the area. Mr. Dailey said the drainage districts in highly developed areas have a responsibility to protect residents from flooding when river levels become elevated and they must be available to convey interior storm water through drainage ditches and sewers. He closed his testimony and requested the committee refrain from changing **K.S.A. 24-132** (Attachment 16).

Written testimony as a proponent was provided by:

Lenny Meier, President Vegetable Growers Association (Attachment 17).

The Chairman closed the hearing on **HB 2982**.

The Chairman called the committee's attention to **HCR 5037**. Representative Powell moved to recommend the favorable passage of the resolution. Representative Moxley seconded the motion. The motion passed.

The Chairman asked for the committee's desire regarding **HCR 5032**. Representative Moxley moved to recommend the favorable passage of the resolution. Representative Williams seconded the motion. The motion passed.

The Chairman requested the committee begin discussion on **SB 565**. Representative Gatewood made a motion and Representative Powell seconded; upon discovery of incorrect information, the motion was withdrawn. Representative Powell made a substitute motion (line 17, page 3) changing \$15,000 to \$4,756. Representative Light seconded the motion. The substitute motion carried.

Representative Gatewood moved to recommend SB 565 as favorable for passage as amended. Representative Powell seconded the motion. The motion passed.

As a point of interest, Representative Lukert provided information regarding the tax exemption bill for hunting lodges had been worked in Taxation Committee but did not pass.

The Chairman adjourned the meeting at 5:15 p.m. The next meeting is scheduled for March 25, 2008, at 3:30 p.m.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: March 24, 2008

NAME	REPRESENTING
Jeff Wiethorn	Kaw River Drainage District
Larry Brennan	Kaw Valley Drainage Dist of Wy Co. KS
JAMES L. JENKINS	KAW VALLEY DD-WY. Co.
STEVE DAILLY	FAIRFAX AD-WY. Co.
SCOTT CARLOW	SCC
STAN RASMUSSEN	U.S. ARMY
Andy Lewis	Kaw River Drainage District
Yony MEIER	KAW RIVER DRAINAGE DIST
Donn Teske	KFu
Matt Scherer	KDA
ALAN POLLOM	THE NATURE CONSERVANCY
Jeff Keating	FORT RILEY
Amy Thornton	KDWP
Berend Koops	KDWP
Scott Heidner	Kaw River Drainage District
Woody Moses	KAPPA
Wendy Harris	KAPPA
Clint Patty	Frieden: Forbes
Stephen P. Weir	Stephen P. Weir, P.A.

HOUSE AGRICULTURE COMMITTEE GUEST LIST

DATE: March 24, 2008

NAME	REPRESENTING
Joe Marrey	Builders Choice Associates
CU Catsoradis	KDA
John Rundel	
James Rundel	
Luke Bells	Ks Assoc. of REALTORS
Martha Jean Smith	KMHHA
Debi Baker	KWOO

Testimony on SB 538
to
The House Agriculture and Natural Resources Committee
by
Scott B. Carlson
Assistant Director
State Conservation Commission
March 24, 2008

Chairperson Faber and members of the committee, thank you for the opportunity to provide testimony on SB 538. The empowering statute for the State Conservation Commission (SCC) is Conservation District Law, K.S.A. 2-1901 et seq. The proposed SB 538 would amend K.S.A. 2-1904 and establish the Farm and Ranchlands Protection Program and specifically authorizes the SCC to provide state funded grants to eligible entities for the administration, lease or purchase of perpetual conservation easements. The SCC could adopt rules and regulations to implement an easement program. The SCC has the ability to implement this program if SB 538 is passed and funds appropriated as the bill does not require the SCC to be tasked with the actual contracting, maintaining or holding of the easement.

Conservation Easement Program Implementation:

Under proviso, the SCC received \$311,500 for FY 2008 to use as a match to the Army Compatible Use Buffer (ACUB) Program and the USDA, NRCS Farm and Ranchlands Protection Program (FRPP) funds. The SCC has funded part of one easement combined with FRPP and ACUB funding in the buffer area around Fort Riley of 640 acres. The ACUB program establishes buffer areas around Army installations to limit effects of encroachment and maximize land inside the installation that can be used to support the installation's mission. Under the FRPP, the Natural Resources Conservation Service (NRCS) may provide up to 50 percent of the appraised fair market value of the conservation easement; the cooperation entity provides the other 50 percent. Landowner donations up to 25 percent of the appraised fair market value of the conservation easement may be considered part of the entity's matching offer. In FFY 2008 the FRPP was funded at \$633,313. The NRCS had over \$1.2 million in easement funds request on 7,200 acres during FFY 2008.

In FY 2007 the SCC received \$311,500 under proviso authority and funded the state share of four easements and supplemented part of a fifth easement with FY 2008 funds. The easements were in the Fort Riley Buffer area and the Flint Hills totaling 2,287 acres plus part of an easement shared with FY 2008 funds of 640 acres. The first year the SCC received conservation easement funding was FY 2006. Proviso language gave the

SCC authority to enter into a conservation easement in the Flint Hills in conjunction with the FRPP in the amount of \$31,250 on 500 acres.

Fiscal Year	Area	Acres	Total Cost	Cost/Acre	State Funds
2006	Flint Hills	500	\$125,000	\$250	\$31,250
2007	Flint Hills & Ft Riley	2,287	\$988,594	\$432	\$246,775
2008	Ft Riley	640	\$483,999	\$756	\$109,999*

***Funded from FY 2007 and 2008 funds**

Fiscal Impact on the SCC:

The fiscal impact on the SCC is contingent upon the amount of funding appropriated toward this effort. In FY 2006, 2007 and 2008, the SCC managed with current staff and resources administering the state funding of six conservation easements totaling \$388,024. Fiscal Year 2009 would have costs associated with the development and adoption of administrative rules and regulations and potential implementation costs for program administration. The majority of costs associated with salary and wages will be absorbed by the agency through reassignment of current staff duties and priorities.

Furthermore, SB 538 does allow easement contracting with other entities that may not seek FRPP funding to supplement an easement purchase. If this occurs the SCC will have the responsibility to rank and prioritize applications. This may increase staff workload. To date, all SCC funded easements have been prioritized by adopting the FRPP ranked applications.

Mr. Chairman, this concludes my comments and I will stand for questions at the pleasure of the committee.



DEPARTMENT OF THE ARMY
INSTALLATION MANAGEMENT COMMAND
HEADQUARTERS, UNITED STATES ARMY GARRISON, FORT RILEY
500 HUEBNER ROAD
FORT RILEY, KANSAS 66442-5000

March 24, 2008

Testimony Regarding Senate Bill 538, before the House Agriculture and Natural Resources Committee

Offered by Jeff Keating, Conservation and Restoration Branch, Environmental Division, Directorate of Public Works, Fort Riley, Kansas

Chairman Faber, members of the Committee, thank you for the opportunity to testify today regarding Senate Bill 538.

Fort Riley appreciates the committee's consideration of this bill and the aspects of the bill that support Fort Riley's military mission. We believe that an aggressive program to manage development adjacent to the installation is a vital part of sustaining Fort Riley's mission now and far into the future.

I would like to point out that we believe the ranking criteria in this bill, described in New Section 5, page 5, adequately serves the interest of Fort Riley when ranking projects for conservation easement funding. Over the last two years, Fort Riley has used the language in the Governor's budget to help fund a number of conservation easements within the Army Compatible Use Buffer area. However, we intentionally have not used all of the allotted funds, so that other entities could use the state funds for easements elsewhere in the Flint Hills.

Conservation easements executed in the Flint Hills region, whether accomplished under the ACUB program or not, have a secondary benefit to Fort Riley through protection of habitat for declining grassland bird species. If the greater prairie-chicken or Henslow's sparrow were to be listed as endangered or threatened, Fort Riley's mission could be adversely impacted. Conservation easements are a proven means of conserving the habitat of those species.

This bill could help secure the future of conservation easements in Kansas, and Fort Riley's mission. I will stand for questions at the appropriate time.

Thank you.

Jeff Keating

H-Ag + Nat'l Resources
3/24/08
Attachment 2

Testimony on **SB 538**

February 7, 2008

Alan Pollom

On behalf of the Kansas Chapter of The Nature Conservancy

Before the House Agriculture and Natural Resources Committee

Mr. Chairman and members of the Committee, thank you for the opportunity to testify **in favor of SB 538**.

The Nature Conservancy is the nation's largest nonprofit conservation organization, operating in all 50 states and 33 nations. In Kansas the Conservancy owns six preserves consisting of more than 46,000 acres.

Just last week I was in the Capitol to attend the ceremony announcing the 8 Wonders of Kansas, as selected by over 24,000 voters. The Nature Conservancy was especially proud to have two of our preserves, at the Cheyenne Bottoms and the Tallgrass Prairie National Preserve, among the winners chosen in the competition.

I note that these natural wonders, as well as other winners Castle Rock/ Monument Rocks and the Quivira National Wildlife Refuge still exist today to receive this well deserved honor because forward looking individuals took action many years ago to preserve these wonders for future generations. SB 538 is an important step toward likewise helping private landowners and cooperating nonprofit entities conserve additional important aspects of our rural countryside for the future appreciation and enjoyment of all Kansans.

The concept of conservation easements is relatively new to our state but is rapidly gaining interest. IN the last three years The Nature Conservancy has worked with Kansas landowners to permanently conserve over 20,000 acres through the mechanism of conservation easements. Several of these transactions were undertaken in partnership with the U.S. Department of Agriculture and the state conservation commission. Demand exists among landowners representing several times this amount of acreage but goes unfulfilled for lack of funding.

The establishment of the Kansas farm and ranchland protection program anticipated in SB 538 makes important progress toward creating opportunities for the State of Kansas to capture matching resources available through multiple federal agencies, nonprofit land trusts, and private landowners interested in long-term preservation of their farms and ranches.

The Nature Conservancy encourages the committee to take action in favor of SB 538.



Since 1894

TESTIMONY

To: The House Agricultural and Natural Resources Committee
Rep. John Faber, Chairman

From: Mike Beam, Kansas Livestock Association (KLA)

Subj: **SB 538**- Legislation establishing a Kansas farm and ranch land protection program, to be administered by the State Conservation Commission.

Date: March 24, 2008

Attachments include:

- *Section by section explanation of SB 538, with comments*
- *Existing state statutes regarding conservation easements*
- *FAQ's about Land Trusts & Conservation Easements*
- *USDA Farm and Ranchland Protection Program (FRPP) Questions & Answers*

Thank you, Mr. Chairman, for scheduling a hearing on this legislation. This bill is a proposal from the Kansas Livestock Association (Kansas Livestock Association), Kansas Livestock Association Ranchland Trust (KLA-RT), and two other private conservation organizations who you will hear from later in this hearing. We have also conferred with the State Conservation Commission, Kansas Department of Wildlife and Parks, and officials with Ft. Riley and the United States Army in drafting this legislation.

Kansas Livestock Association (KLA) supports efforts to establish a state purchase of development rights program in Kansas. While the legislature has provided funding for conservation easements (approximately \$311,000 annually) the past three sessions, we believe it's time for a statutory program for the preservation of farm and ranch land in Kansas.

Why act to protect agricultural land?

The American Farmland Trust has reported America loses two acres of farm or rangeland each single minute, and from 1992-1997 Americans converted more than six million agricultural acres to developed uses. This equates to an area about the size of the state of Maine.

In Kansas, the USDA Natural Resources Conservation Service reported land users of Kansas converted approximately 230,000 acres of rural land to urban development and transportation corridors between 1982 and 1997.

One of the six key recommendations in the 2003 Kansas Natural Resources Legacy Alliance report was to "... *adoption of management practices to protect our changing landscape*". One of the strategies to address this issue was to "*Promote the use of voluntary conservation easements through private, state and federal programs as a means of protecting prime farmlands and unique landscapes*".

Conservation easements:

A conservation easement is a tool that can be used to maintain private ownership of working lands while assuring the land is not converted to residential, commercial, or industrial use. A conservation easement is a contract or covenant, attached to the deed, which stipulates specific uses or activities that may and may not occur on the designated land.

If a conservation easement is gifted to an eligible private conservation organization the provisions of the easement are negotiated between the landowner and conservation organization (land trust). A gifted easement, that meets requirements of the Internal Revenue Service (IRS), is considered a charitable contribution and federal income tax deduction.

Placing a conservation easement on agricultural land is not a viable consideration for every landowner, but it can be a tool to:

- Leverage the value of the development rights on property without changing the current use (agricultural production).
- Lower the market value to address potential estate tax concerns.
- Preserve the historical farming or ranching tradition of the family.
- Conserve the historical open spaces and scenic view shed of the local community.
- Serve as a tool for passing the farm or ranch to the next generation.

USDA Farm and Ranchland Protection Program:

The Farm and Ranchland Protection Program (FRPP) (see attached Fact Sheet) provides matching funds to states, tribal and local governments, and private conservation groups for the purchase of permanent conservation easements that preserve working agricultural lands. Since 1996, this program has benefited the public by permanently preserving over 380,000 acres of farm and ranchland in 44 states. Until recent years, there was very little participation in FRPP among Kansas landowners.

The primary limiting factor for FRPP participation in Kansas is the requirement that private or non-federal entities must provide a minimum match of 25% of the easement value. The ability of private conservation groups (land trusts) to generate funds to conserve large acreages is quite limited. It appears to us that most of the federal FRPP funds are conserving agricultural land and open spaces in states that have a dedicated source of conservation easement purchase dollars that can match the USDA program.

FRPP provides 2-1 matching funds:

It is important to note the federal FRPP dollars are a two to one match to monies provided by states (or any nonfederal dollars). Furthermore, a participating landowner must donate 25% of the conservation easement's value.

For example, if an appraisal determines a proposed conservation easement has a value of \$100,000, USDA pays the landowner \$50,000 if the private entity or state provides \$25,000 and the landowner donates \$25,000. So, in this example a state can participate in a \$100,000 perpetual conservation project for \$25,000!

FRPP is a popular USDA conservation program and it appears the program could receive an enhanced funding level in the 2007 Farm Bill. In fact, the House version of the pending Farm Bill mandates nearly \$ 1 billion for FRPP over five years. States that have the funds for the 25% match will likely be the ones that can access this program.

Funding mechanism:

I realize SB 538 is missing an important element, a method of funding the purchase of conservation easements. As a group, we discussed several sources of funding with the realization that state general funds for this program will always be limited and in competition with too many important state programs. While we believe it is essential to identify a new funding source we have yet to land on a specific plan to recommend at this hearing.

The vision for conservation easements in Kansas:

In recent years, KLA has responded to concerns from ranchers regarding the suburban residential encroachment in several areas of Kansas. Our members have expressed concern that some of these changing landscapes are occurring in areas that historically have been noted for their large intact ranching and grazing lands that support viable agriculture operations. One step taken is the formation of the first agricultural land trust, called the Kansas Livestock Association Ranchland Trust, Inc.

Opportunity and challenge for the Kansas Legislature:

Kansans are known for their commitment to conservation. Landowners all across this state have received local, state, and national recognition for their land stewardship practices. The Kansas legislature, each year, appropriates funding for conservation programs that support water quality and soil conservation. These are all worthy projects, but we believe it is time to take another step in voluntary conversation.

Let's act this session, to design a program to permanently conserve a small portion of our states agricultural land, our state's rich agricultural heritage, and provide opportunities for agricultural producers in the future.

Thank you for your time and consideration.

Section by section explanation and analysis of SB 538:

Page 4; no. 10, subsection e; Section 1:

This provision amends the State Conservation Commission (SCC) statutes to provide the agency authority to partner with private conservation groups for the administration and purchase of conservation easements on eligible farm and ranch lands.

Page 4; subsection b; New Section 2:

This section includes definitions and refers to a "conservation easement" as the current definition in Kansas statute (passed in 1992).

Page 4; subsection c; New Section 2:

Defines an "eligible entity" as one recognized by the Internal Revenue Service as a charitable conservation organization that can accept and administer conservation easements.

Page 4; subsection d; New Section 2: (see separate summary of eligible lands)

This subsection provides a definition of eligible farm and ranch lands.

Note: The "eligible farm and ranch lands" definition is intended to be consistent with the USDA Farm and Ranchland Protection Program requirements. The Senate amended the bill on lines 26-31 to stipulate the eligible lands must be 5 miles outside a city with a population of 35,000 or more residents.

Page 4; subsection a; New Section 3:

The purpose of the act is stated in this subsection, which is to authorize the State Conservation Commission (SCC) to administer a program for the purpose of limiting the loss of agricultural lands.

Page 4; subsection b; New Section 3:

The language in this subsection allows SCC to make grants available, in cooperation with the federal USDA Farm and Ranchland Protection Program, United States department of defense, or other federal or private entity, for permanent conservation easements and associated costs.

Page 4; subsection c; New Section 3:

This subsection authorizes SCC to promulgate rules and regulations to administer the program.

Page 4; subsection d; New Section 3:

This subsection prohibits SCC from owning or holding conservation easements funded under this act.

Pages 4-5; New Section 4:

This section establishes several guidelines and/or documents eligible entities must provide SCC, including a written agreement prescribing the manner in which the entity will administer SCC funded conservation easements.

Page 5; subsection a, New Section 5:

This subsection lists criteria for evaluating and ranking applications and allows SCC to utilize other factors if necessary. (*Note: these factors are similar to ranking criteria used for USDA conservation easement programs.*)

Page 5; subsection b, New Section 5:

This subsection merely requires SCC to award funds to successful applicants in a timely fashion.

Pages 5 & 6; subsection a-c, New Section 6:

A new farm and ranch land protection program fund is created with this subsection.

Note: SB 538 does not create a source of funding. This program is subject to appropriation.



Frequently Asked Questions about Land Trusts and Conservation Easements

What is a land trust?

Land trusts are private, non-profit organizations with the primary mission of conserving land and open spaces. In most instances, the Internal Revenue Service (IRS) expressly recognizes a land trust as a charitable organization.

How do land trusts conserve land?

While land trusts may own title to land, they more commonly hold, manage, and administer *conservation easements* from landowners who desire to preserve the conservation values and open spaces of their land.

Are there many land trusts?

According to the Land Trust Alliance (LTA), some trusts organized over 100 years ago. Today, LTA estimates over 1,200 local and regional land trusts protect over 6.2 million acres in the United States.

What or who is KLA Ranchland Trust?

This entity is a non-profit organization founded by the Kansas Livestock Association (KLA) in 2003. The Kansas Livestock Association Ranchland Trust (KLA-RT) is an affiliate of KLA, and is recognized by the Kansas Secretary of State and IRS as a separate, stand-alone organization with its own articles of incorporation, bylaws, budget/checking account, and board of directors.

What is the purpose of KLA-RT?

The mission of the KLA Ranchland Trust is to preserve Kansas' ranching heritage and open spaces for future generations through the conservation of working landscapes. To fulfill this mission, KLA-RT is authorized in its bylaws and IRS filings to acquire, own, hold, protect and defend conservation easements.

Why did KLA create a land trust?

KLA leaders in the Flint Hills expressed interest in forming a land trust in 2001 to provide a rancher/landowner-governed organization to assist landowners who are considering *conservation easements* on their working ranchlands. The ranchers and landowners involved in forming the KLA-RT believe the vast acres of open-spaced ranch lands of Kansas will be under more intense developmental pressure in the future. These leaders believed many landowners would prefer voluntary conservation easements as an economic alternative to development, especially if the easements could be held and administered by a qualified and competent agricultural land trust.

Have other agricultural organizations formed land trusts?

Yes. In fact, KLA-RT is a member of a coalition of land trusts that are affiliated with seven state livestock producer organizations. This group, called the Partnership of Rangeland Trusts, collectively holds 935 conservation easements on over 1.3 million acres of working agricultural lands.

What is a conservation easement?

A conservation easement is a legally recorded agreement or contract, between the landowner and a land trust, which limits a property's uses to protect its conservation values. These agreements are entered into on a voluntary basis.

How does a conservation easement impact ownership and land management?

A landowner who donates or sells a conservation easement retains title to the property and continues to determine who may have access to the property. A conservation easement runs with the title to the property regardless of future changes in ownership.

What activities are prohibited or restricted with a conservation easement?

Each conservation easement is tailored to the conservation desires of the owner(s) and grantee, but usually restricts (a) sub-division for residential or commercial purposes; (b) construction of non-agricultural buildings; and (c) surface mining.

What activities are allowed under a conservation easement?

Most conservation easements on agricultural land expressly authorize a continuation of farming and ranching activities. KLA-RT's purpose is to preserve working agricultural land for subsequent generations.

Are there any economic incentives for donating a conservation easement on my property?

The donation of an easement may qualify as a charitable contribution for federal income tax purposes. (Conservation Easements donated in 2006 & 2007 may have qualified for an enhanced income tax benefit. Federal legislation to renew this tax law is pending.) Furthermore, a conservation easement may reduce estate and gift taxes.

Can I receive a payment for placing a conservation easement on my farm or ranch?

Funds to purchase conservation easements in Kansas currently are limited. In 2005-2007, the Kansas Legislature appropriated money to match USDA Farm and Ranchland Protection funds for a few purchased conservation easements. The USDA Grassland Reserve Program (GRP) has provided money to purchase conservation easements on over 23,000 acres of grazing lands in Kansas. Additional GRP dollars may be available if the program is reauthorized in the 2007 Farm Bill. Securing a sustainable source of state funds for the purchase of conservation easements is a long-term goal of KLA-RT.

Why would anyone consider placing a conservation easement on their property?

A conservation easement is not for every landowner, but it is a tool that many are using to preserve their land and their legacy for future generations.

Questions and Answers

Farm and Ranch Lands Protection Program

September 2004

Q. What is the Farm and Ranch Lands Protection Program (FRPP)?

A. FRPP is a voluntary Federal program that helps farmers and ranchers keep their land in agriculture. The program provides matching funds to State, Tribal, and local governments and non-governmental organizations with existing farm and ranch land protection programs to purchase conservation easements. The Natural Resources Conservation Service (NRCS) is designated as the lead agency in implementing this program.

Q. What are the major changes to FRPP in the 2002 Farm Bill?

A. The Farm Security and Rural Investment Act of 2002 (Farm Bill) expands the program beyond state and local governments to include non-governmental organizations as eligible entities. It also makes farm and ranch land containing historical and archaeological sites eligible. The 2002 Farm Bill also allows a State, Tribal, or local government or non-governmental organization to supplement its share of the easement cost through a landowner's donation.

Q. What is a conservation easement?

A. A conservation easement is an interest in land, as defined and delineated in a deed, whereby the landowner conveys specific rights, title, and interests in a property to a State, Tribal, or local government or non-governmental organization. The landowner retains those rights, title, and interests in

the property which are specifically reserved to the landowner in the easement deed, such as the right to farm.

Q. What is a purchase of agricultural conservation easement (PACE) program?

A. A PACE program, sometimes referred to as a purchase of development rights program, is a voluntary farmland protection program that compensates landowners for voluntarily limiting future development of their land for non-agricultural uses. PACE programs, which are generally operated by Federal, State, and local governments or non-governmental organizations, enable landowners to sell development rights on their land to a government agency or non-governmental organization, such as a land trust, while retaining full ownership.

Q. How does a landowner participate in FRPP?

A. A landowner submits an application to an entity—a State, Tribal, or local government or a non-governmental organization—that has an existing farm or ranch land protection program. In exchange for payment, participating landowners agree not to convert their land to non-agricultural uses and to develop and implement a conservation plan for any highly erodible land. The NRCS State Conservationist, with advice from the State Technical Committee, awards funds to qualified entities to conduct their farm and ranch land protection programs. These

entities acquire perpetual conservation easements from landowners.

Q. How is the value of a conservation easement determined?

- A. The value of a conservation easement usually is determined through a professional appraisal. A qualified appraiser assesses the difference between the fair market value of the property, often using comparable sales, and its restricted value under the easement.

Q. What restrictions are found in a typical easement?

- A. The easements generally restrict non-farm development and subdivisions. Some farm-related housing may be allowed. Generally, there are few restrictions on improvements and construction related to the farming operation. The easements become part of the land deed and are recorded in the local land records.

Q. Are all agricultural conservation easements the same?

- A. The basic purpose and structure of all agricultural conservation easements are the same. However, each easement is tailored to the specific farm being protected. Exact language in the easement may reflect future expansion plans of the landowners, including the needs of their heirs.

Q. How do the easements affect other rights of ownership?

- A. The landowner controls the land and use of the land according to the agricultural conservation easement. The land still is owned by the landowner and can be transferred, deeded, or sold, just as any other property. The easement does not require any provisions for public access, unless such access was negotiated as part of the easement purchase transaction.

Q. Does a conservation easement affect a farmer's ability to borrow money?

- A. A farm loan usually is based on the ability of the farm operation to carry the loan. Therefore, a conservation easement, which only affects non-farm development activities, not the farm operation, should not have a bearing on the farmer's ability to borrow operating funds. If a lending institution holds a lien on a property, it must review the sale of the conservation easement just as it would need to approve any transaction on the property.

Q. What are the local property tax implications of protecting farmland with conservation easements?

- A. Because the landowner still owns the property, he or she still is responsible for paying any associated property taxes. Since many states have programs that tax farmland based on its use or farm value, the net effect of the easement on local property tax revenues is little to none.

Q. How are the proceeds from the sale of a conservation easement treated for tax purposes?

- A. The easement sale proceeds are treated as any other capital gain for Federal, State, and local income tax purposes. Some State or local programs have provisions that allow for installment purchases or have used securable tax-exempt bonds as a method of payment.

Q. What is the role of the Federal, State, Tribal, and local governments and non-governmental organizations?

- A. Cooperating governmental or non-governmental organizations process the easement acquisition, hold, manage, and enforce easements. A Federal contingent right interest in the property must be incorporated in each easement deed to

protect the Federal investment if the cooperating entity terminates, defaults, or divests itself from the easement.

Q. How much is a State, Tribal, or local government or non-governmental organization required to contribute?

- A. The NRCS share of the conservation easement cannot exceed 50 percent of the appraised fair market value of the conservation easement. As part of its share of the cost of purchasing a conservation easement, a cooperating entity may include a charitable donation by the landowner not to exceed 25 percent of the appraised fair market value of the conservation easement. As a minimum, the cooperating entity shall provide, in cash, 25 percent of the appraised fair market value or 50 percent of the purchase price of the conservation easement.

Q. Could the Adjusted Gross Income provision of the 2002 Farm Bill impact my participation in FRPP?

- A. Yes, if you are an individual or entity that has an average adjusted gross income exceeding \$2.5 million for the three tax years immediately preceding the application year, you are not eligible to receive program benefits or payments. However, an exemption is provided in cases where 75 percent of the adjusted gross income is derived from farming, ranching, or forestry operations.

For More Information

If you need more information about FRPP, please contact your local USDA Service Center, listed in the telephone book under U.S. Department of Agriculture, or your local conservation district. Information also is available on the World Wide Web at: <http://www.nrcs.usda.gov/programs/farmland/2002/>



Visit USDA on the Web at:
<http://www.usda.gov/farmland>

Note: This is not intended to be a definitive interpretation of farm legislation. Rather, it is preliminary and may change as USDA develops implementing policies and procedures. Please check back for updates.

Kansas Conservation Easement Law

58-3810

Chapter 58.--PERSONAL AND REAL PROPERTY PART 6.--MISCELLANEOUSPROVISIONS Article 38.--EASEMENTS

58-3810. Uniform conservation easement act; definitions. As used in this act, unless the context otherwise requires:

(a) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic or open-space values of real property, assuring its availability for agricultural, forest, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.

(b) "Holder" means:

(1) A governmental body empowered to hold an interest in real property under the laws of this state or the United States; or

(2) a charitable corporation, charitable association or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.

(c) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder.

History: L. 1992, ch. 302, § 11; July 1.

58-3811

Chapter 58.--PERSONAL AND REAL PROPERTY PART 6.--MISCELLANEOUSPROVISIONS Article 38.--EASEMENTS

58-3811. Same; creation; duration; impairment; conveyance or assignment.

(a) A conservation easement may be created only by the record owner of the surface of the land specifically stating the intention of the grantor to create such an easement under this act.

(b) Except as otherwise provided in this act, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other easements.

(c) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

(d) Except as provided in subsection (b) of K.S.A. 58-3812 and unless the instrument creating it otherwise provides, a conservation easement shall be limited in duration to the lifetime of the grantor and may be revoked at grantor's request.

(e) An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a grantor of the conservation easement.

(f) A conservation easement may not be conveyed or assigned by a holder to any entity or person other than a city or county of this state, an entity enumerated by subsection (b)(2) of K.S.A. 58-3810 or the grantor thereof or such grantor's heirs.

History: L. 1992, ch. 302, § 12; July 1.

58-3812

Chapter 58.--PERSONAL AND REAL PROPERTY PART 6.--MISCELLANEOUS PROVISIONS Article 38.--EASEMENTS

58-3812. Same; judicial actions; who may bring action affecting conservation easement; modification or termination by court. (a) An action affecting a conservation easement may be brought by:

- (1) An owner of an interest in the real property burdened by the easement;
- (2) a holder of the easement;
- (3) a person having a third-party right of enforcement; or
- (4) a person authorized by other law.

(b) This act does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

History: L. 1992, ch. 302, § 13; July 1.

58-3813

Chapter 58.--PERSONAL AND REAL PROPERTY PART 6.--MISCELLANEOUSPROVISIONS Article 38.--EASEMENTS

58-3813. Same; validity of conservation easement. A conservation easement is valid even though:

- (a) It is not appurtenant to an interest in real property;
- (b) it can be or has been assigned to another holder;
- (c) it is not of a character that has been recognized traditionally at common law;
- (d) it imposes a negative burden;
- (e) it imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;
- (f) the benefit does not touch or concern real property; or
- (g) there is no privity of estate or of contract.

History: L. 1992, ch. 302, § 14; July 1.

58-3814

Chapter 58.--PERSONAL AND REAL PROPERTY PART 6.--MISCELLANEOUSPROVISIONS Article 38.--EASEMENTS

58-3814. Same; application of act. (a) This act applies to any interest created after its effective date which complies with this act, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement or otherwise.

(b) This act applies to any interest created before its effective date if it would have been enforceable had it been created after its effective date unless retroactive application contravenes the constitution or laws of this state or the United States.

(c) This act does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement or otherwise, that is enforceable under other law of this state.

History: L. 1992, ch. 302, § 15; July 1.

58-3815

**Chapter 58.--PERSONAL AND REAL PROPERTY
PART 6.--MISCELLANEOUSPROVISIONS
Article 38.--EASEMENTS**

58-3815. Same; uniformity of application and construction. This act shall be applied and construed to effectuate its general purpose to make uniform the laws with respect to the subject of the act among states enacting it.

History: L. 1992, ch. 302, § 16; July 1.

58-3816

**Chapter 58.--PERSONAL AND REAL PROPERTY
PART 6.--MISCELLANEOUSPROVISIONS
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.

58-3817

**Chapter 58.--PERSONAL AND REAL PROPERTY
PART 6.--MISCELLANEOUSPROVISIONS
Article 38.--EASEMENTS**

58-3817. Same; short title. This act shall be known and may be cited as the uniform conservation easement act.

History: L. 1992, ch. 302, § 18; July 1.

To: House Agriculture and Natural Resources Committee
From: Luke Bell, KAR Director of Governmental Relations
Date: March 24, 2008
Subject: **SB 538** – Establishing the Farm and Ranch Land Protection Grant Program

Chairman Faber and members of the House Agriculture and Natural Resources Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® (KAR) to offer neutral testimony on **SB 538**. KAR has faithfully represented the interests of the 10,000 real estate professionals and over 700,000 homeowners in the State of Kansas for over 85 years.

SB 538 would establish a farm and ranch land protection grant program to fund the acquisition of additional conservation easements in the State of Kansas. A conservation easement is a transfer of legal rights to the use of a specific property that creates a legally enforceable land preservation agreement between a landowner and a qualified private or public organization.

Conservation easements typically restrict the future use of the land by prohibiting real estate development, commercial and industrial use or any other activities that materially alter the present use of the land. Once these restrictions are set in place, they typically “run with the land” and are binding on all future landowners in perpetuity.

In past versions of this legislation (notably **HB 2147**), the proponents of this legislation have proposed to fund this program through a new excise tax levied on the fair market value of any agricultural property rezoned for residential or commercial use within seven years of the property’s transfer. KAR absolutely opposes the enactment of any new excise taxes on real property or real estate development.

Even though the developer of the property would initially pay the excise tax levied against the property, in order to recoup these costs, the developer would be forced to pass this added cost along to the consumer or business who is wishing to purchase a new home or commercial building in the development.

These additional costs would be added directly into the purchase price of the new home or commercial building, which would subsequently be rolled into a 30-year mortgage and accrue compounded interest over time. Because of this, several studies suggest that for every \$1.00 increase in the excise tax levied on new real estate development, the eventual buyer of the home or commercial property will pay an additional \$3.60 for the property.

In closing, we understand that the main thrust of this legislation is to establish a state level grant program to leverage additional federal dollars for the purchase of conservation easements. While we do not object to the state using state general funds to support this program, we believe it is absolutely inappropriate to levy new excise taxes on real property and real estate development in this challenging real estate market.



STATEMENT OF THE KANSAS BUILDING INDUSTRY
ASSOCIATION

TO THE HOUSE AGRICULTURE AND NATURAL
RESOURCES COMMITTEE

REPRESENTATIVE JOHN FABER, CHAIR

REGARDING S.B. 538

ESTABLISHING THE FARM AND RANCH LAND PROTECTION GRANT
PROGRAM

MARCH 24, 2008

Mr. Chairman and Members of the Committee, I am Chris Wilson, Executive Director of the Kansas Building Industry Association (KBIA). KBIA's members are involved in the residential building industry. Thank you for the opportunity to comment on S.B. 538. Our position is neutral, with concerns.

This bill would establish a farm and ranch land protection grant program in Kansas. The federal Farm and Ranch Lands Protection Program administered by the Natural Resources Conservation Service of USDA as authorized under the 2002 Farm Bill provides funding for governments to acquire conservation easements from landowners. Participating landowners agree not to convert their land to non-agricultural uses and to develop and implement a conservation plan for any highly erodible land.

I noted in researching this program that Kansas is participating in the federal program and for FY2007 had the second highest number of acres enrolled in the program. Kansas had 6,761 acres second only to Vermont's 7,486. The total number of acres Kansas has enrolled in the program are 14,563. In FY 2007, the federal dollars allocated for Kansas were \$676,136. I am interested in learning more about how this program has been utilized in Kansas to date.

KBIA does not agree with the philosophy of encouraging and providing tax dollars to landowners to limit the land use of their land for future generations. I relate to that philosophy personally as a farmland owner myself and an 11th generation U.S. farmer. I hope my farmland stays in agricultural production for generations to come and that my children and their children choose to remain involved in agriculture. But that decision will be theirs, and I cannot know what needs or opportunities they may have in the generations to come, and that may involve the conversion of farmland. I will not tie their hands.

In my family, we have seen that development opportunities often come unexpectedly. I would not have anticipated this in my lifetime, but due to the increased development necessitated with the expansion of Ft. Riley, the City of Wamego planned to annex to the property line of farmland we owned. Being able to sell that property for development was by far the best alternative for us. Had that land been in a conservation easement, we would not have been able to do so, and our farm would have been at the city limit and surrounded by development.

Also, in my work nationally as an officer of American Agri-Women, I have many friends throughout the country, and I have seen often that the opportunity to sell farmland for development provides a much-needed retirement income for those in agriculture. **KBIA is particularly concerned that you not approve a funding mechanism for this program that would provide for a tax on real estate to fund it. That would result in taxing those who sell their farmland to a developer, and taxing that retirement income.**

KBIA has a concern about using tax dollars from any source to fund the “eligible entities” under this bill, which are private conservation not-for-profit entities, under Section 170(h)(3) of the internal revenue code.

KBIA respectfully asks you to oppose any revenue provisions that would raise taxes on real estate.

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Kansas Farm Bureau
WRITTEN POLICY STATEMENT

House Agriculture and Natural Resources Committee

**Re:SB 538 an act establishing the farm and
ranchland protection program**

March 24, 2008
Submitted by:
Steve M. Swaffar
Director of Natural Resources

Chairman Faber and members of the committee, on behalf of the members of Kansas Farm Bureau (KFB) we provide the following written comments in support of SB 538. 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.

KFB policy supports both state and federal voluntary, incentive-based, cost-share conservation programs. We also have policy that specifically supports programs offering conservation easements on agriculture production areas. Clearly we support the overall concept proposed in SB 538, and in the future we hope a permanent funding mechanism can be found for this program. We believe there is a need and desire for this type of program in all areas of the State and encourage the committee to establish a statewide program.

Development around urban centers that takes agriculture land out of production is a concern for many of our members farming and ranching close to these areas. Escalating land values create market competition for land for those farmers and ranchers trying to expand their operations. In some cases land sale prices are high enough that production agriculture simply would not be profitable because payments on the loan would be greater than the profits from grain or livestock production. Farmers and ranchers have few mechanisms to preserve valuable farm and ranch lands when developmental pressures drive prices to unrealistic levels. This is one of the primary reasons our members developed policy in 2006 supporting the concept of a conservation easement program. We encourage the committee to continue to discuss the topic and search for an appropriate funding mechanism for the program in the future. Thank you for this opportunity to provide comments on this important topic.

Webb & Associates
4815 S. 191st
Stilwell, Kansas Livestock Association

March 24, 2008

Senate Bill 538

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to present written testimony in support of Senate Bill 538, regarding conservation easements.

My name is Dave Webb of Stilwell, Kansas. I am a former member of the Kansas Legislature and can appreciate your deliberations of this issue and the many other issues that confront the state.

I am an auctioneer and appraiser by profession. I also, among other things, have served on our local Soil and Water Conservation Board. Additionally, I am chairman of the Kansas Livestock Association Ranchland Trust.

This is a conservation measure to establish a program for conservation easements throughout our great state. You may ask, "why". If our forefathers had done this type of program for the trails and battlefields of our nation, today there would be a greater emphasis on that portion of our heritage because they would be preserved today.

This legislation provides one of the last remaining opportunities to preserve the precious vistas and landscapes of our state for generations to come. Additionally, it provides Kansas families the opportunity to secure agricultural practices on their property for perpetuity.

This is not legislation that you can say, "Wow, look what we accomplished during this session." However, it is legislation that another generation will look back and say, "Wow, what great forethought they had when this was enacted."

I have been an advocate of this type of program for our state for many years. Many of our neighboring states, and states across the nation, have such a program and the benefits to the landowner, the community, and the general population is tremendous.

The time is now, not in the future or for someone else. I would ask you today to take the format of this legislation, accept the challenge, and carry the touch, not for yourself but for future generations.

In closing, let me thank you for the opportunity to appear before you today in support of this legislation. Your task is large; however, so is the vision.

Let me remind you while we are here on this earth, we are only caretakers of the land. Our responsibility is to leave it in better condition for future generations.

Sincerely,

Dave Webb
913-681-8600
dwebb@dlwebb.com

LAW OFFICES OF
FRIEDEN & FORBES
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

JOHN C. FRIEDEN P.A.*
RANDALL J. FORBES P.A.
KEVIN M. FOWLER
CLINTON E. PATTY
B. LANE HEMSLEY

555 SOUTH KANSAS AVENUE, SUITE 303
P. O. BOX 639
TOPEKA, KANSAS 66601-0639

TELEPHONE: (785) 232-7266
FAX: (785) 232-5841
EMAIL: patty@friedenforbes.com

**ALSO ADMITTED IN MISSOURI*

March 24, 2008

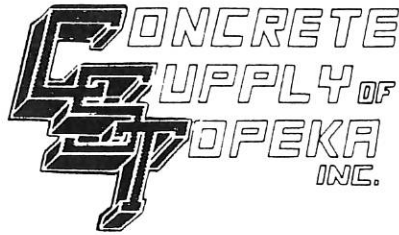
TESTIMONY
By
CLINT PATTY
REGARDING HOUSE BILL 2982
BEFORE THE HOUSE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

Good afternoon Mr. Chair and Members of the Committee, my name is Clint Patty. I am an attorney with the law firm of Frieden and Forbes in Topeka, Kansas, and am here representing my client, the Kansas Aggregate Producers Association (the "Association") both as counsel and a member of the Association. I have been asked to provide testimony to support the clarification of existing law provided by HB 2982.

When K.S.A. 24-132 was amended in 1995 to provide drainage districts with the authority to regulate excavations within flood plains consistent with K.S.A. 19-3309, the clear Legislative intent was to limit regulatory authority within a 1000 feet of flood control works. Since the 1995 amendments, the Corps of Engineers, Kansas Division of Water Resources and all other drainage districts except one have properly interpreted the 1995 amendment to limit the regulatory authority to a 1000 feet from a flood control works. This is consistent with the statutory reference to K.S.A. 19-3309, stating "[n]o excavation shall be made or commenced within one thousand (1,000) feet landward or riverward of the center line of any portion of a flood control works constructed under the provisions of chapter 19, article 33 of the Kansas Statutes Annotated without first obtaining a permit."

The state is now faced with one drainage district that has chosen to ignore both the plain language and the clear legislative intent behind the 1995 amendment to K.S.A. 24-132. By exceeding the reach of K.S.A. 24-132, the Kaw River Drainage District puts at risk all future area excavation projects. Although a lawsuit is pending in this matter, this legislation is needed to provide regulatory certainty to businesses that want to conduct excavation projects in this district, and to prevent future harm caused by Kaw River Drainage District's regulatory abuse.

In closing, the Association urges passage of HB 2982 to clarify the existing law, and maintain consistency with the Legislative intent behind the 1995 amendment. Thank you once again for allowing me the opportunity to provide my client's position on this important matter.



March 24, 2008

Joe Marney, Builders Choice Aggregates

House Bill 2982

The House Committee on Agriculture and Natural Resources

Good afternoon Mr. Chair and Members of the Committee:

Thank you for the opportunity to speak with you today. I am Joe Marney, VP of Concrete Supply of Topeka. My family operates several concrete plants in NE Kansas. For nearly 25 years the sand we used in the production of concrete came from a dredge operation in the KS River. Roughly 5 years ago we were advised that the permits from the Corps of Engineers for the sand dredging operations on the river would be cancelled. Since then, 4 sand plants on the river that produced 900,000 tons a year have closed and the number of producers open to the public has gone from 3 to 1.

Therefore, I began searching for the better part of 3 years to find the best place to start an inland pit extraction operation. Since all of the sand in our region is in the river bed and a floodplain it is no surprise that the land I was able to get zoned by the county and permitted by the DWR was in a drainage district.

After 10 months, I had completed all of the necessary engineering and secured all of the zoning and permitting approvals I needed to begin construction on our facility. It was at this time the Kaw River Drainage District filed for an injunction because we had not been secured an excavation permit from them.

Everyone I talked to including county counsel, engineers at DWR, county commissioners and private attorneys told me that the statute that gives some authority to the drainage district to issue a permit for excavations does not apply to my location. However, this one drainage district has delayed my project arguing that same statute does give them authority.

We are not asking you to change any laws. We are just asking you to clarify that the legislature never intended to give them authority outside the 1000' limits for excavation permits. With this clarification, no other districts can hold up other critically needed projects with a similar misinterpretation of this statute. It has now been 15 months since

the KRDD filed a suit against us and it appears that we still have several months if not years of litigation in front of us just to clarify what their permitting power is.

With the continuing closure of river dredging operations certain in the future and the necessity of sand in our economy, sand operations in the floodplain will definitely face this issue. Without clarification of what we perceive as the original intent of this statute, these extremely long legal battles will continue. With them, higher cost for raw materials will follow. These cost will passed on to the citizens of Kansas that are already paying the legal fees the KRDD is amassing and most likely, other drainage districts in the future. I ask that you take it upon the Legislature to clarify what was intended and not leave it up to Courts.

Thank you for your time.

MEMBERS OF THE SENATE LOCAL GOVERNMENT COMMITTEE

TRANSCRIPT OF TESTIMONY ON BEHALF OF
THE KAW VALLEY DRAINAGE DISTRICT OF KANSAS CITY, KANSAS

1. STATEMENT OF THE ISSUE:

~~The Kaw Valley Drainage District is required by agreements with the Army Corps of Engineers to review plans and regulate excavations and other construction projects proposed within 1,000 feet landward or riverward of any existing or future flood control works in order to insure the integrity of the flood control system.~~

~~At present, the Kaw Valley Drainage District lacks statutory authority to require or act upon permits for such construction and thereby fulfill its obligation under contracts with the United States of America through the Army Corps of Engineers.~~

In recent months, the proponents of construction projects within the boundaries of the District have challenged the District's authority to regulate construction in any manner.

Pursuant to K.S.A. 19-3307, 19-3309, and 19-3310, cities and counties that have federal flood projections projects within their boundaries are empowered to require permits for construction within the areas described above.

Currently, K.S.A. 24-132 grants to drainage districts traversed or touched by the Kansas River all the rights, powers, authority, and jurisdiction conferred upon counties and boards of county commissioners in K.S.A. 19-3301 through 19-3308, but does not confer the right to require permits under K.S.A. 19-3309.

2. STATEMENT OF SUPPORT FOR SENATE BILL NO. 168:

The amendment to K.S.A. 24-132 in Senate Bill No. 168 represents a straightforward, simple solution to the issue presented above.

~~It is our assumption that because K.S.A. 19-9309 became law after K.S.A. 24-132, the omission of authority to regulate construction projects within affected Drainage Districts was merely an oversight.~~

~~We give our strong support to the passage of Senate Bill No. 168 to allow our District and other districts within the jurisdiction of K.S.A. 24-132 to fulfill the obligations arising under contracts with the United States of America and to insure flood protection within the boundaries of the District.~~

THE KAW VALLEY DRAINAGE DISTRICT

By:


LAWRENCE J. BRENNAN
District Engineer

By:


M. WARREN MCCAMISH
Attorney

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

Date: March 24, 2008
Before: The House Agriculture & Natural Resources Committee
By: Edward R. Moses, Managing Director
Kansas Aggregate Producers Association
Regarding: HB 2982 – Concerning Drainage Districts

Good afternoon Mr. Chair and Members of the Committee:

Thank you for the opportunity to appear before you today and provide our comments in support of HB 2982. My name is Edward Moses, Managing Director, of the Kansas Aggregate Producer's Association. The Kansas Aggregate Producer's Association is a trade association comprised of sand & gravel and rock producers located throughout Kansas. Comprised of approximately 250 members, our mission is to provide the 35-40 million tons of aggregate consumed by Kansans annually.

While a first glance it may appear we are attempting to resolve a local dispute, it is not. As the Managing Director of the Kansas Aggregate Producers Association for the past 22 years I have been involved in numerous zoning, conditional use permits, and regulatory efforts to authorize the appropriate development of natural resources. The issue becomes more acute when the negative impacts to the public at large are weighed. For these reasons we have requested your consideration of the measure before you today.

Access to Natural Resources

Faced with diminishing natural resources economic development in Kansas, Shawnee County and Topeka is threatened due to little or no access to natural resources such as sand and limestone. As these materials are critical to support the construction and maintenance of both public and private infrastructure it is good public policy to provide appropriately permitted access for their development. For example it is estimated that approximately 70-80% of our products are consumed by state and local government. In conjunction with this need is the undisputable fact that resources are located where nature put them, and unlike a farm or factory cannot be moved to suit the whims of individuals.

Almost 50% of all Kansas live in the 10 counties adjacent to the Kansas River. In the last ten years sand and gravel production has fallen from 9 million to 4 million tons annually. Only one new sand and gravel operation has been opened since 1992 and its production is not available to the public. During the last three years production of sand and rock in Shawnee County has fallen by approximately 900,000 tons per year and there is only **one** producer in the county. Consequent to the creation of this monopoly, the price of sand has risen during the same period from \$3.75 to \$6.50 per ton.

Why does this have a statewide impact? In a process known in our industry as ‘market distortion’ or ‘market displacement’ in order to balance the supply producers will be forced to import sand from as far away as Sedgwick/Reno county areas where sand sells for \$3.00 per ton and not Kansas City where sand sells for \$7.50. Thus:

- Increasing prices in those areas and the cost of construction
- Increasing the rate of reserve depletion in those areas triggering the need to open sand operations earlier than anticipated.
- Increasing fuel consumption and CO2 emissions as a result of transportation.

Several attempts have been made by various producers to replace these sources. However, all of these proposals have been faced with stiff opposition from small self-interested minorities. In the Kansas River valley only one out of five applications has received approval since 1992.

Competent authority already exists

In 1995 K.S.A. 24-132 was adopted to provide authority for certain drainage districts, organized pursuant to K.S.A. 24-401 et. seq., in order to contract with the U. S. Army Corps of Engineers on flood control projects. It interesting to note that this statute was drafted in a very narrow and precise manner, notably:

- It was limited only to those drainage districts located on the Kansas River located within or contiguous a city of the first class.
- All other drainage districts were prohibited from enjoying this authority
- Authority was only granted for excavations located 1,000 feet landward or riverward of a flood control structure.

We believe the reasons for this are rather obvious competent authority already exists:

- First, the Legislature wished to reduce any possible conflicts with the Kansas Division of Water Resources, which is responsible for and has primacy for all structures in the floodplain.
- Second, the Legislature did not wish to grant drainage districts authority greater than counties have under K.S.A. 19-3309; hence, the words “in the same manner”.
- Third, the legislature wished to limit any possible conflicts with U.S. Corps of Engineers.

- Fourth, the legislature did not wish extend any additional authority to any other drainage districts, in order to prevent conflicts with the myriad of other statues dealing with floodplain issues and other agencies charged with those responsibilities.

However, opponents to this measure **have alleged** the authority to regulate excavations within the boundaries of their jurisdiction under K.S.A. 24-132, it appears as a matter of state policy as expressed in K.S.A. 19-3309 they do not. HB 2982 merely asks you to clarify this matter by inserting the exact language found in K.S.A. 19-3309. In support of these allegations it is argued that the Legislature vested this authority through the use of the words “within the boundaries” while totally ignoring the words “in the same manner.

K.S.A.24-132 (d) Except as provided by this subsection, the governing body of the drainage district may regulate excavations **within the boundaries in the same manner provided by K.S.A. 19-3309, and amendments thereto.**

The Kansas sand and gravel industry is already one of the most regulated industries in the nation. It is no different in Kansas where public policy, **as approved by this** Legislature has established a comprehensive regulatory framework with respect to sand and gravel operations. For your review we have attached a document illustrating the steps necessary for approval. We submit that competent authority, acting on behalf of all Kansans already exists; and it is necessary to clarify that authority by recommending HB 2982 favorably for passage.

Is Kansas To Be Held Hostage?

We respectfully submit it was never the intention of the Legislature to allow three board members of the Kansas River Drainage District, elected by 24 votes each, to dictate public policy to 2.7 million Kansans. This project needs to proceed in order to protect the public. Quoting the words of John Stuart Mill or Dr. Spock, does not the “needs of the many outweigh the needs of the few”?

Thank you for your time and attention. I will be happy to respond to any questions at the appropriate time.

19-3309. Same; regulation of excavation; permits; appeal. No excavation shall be made or commenced within one thousand (1,000) feet landward or riverward of the center line of any portion of a flood control works constructed under the provisions of chapter 19, article 33 of the Kansas Statutes Annotated without first obtaining a permit. Permits requested of the county shall be reviewed by the county engineer. If he determines that the proposed excavation shall be detrimental or will impair or endanger the function of any flood protection works, permission for such excavation shall be denied. If he determines that a restricted or conditional permit for excavation can be granted to the applicant which will not be detrimental or will not impair or endanger the function of such flood protection works he shall issue such restricted or conditional permit. If he determines that no impairment of or danger to such flood protection works will occur as a result of such excavation he shall issue a permit to the applicant. The issuance of any permits hereunder shall not authorize the violation of any existing zoning laws or building codes.

K.S.A. 24-132 (d) Except as provided by this subsection, the governing body of the drainage district may regulate excavations within the boundaries in the same manner provided by K.S.A. 19-3309, and amendments thereto. Applications for permits shall be submitted to and reviewed by the district engineer. If the engineer determines that the proposed excavation shall be detrimental or will impair or endanger the function of any flood protection works, permission for such excavation shall be denied. If the engineer determines that a restricted or conditional permit for excavation can be granted to the applicant which will not be detrimental or will not impair or endanger the function of such flood protection works, the engineer shall issue such restricted or conditional permit. If the engineer determines that no impairment of or danger to such flood protection works will occur as a result of such excavation, the engineer shall issue a permit to the applicant. The issuance of any permits hereunder shall not authorize the violation of any existing zoning laws or building codes.

Any person feeling aggrieved by the determination of the engineer may appeal such decision in writing to the governing body of the drainage district within 10 days of determination and the governing body after a public hearing may affirm, reverse or modify the determination.

Chapter 24.--DRAINAGE AND LEVEES

Article 1.--GENERAL PROVISIONS

24-126. Unlawful to construct fills and levees without prior approval of chief engineer, penalty; plans for levee, contents; approval of levee plans, considerations; fees; injunctions; rules and regulations. (a) It shall be unlawful for any person, corporation, drainage or levee district, county, city or township, without first obtaining the approval of plans for the same by the chief engineer of the division of water resources, to construct, cause to be constructed, maintain or cause to be maintained, any levee or other such improvement on, along or near any stream of this state which is subject to floods, freshets or overflows, so as to control, regulate or otherwise change the flood waters of such stream. Any person, corporation, county, city, township or district violating any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment in the county jail for a period of not more than one year, or by both such fine and imprisonment. Each day any structure is maintained

Chapter 82a.--WATERS AND WATERCOURSES

Article 9.--STATE WATER RESOURCE PLANNING

82a-928. State water plan; policies to achieve long-range goals listed. The policies of the state of Kansas that are deemed desirable for the achievement of the long-range goals and objectives as set forth in K.S.A. 82a-927, and amendments thereto, and that shall serve as guidelines for public corporations and all agencies of the state, relative to their responsibilities with respect to the water resources of the state whenever physical and economic conditions permit, are hereby declared to be:

(a) The utilization of nonstructural methods, including floodplain regulation, and structural measures for the reduction of flood damage;

(b) the design of proposed levees and dikes so as to reduce flood risks in agricultural areas to a chance of occurrence in any one year of 10% or less;

(c) the design of proposed levees and dikes so as to reduce flood risks in urban areas to a chance of occurrence in any one year of 1% or less;

(d) the design of proposed storage structures for the protection of agricultural areas so as to provide sufficient capacity to control the volume of a flood having a chance of occurrence in any one year of 4% or less;

(e) the design of proposed storage structures for the protection of urban areas to provide sufficient capacity to control the volume of a flood having a chance of occurrence in any one year of 2% or less;

(f) the development of adequate water storage to meet, as nearly as practicable, present and anticipated water uses through planning and construction of multipurpose reservoirs and through the acquisition from the federal government of storage in federal reservoirs and by agreements with the federal government regarding the use of storage;

(g) the inclusion in publicly financed structures for the conservation, management and development of the water resources of the state of reasonable amounts of storage capacity for the regulation of the low flows of the watercourses of the state;

(h) the achievement of the primary drinking water standards promulgated by the secretary of health and environment pursuant to K.S.A. 65-171m, and amendments thereto;

(i) the identification of minimum desirable streamflows to preserve, maintain or enhance baseflows for in-stream water uses relative to water quality, fish, wildlife, aquatic life, recreation, general aesthetics and domestic uses and for the protection of existing water rights;

(j) the maintenance of the surface waters of the state within the water quality standards adopted by the secretary of health and environment as provided by K.S.A. 65-164 to 65-171t, inclusive, and amendments thereto;

(k) the protection of the quality of the groundwaters of the state as provided by the Kansas groundwater exploration and protection act and other acts relating thereto;

(l) the management of the groundwaters of the state as provided by the Kansas water appropriation act and the provisions of K.S.A. 82a-1020 to 82a-1040, inclusive, and amendments thereto;

(m) the provision of financial and technical assistance to public corporations concerned with management, conservation and development of water resources;

(n) the review and coordination of financial assistance for research that may be provided by federal or state agencies to public corporations concerned with management, conservation and development of water resources to prevent duplication of effort;

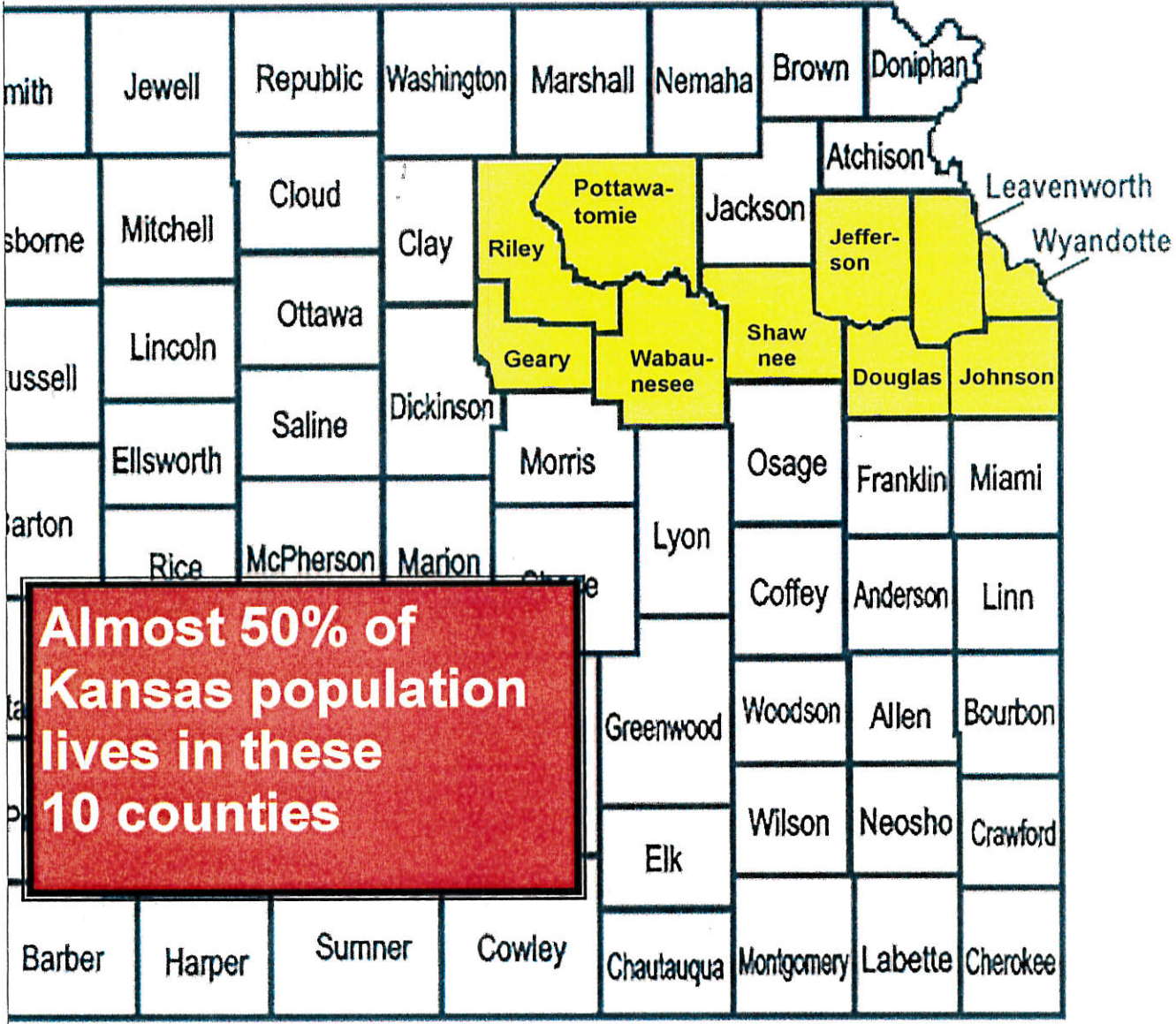
(o) the development of groundwater recharge projects;

(p) the encouragement of local initiative in the planning, implementation, funding and operation of local water programs to the extent that the same are supportive of state water programs;

(q) the design of municipal water systems to provide an adequate water supply to meet the needs during a drought having a 2% chance of occurrence; and

(r) the encouragement of the use of agricultural soil and water conservation practices and structures to control erosion and to effectively utilize precipitation and runoff.

History: L. 1965, ch. 558, § 2; L. 1981, ch. 398, § 10; L. 1986, ch. 394, § 3; L. 1987, ch. 402, § 3; July 1.



MATRIX OF KANSAS AGGREGATE REGULATION

National

United States Army Corps of Engineers

- 401 Permit
- 404 Permit
- 410 Permit

United States Department of Labor

- Mine Safety & Health Administration
- River Dredging
- Occupational Safety & Health Administration
- Bureau of Wage Standards

United States Department of Homeland Security

- Bureau Alcohol Tobacco & Firearms
- U.S. Coast Guard (Adjacent to Navigable Rivers)
- Federal Emergency Management Administration

Environmental Protection Agency

- Storm Water Regulations
- Process Water Regulations
- Spill Prevention
- Air Quality Regulations
- Wetlands

United States Department of Interior

- U.S. Geological Survey
- Bureau of Mines
- Bureau of Reclamation

Federal Communication Commission

United States Department of Agriculture

- Soil Conservation Service

United States Department of Transportation

- Hazardous Materials
- Explosives Transportation

Federal Bureau of Investigation

State

Kansas Department of Health & Environment

- Water Quality Regulations
- Air Regulations
- Solid Waste Regulations

Kansas Department of Agriculture

- Division of Water Resources
- Agrilime Sales
- Division of Weights & Measures

Kansas Geological Survey

State Fire Marshall

- Blasting Certification
- Blasting Notification

State Emergency Response Commission

- Blasting Permits

Kansas Corporation Commission

- Motor Carrier Safety Regulations
- Mandatory Drug Testing

State Conservation Commission

- State Watersheds
- Reclamation Plans
- Mining

Regional

Groundwater Management Districts

Watershed Districts

Regional Planning Commissions

Local

- Zoning Boards
- Planning Commissions
- Emergency Preparedness Jurisdictions
- Fire Departments
- County Commissions
- City Governments

Lower Silver Lake Sand Pit
Permit Schedule
2006,607

12-8

Agency	Permit or Application	Required		Applied For		Obtained		Notes
		Yes	No	Yes	No	Yes	No	
Shawnee Co. Planning Dept.	Conditional Use Permit (CUP)	x		x		x		The Planning Commission will approve or disapprove CUP.
	Floodplain Development Permit	x		x			x	A permit will be required for the scalehouse, scales, processing plant, and berms. Approval anticipated after DWR Floodplain Fill Permit obtained
Shawnee Co. Health Agency	Septic Permit	x			x		x	Should be obtained before construction begins. A variance will be required from County Commission since site is located within 100-year floodplain.
	Water Well Permit	x			x		x	Should be obtained before construction begins.
U.S. Corps of Engineers	Section 404 Permit		x	x			x	The permit was applied for, but a wetlands assessment was performed and the site was determined to contain no jurisdictional "Waters of the U.S."
Kansas Dept, of Agriculture - DWR	Notice of Intent to Open or Expand a Sand or Gravel Pit	x			x			The application has been filed.
	Application of Approval to Change the Place of Use, The Point of Diversion or the Use Made of the Water Under an Existing Water Right	x			x		x	The application has been filed.
	Application of Approval to of Plans for Construction or Maintenance of Levees or Floodplain Fills	x		x			x	The application has be applied for, DWR is reviewing plans for floodplain fill.
Kansas Dept. of Health and Environment	Construction Stormwater General NPDES Permit for Construction Related Activities	x			x	x		SWPPP has been approved. Permit has been obtained.
	NPDES Permit for Stormwater Discharges Associated with Industrial Activities		x		x		x	The permit has been applied for. Approval is pending.
	Water Well Permit		x		x		x	A permit will not be required because the water well will not be used to provide drinking water.
	Septic Permit		x		x		x	A permit will not be required because the septic system will only accommodate domestic wastes.
	Air and Radiation		x		x		x	A permit will not be required for air contaminatino of particulate emmissions.
Kansas State Conservation Commission	Mine Registry	x			x			The application has been filed. Fee must be paid prior to construction operations.
	Mining Permit	x			x		x	The application has been filed. Fee must be paid prior to construction operations.
	Reclamation Bond	x			x		x	The bonding must submitted prior to construction operations.
	Blasting Permit		x		x		x	No Blasting will occur on-site.

KAPA Proposed Amendment
HOUSE BILL NO. 2982
By Committee on Appropriations

12-9

(d) ~~Except as provided by this subsection, the~~ The governing body of the drainage district may regulate excavations ~~within the boundaries~~ in the same manner provided by K.S.A. 19-3309, and amendments thereto, ~~and~~ may only require an excavation permit as provided in this subsection. No excavation shall be made or commenced within 1,000 feet landward or riverward of the center line of any portion of a flood control work constructed under the provisions of chapter 19, article 33 of the Kansas Statutes Annotated without first obtaining a permit. Applications for permits shall be submitted to and reviewed by the district engineer. If the engineer determines that the proposed excavation shall be detrimental or will impair or endanger the function of any flood protection works, permission for such excavation shall be denied. If the engineer determines that a restricted or conditional permit for excavation can be granted to the applicant which will not be detrimental or will not impair or endanger the function of such flood protection works, the engineer shall issue such restricted or conditional

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(d) Except as provided by this subsection, the governing body of the drainage district may regulate excavations within the boundaries in the same manner provided by K.S.A. 19-3309, and amendments thereto. Applications for permits shall be submitted to and reviewed by the district engineer. If the engineer determines that the proposed excavation shall be detrimental or will impair or endanger the function of any flood protection works, permission for such excavation shall be denied. If the engineer determines that a restricted or conditional permit for excavation can be granted to the applicant which will not be detrimental or will not impair or endanger the function of such flood protection works, the engineer shall issue such restricted or conditional permit. If the engineer determines that no impairment of or danger to such flood protection works will occur as a result of such excavation, the engineer shall issue a permit to the applicant. The issuance of any permits hereunder shall not authorize the violation of any existing zoning laws or building codes.

Any person feeling aggrieved by the determination of the engineer may appeal such decision in writing to the governing body of the drainage district within 10 days of determination and the governing body after a public hearing may affirm, reverse or modify the determination.

19-3309. Same; regulation of excavation; permits; appeal. No excavation shall be made or commenced within one thousand (1,000) feet landward or riverward of the center line of any portion of a flood control works constructed under the provisions of chapter 19, article 33 of the Kansas Statutes Annotated without first obtaining a permit. Permits requested of the county shall be reviewed by the county engineer. If he determines that the proposed excavation shall be detrimental or will impair or endanger the function of any flood protection works, permission for such excavation shall be denied. If he determines that a restricted or conditional permit for excavation can be granted to the applicant which will not be detrimental or will not impair or endanger the function of such flood protection works he shall issue such restricted or conditional permit. If he determines that no impairment of or danger to such flood protection works will occur as a result of such excavation he shall issue a permit to the applicant. The issuance of any permits hereunder shall not authorize the violation of any existing zoning laws or building codes.

Any person feeling aggrieved by the determination of the county engineer may appeal his decision in writing to the board of county commissioners within ten (10) days of the determination and the board after a public hearing shall have authority to affirm, reverse or modify the determination.

M E M O R A N D U M

TO: House Agriculture and Natural Resources Committee
FROM: Jeffrey A. Wietharn
DATE: March 20, 2008
SUBJECT: House Bill 2982

Chairman Faber and members of the Committee, thank you for allowing me to appear before you today. I do so in my capacity as an attorney representing the Kaw River Drainage District. The Kaw River Drainage District is located along the north bank of the Kansas River, stretching from near downtown Topeka to a point south of Silver Lake. I am testifying against the amendment to K.S.A. 24-132 contained in House Bill 2982.

As you know, the Bill seeks to limit the authority of drainage districts' governing bodies to regulate excavations within their districts. Please understand that a similar bill (Senate Bill 598) received two full hearings in the Senate. Additionally, an appeal is currently pending before the Kansas Court of Appeals that is relevant to this House Bill. That case is Kaw River Drainage District v. Lindstrom et al., Case No. 07-98775-A. The case was originally filed in September 2006 in Shawnee County District Court. That Court found that the "1000 feet" language of K.S.A. 19-3309 modifies the broader language found in K.S.A. 24-132(d). We respectfully disagree, and my client appealed to the Court of Appeals. The matter has been fully briefed, and we anticipate that it will be set for oral arguments in the near future.

If the Shawnee County District Court's decision is ultimately affirmed, the litigation may make this legislation unnecessary. I respectfully request that you let the litigation run its course.

I also ask that you reject House Bill 2982 because it will result in bad public policy. Although I am not an engineer, in the context of the litigation I have tried to educate myself about the issues. My understanding is that excavations within a drainage district can facilitate underseepage and undermine the levy system. Additionally, excavation operations, particularly if accompanied by berms, may have the effect of reducing a district's surface area and/or divert flood waters further inland. Therefore, each excava-

Memorandum to House Agriculture
and Natural Resources Committee
March 20, 2008
Page 2

tion project must be evaluated so as to minimize the risk of flooding and damage.

Granted, as in our case, excavators may not always agree with the decision of a governing body. However, as we have seen, there is a remedy in District Court. The remedy is not to impose an arbitrary limit on the governing body's authority, which limitation does not take into account the unique nature of the district or the proposed excavation project.

For these reasons I ask that you reject House Bill 2982. Chairman Faber and Committee, thank you for the opportunity to appear before you today, and I will stand for questions at the appropriate time.

HOUSE BILL 2982
PROPOSED AMENDMENT TO KSA 24-132

STATEMENT BEFORE THE HOUSE AGRICULTURAL COMMITTEE
BY LAWRENCE J. BRENNAN, ADMINISTRATOR
KAW VALLEY DRAINAGE DISTRICT OF WYANDOTTE COUNTY, KANSAS

March 24, 2008

The Kaw Valley Drainage District of Wyandotte opposes the passage of HB 2982

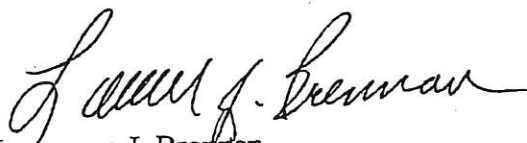
The Kansas Statutes affecting the Kaw Valley Drainage District of Wyandotte County begins in 1905 with the passage of 24-401 et seq. In 1945, 19-3301 through 19-3308 were passed, which addressed governance and administration of drainage districts along rivers and their tributaries across the state where the Corps of Engineers had authority to act, and applied to both counties and cities. In 1971, 19-3309 was passed, and in 1995, the powers granted in 19-3301 through 19-3309 were also granted to drainage districts. KSA 24-132 talks about drainage districts "touched by the Kansas River". It appears that all counties, cities and drainage districts on the Kansas River could be impacted by HB 2982.

The net effect of over 100 years of legislative history is that the State of Kansas had established the policy that lands and improvements in areas protected from floods are to be kept secure from certain risks. And to implement that policy, tools were given to local governmental units to help enforce reasonable regulation of excavations. What is at risk by improper excavations is land, improvements and existing flood control facilities.

The existing body of law should not be contravened and the law ignored. The permit process is very important and has been very successful in our district. To suggest courts should be substituted for the permit process is at odds with reality, where the legislative and local governments every day put the burden on commercial enterprises, with the permitting and licensing process.

In our District, a way has been found to permit all worthwhile projects. In the twelve years since 24-132 was passed, our authority to review excavations has not been questioned. In our area, weighing flood protection against the easing of acquiring construction materials, flood protection would win hands down.

Sincerely,



Lawrence J. Brennan
Kaw Valley Drainage District

**FAIRFAX DRAINAGE DISTRICT OF
WYANDOTTE COUNTY, KANSAS**

**1620 Fairfax Trafficway
Kansas City, Kansas 66115-1408
(913) 321-2260
FAX (913) 321-1129**

March 22, 2008

Honorable Members
House Agriculture and Natural Resources Committee

Subject: House Bill 2982

The Fairfax Drainage District (FDD) Board of Directors wishes to formally express its opposition to HB 2982 which proposes to amend existing law KSA 24-132.

The language which is proposed in HB 2982 eliminates the needed regulatory authority of drainage districts as pertains to excavations greater than or equal to 1,000 ft. landward or riverward of flood control works within their boundaries. The FDD believes this change in regulatory authority will compromise the ability of drainage districts to carry out its sole function --- flood protection for its constituents.

Most drainage districts in highly developed areas have a twofold function: 1.) to protect their constituents from flooding when river levels are elevated (this is accomplished with levee flood control works) and 2.) to collect and convey interior storm water (landward of the levees) as a result of local precipitation (this is generally accomplished with drainage ditches and storm sewers which extend well beyond the levee flood control works).

As a result of this second function, drainage districts in highly developed areas incorporate several miles of streams, ditches & storm sewers together with related structures within their jurisdictions (both inside and outside 1,000 ft. of their flood control works) to manage storm water flow and protect their constituents from interior flooding. Their construction, modifications, repair and maintenance, together with that of other below ground non-storm water related utilities (such as high pressure gas mains, electrical ducts, forced water & sanitary mains, fiber optic transmission lines, etc.), which often traverse storm sewer structures, all require regulation by the drainage district when excavations are envisioned to ensure proper interior storm water management throughout their entire boundary whether close to or far removed from the levee flood control works.

Therefore, in an effort not to compromise the twofold flood protection function of drainage districts, the FDD believes it is imperative that regulatory authority of drainage districts for excavations within all areas of their boundaries, both on the landside and river side of the flood control works, continue to be prudently safeguarded by maintaining the language of the existing statute. I will be available to offer comments at the March 25, 2008 hearing.

Respectfully yours,

Stephen P. Dailey

Stephen P. Dailey, P.E.
General Manager

TESTIMONY

TO: HOUSE AGRICULTURE AND NATURAL RESOURCES

FROM: LENNY MEIER
PRESIDENT
VEGETABLE GROWERS ASSOCIATION

RE: HB 2982

DATE: MARCH 24, 2008

Mr. Chair and members of the committee, thank you for the opportunity to testify today in opposition to House Bill 2982. I realize you didn't write this bill, but from where I sit it will do more harm in this fashion than good. I pay taxes to the drainage board and if the bill limits them to 1000 feet of the center line of any portion of a flood control works then I no longer need to pay taxes because my ground, even though in a flood plain, is more than 1000 feet from the proposed control line. The drainage districts and the people who live and own property inside the drainage district boundaries are happy with the current law.

Drainage districts should have permitting authority within their entire boundaries the same as the counties. If it is limited to 1000 feet, a big business such as a sand plant can just stay outside the 1000 feet and say, "stop us if you can." It then becomes a contest of who has the most money.

The drainage board will no longer be able to do me any good. They will no longer control the possibility of creating an unintentional danger. Excavations can be dangerous because of the type of soil in the district. Some of the topsoil is only 1 foot deep and the members of the drainage board are aware of this. Removal could cause erosion of sorts that would cause danger somewhere down the line. Flood control will be greatly reduced and many thousands of acres of land and homes and businesses will be put in grave danger.

The other reason I'm here is that I am the president of the Vegetable Growers Association for the state of Kansas. As a grower in the valley(flood plain), I believe that the drainage board has helped keep the land usable due to diligent decisions in the past. They limit what can be removed or added to the flood plain and keep it on an even playing field. With the drainage board controlling what can be added or removed, it keeps the land from excess flooding, in the event of a flood. With the proposed bill, a district engineer would determine if excavations could be made outside of the proposed 1000 feet. He does not live or work in the area as does the drainage board members. They see day to day what is happening in the area and are the best judges as to what should or should not be removed from the area outside of the 1000 feet. When something is proposed to happen in the drainage district, we are notified and given the opportunity to oppose or

approve the proposal. With the district engineer in charge, things may have a way of happening without the population in the drainage district having knowledge. Please reconsider the harm this bill will cause to the people who live in the drainage districts. Thank you for this opportunity to oppose House Bill 2982 for the people who live in the drainage districts.