

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on February 7, 2008 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Emalene Correll, Kansas Legislative Research Department
Jason Thompson, Revisor of Statutes
Matt Todd, Revisor of Statutes
Adrienne Halpin, Committee Assistant

Conferees appearing before the committee:

Ron Hein, Kansas Beverage Association
Kansas Food Association
Kansas Pharmacy Coalition
Kansas Restaurant and Hospitality Association
Bob Alderson, Casey's General Stores
Bill Bider, Kansas Department of Health and Environment
Philip Bradley, Licenced Beverage Association
Mike Beam, Kansas Livestock Association
Roxanne Miller, Kansas Land Trust
Dave Webb, Stillwell, Kansas Livestock Association Ranch Land Trust
Alan Pollom, Nature Conservancy of Kansas
Mark Salley, Army Central Regional Environmental Office
Scott Carlson, State Conservation Commission

Others attending:

See attached list.

Chair McGinn announced the continuation of testimony from February 1st for **SB 258** which deals with the redemption of certain beverage containers.

Ron Hein testified on behalf of the Kansas Beverage Association, the Kansas Food Association, the Kansas Pharmacy Coalition, and the Kansas Restaurant and Hospitality Association against **SB 258** (Attachments 1, 2, and 3). Mr. Hein stated these organizations do not have the adequate space or staffing to maintain redemption centers in their commercial centers. Mr. Hein echoed Kevin Dietly's testimony from February 1st, stating that Kansas needs to look into a more comprehensive means of recycling. Mr. Hein stood for questions.

Next, Bob Alderson testified on behalf of Casey's General Stores (Attachment 4). The chain, which is based in Iowa, has 104 stores in Kansas. Because Casey's operates in Iowa-- which has a beverage container redemption program-- Mr. Alderson stated the chain has been directly impacted by this type of legislation. In rural Iowa communities, Casey's often becomes the primary collector of bottles, presenting space, sanitation, and staffing problems. In stores near bordering states, consumers redeem bottles which were not purchased in-state, causing the stores to collect more bottles than they sell. Mr. Alderson stood for questions.

Bill Bider, Director, KDHE Bureau of Waste Management, stated KDHE took a neutral position on the issue and highlighted both potentially positive and negative consequences of the legislation (Attachment 5). KDHE considers the bill to have environmentally positive outcomes, among which would be reduced litter, especially if water bottles were included. Among the possible negative consequences of the legislation are: the potential energy costs in transportation, the climate controlled areas which would be necessary to store containers, and an increase in water consumption and chemical cleaning agents to sanitize the bottles. KDHE believes a redemption program would have an overall positive environmental impact. As to potential costs, Director Bider stated the bill would refer most of the responsibilities of carrying out the redemption program to KDHE. Such responsibilities would include: public awareness training, data collection, analysis,

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investigation, inspection, auditing, and reporting. Director Bider estimated the up-front contracting cost would be \$300,000. Afterward, there would be an approximate \$600,000 cost per year to provide for staff and administration. At this moment, a funding source has not been identified in the bill. KDHE encourages several additions to the bill including: (1.) the requirement to report to KDHE so the program could be monitored for effectiveness, (2.) specification of an adequate number of redemption centers, (3.) the necessity to phase-in such a program because of the need to train personnel and develop forms, and (4.) a designation for unredeemed deposits. Director Bider reiterated that, if returned containers exceed 72%, wholesalers will experience losses which the two cent handling fee will not cover. KDHE believes the bill needs to be revised before it can be moved forward and would be happy to help in that process. Director Bider stood for questions.

Lastly, Philip Bradley of the Licenced Beverage Association, stated that, under Kansas statute, licenced facilities serving alcohol are not permitted to allow alcohol beverage bottles to leave the premises (Attachment 6). As such, **SB 258** does not designate these facilities as either a consumer who could redeem bottles to its supplier, or a supplier who needs to collect them. Mr. Bradley stood for questions.

Chair McGinn closed the hearing on **SB 258** and opened the hearing for **SB 538** which addresses farm and ranch land protection.

Mike Beam of the Kansas Livestock Association spoke in favor of the bill (Attachment 7) stating **SB 538** would amend the purpose statement of the State Conservation Commission so that the Commission could administer conservation easements. This program would mirror the USDA program called the Farm and Ranch Land Protection Program which requires a 25% non-federal match. Mr. Beam stated that conservation easements have been recognized by Kansas statutes since 1992 and provide a way to leverage the development value of land without actually developing it, preserving historical farm and ranching traditions and providing a tool for generational succession for a farm or ranch. Mr. Beam stood for questions.

Roxanne Miller of the Kansas Land Trust spoke in favor of the bill (Attachment 8). While the Trust participates in federal programs, these programs require support matches. Ms. Miller stated that, although the Trust receives funds from the State Conservation Commission and has used these funds efficiently, the Commission is responsible for the support of many agencies and the funding will not be adequate for future needs, such as the partnership with Fort Riley to preserve land surrounding the military base. She further stated that, in order to continue their past successes, the Land Trust is in need of regular and predictable funding. Ms. Miller stood for questions.

Dave Webb of Stillwell, Kansas testified in support of the bill (Attachment 9). Mr. Webb formally served on the Conservation Committee and is Chairman of the Kansas Livestock Association Ranch Land Trust. Mr. Stillwell stated that if previous generations had emphasized conservation, there would be greater awareness of the historic geography now. In the view that we are responsible caretakers of the land, **SB 258** would, he said, preserve farmlands and vistas for future generations. Mr. Webb stood for questions.

Alan Pollom of the Nature Conservancy of Kansas testified in favor of the bill (Attachment 10). Mr. Pollom stated that among the recently named "Eight Wonders of Kansas," two separate preserves were recognized. Mr. Pollom stated that although the concept of conservation easements is relatively new to Kansas, it has gained interest in the last three years. The Nature Conservancy has used easements to preserve 20,000 acres of land to date. Mr. Pollom further stated that enactment of the bill would be an important step toward allowing the state to capture matching resources. Mr. Pollom stood for questions.

Mark Salley of the Army Central Regional Environmental Office spoke in favor of the bill (Attachment 11). Mr. Salley stated that the Army is in favor of conservation easements on land surrounding army installations in that it provides a buffer area around the installation. Easements are also, he stated, a proven means of preserving wildlife habitats. Mr. Salley stood for questions.

Lastly, Scott Carlson of the State Conservation Commission spoke in favor of the bill (Attachment 12). Mr. Carlson stated that **SB 538** would amend statute 2-1904. Mr. Carlson stated that the Conservation

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MINUTES OF THE Senate Natural Resources Committee at 8:30 a.m. on February 7, 20089 in Room 423-S of the Capitol.

Commission has past experience with conservation easements, the first of which were funded in 2006 with more funded in 2007 and 2008. Because these easements rely heavily on federal appropriations, those involved must also find the necessary non-federal match. In the past, this has meant missed opportunities to fund easements. Mr. Carlson further stated that the additional staff made possible through the proposed funding would allow them to work with new programs, unlike the Farm and Ranch Land Protection Program which must prioritize all incoming requests. Mr. Carlson stood for questions.

Written testimony was provided by:

Luke Bell, Kansas Association of Realtors (Attachment 13)

Chair McGinn closed the hearing on **SB 538**.

Senator Bruce motioned to approve the minutes from January 24th with corrections. Senator Ostmeyer seconded the motion. The motion carried.

The meeting adjourned at 9:30.

SENATE NATURAL RESOURCES COMMITTEE

2008 Session

Guest Roster—Please Sign and Pass On

February 7th, 2008
(Date)

Spencer Duncan	Capital Connection LLC
ALAN POLLON	THE NATURE CONSERVANCY
MARK S ALLEY	Army Central Regional Office
BOB ANDERSON	Casper's GENERAL STORES
Patricia Fredrickson	Self Farm Bureau, KAN
Bill Bider	KDHE
Scott Carlson	SCC
Pat Lehman	KACD
Kent Astren	Ks Farm Bureau
Craig Phillips	Fort Riley Environmental Office
Roxanne Miller	Kansas Land Trust
Dave Webb	Stilwell Jr
Mike Beam	Ks. Livestock Assn.
PHIL BRADLEY	KLBA
John Dech	PmCA of KS
Brend Keops	KDWP
Amy Thonke	KDWP
Erik Wisner	KDA
SEAN MILLER	CAPITOL SECRETARIES
Glenn Kain	Ks Beer Wholesalers Assn

Please use black ink only!!

KANSAS BEVERAGE ASSOCIATION

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Ronald R. Hein
Executive Director
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**Senate Natural Resources
TESTIMONY RE: SB 258
Presented by Ronald R. Hein
on behalf of
Kansas Beverage Association
February 1, 2008**

Madame Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Beverage Association (KBA) (formerly the Kansas Soft Drink Association), which is the state trade association for beverage bottling companies operating in Kansas. Products manufactured and distributed by members of the KBA include carbonated diet and regular soft drinks, bottled waters, isotonic drinks, juice, juice drinks, sports drinks, dairy-based beverages, teas, and other beverages.

The KBA strongly opposes SB 258. This Legislation is bad policy for the soft drink industry, for the retail industry, for other beverage manufacturers, for the consumers, for the state of Kansas, and for the environment.

Back in the 1960's and early 1970's, it was believed that the litter problem should be addressed by imposing mandatory deposit legislation on beverage containers. A hand full of states passed such legislation. Since that time, some of the strongest proponents of bottle bill legislation have reversed their position and have called for repeal of such legislation.

Beverage containers represent a very insignificant percentage of the municipal solid waste stream. The State of Kansas has been very successful in initiating efforts at recycling of its containers, and today comprehensive recycling is primarily responsible for the many recycling projects and programs in the state of Kansas and throughout the nation.

SB 258 will also increase costs to the consumer in a variety of ways.

The industry has argued for years that the solution to litter and solid waste management is a comprehensive solid waste management program, not an isolated attack on specific products. The Business and Industry Recycling Program was formed in order to deal with these issues, and the state of Kansas has made tremendous strides in developing a comprehensive waste management program. This is not the time to go backwards and try old gimmick approaches at solid waste management which have failed in the past, and will continue to fail in the future.

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Attachment 1*

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As you will hear from retailers in this state, bottle bill legislation will require retailers to house dirty, used beverage containers. These containers must be delivered so that they can be individually inspected to determine whether or not they are subject to the mandatory redemption.

At a time when the attitude of the state and private industry is for comprehensive recycling, this type of legislation represents a tremendous step backwards for inefficiency, lack of effectiveness, increased cost to the consumer, and in the long run, extreme detriment to the environmentally sound recycling efforts already in existence in the state.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

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Ronald R. Hein
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Testimony re: SB 258
Senate Natural Resources Committee
Presented by Ronald R. Hein
on behalf of
Kansas Pharmacy Coalition
February 1, 2008

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Pharmacy Coalition (KPC). The Kansas Pharmacy Coalition is an ad hoc coalition comprised of the Kansas Pharmacists Association and the Kansas Association of Chain Drug Stores.

The KPC opposes SB 258, because of the problems that a mandatory deposit and redemption program would cause for our members who sell and serve their customers utilizing beverages in their own containers. For example, numerous pharmacies and drug stores sell bottled water, bottled soft drinks, and other beverages in aluminum, plastic or glass bottles that would be required, pursuant to SB 258, to be redeemed by the pharmacy. Many pharmacies do not have back rooms, or do not have sufficient back room space, to serve as recycling centers for glass or plastic bottles or aluminum cans, when they are returned by consumers. Further concern arises with the mess that occurs with collection, and the possibility of attracting rodents and insects. The paper and plastic bags, or other containers that would be required to hold, sort, and separate the returned containers would wreak havoc on the pharmacy industry.

The expenditures that would be required for members of the KPC to expand or construct new facilities for holding such returnable beverage containers would be enormous statewide, and would constitute an economic threat to our industry.

KPC also recognizes that in today's modern world, comprehensive recycling is much more friendly to the environment, friendly to the efficiency of recycling efforts, and more user friendly in terms of efficiency of energy use than is specific container redemption proposals which were thought to be beneficial back in the 1970's but which have proven to be extremely outdated and inefficient vs. a comprehensive recycling effort. The KPC continues to support comprehensive recycling, and continues to support minimization of product packaging, and conservation of energy resources.

However, KPC strongly opposes SB 258 specifically, and bottle bills or mandatory deposit legislation in general, and urges the committee to report SB 258 adversely.

Thank you for permitting me to submit this written testimony.

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February 7, 2008
Attachment 2

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Testimony Re: SB 258
Senate Natural Resources Committee
Presented by Ronald R. Hein
on behalf of
Kansas Restaurant and Hospitality Association
February 1, 2008

Madam Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Kansas Restaurant and Hospitality Association (KRHA). The Kansas Restaurant and Hospitality Association, founded in 1929, is the leading business association for restaurants, hotels, motels, country clubs, private clubs and allied business in Kansas. Along with the Kansas Restaurant and Hospitality Association Education Foundation, the association works to represent, educate and promote the rapidly growing industry of hospitality in Kansas.

The KRHA opposes SB 258, because of the problems that a mandatory deposit and redemption program would cause for our members who sell and serve their customers utilizing beverages in their own containers. For example, numerous restaurants sell bottled water, bottled soft drinks, and other beverages in aluminum, plastic or glass bottles that would be required, pursuant to SB 258, to be redeemed by the restaurant. Many restaurants do not have back rooms, or do not have sufficient back room space, to serve as recycling centers for glass or plastic bottles or aluminum cans, which are returned by consumers, that will attract rodents and insects. In fact, it may be a violation of the restaurant licensure laws to have such returned product in close proximity to the sanitary food which will be sold by the restaurant. The paper and plastic bags, or other containers that would be required to hold, sort, and separate the returned containers would reek havoc on the restaurant industry. The same would be true for lodging facilities, which sell such beverages at retail.

The expenditures that would be required for members of the KRHA to expand or construct new facilities for holding such returnable beverage containers would be enormous statewide, and would constitute not only an economic threat to our industry, but would constitute a health threat for our facilities.

KRHA also recognizes that in today's modern world, comprehensive recycling is much more friendly to the environment, friendly to the efficiency of recycling efforts, and more user friendly in terms of efficiency of energy use than is specific container redemption proposals which were thought to be beneficial back in the 1970's but which have proven to be extremely outdated and inefficient vs. a comprehensive recycling effort. The KRHA continues to support comprehensive recycling, and continues to support minimization of product packaging, and conservation of energy resources.

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However, KRHA strongly opposes SB 258 specifically, and bottle bills or mandatory deposit legislation in general, and urges the committee to report SB 258 adversely.

Thank you for permitting me to submit this written testimony.



CASEY'S GENERAL STORES, INC.

P.O. Box 3001 • One Convenience Blvd., Ankeny, Iowa 50021-8045 • 515-965-6100

TESTIMONY OF BOB ALDERSON
ON BEHALF OF CASEY'S GENERAL STORES, INC.
BEFORE THE SENATE COMMITTEE
ON NATURAL RESOURCES

FEBRUARY 1, 2008

Chairperson McGinn and Members of the Committee:

My name is Bob Alderson, and I am appearing on behalf of Casey's General Stores, Inc., in opposition to Senate Bill No. 258. Casey's is located in Ankeny, Iowa, and it operates 1,462 convenience stores in nine Midwestern states, including Kansas. As of the end of 2007, Casey's had 104 stores in Kansas.

I have read the prepared testimony of Kevin Dietly, which has been submitted to this Committee, analyzing the provisions of SB 258 and discussing the issues that these provisions present. Mr. Dietly has been very thorough in his analysis, and Casey's agrees with Mr. Dietly's analysis and supports his conclusion that "SB 258 is an out-dated answer to the issues of litter control and recycling." To avoid being redundant, I will not reiterate all of the reasons set forth in Mr. Dietly's testimony to support that conclusion. However, because Casey's does business in Iowa, which has a law with provisions substantially identical to those contained in SB 258, I want to share with the Committee some of Casey's experiences operating under that law.

Initially, I should note that Casey's business plan gives priority to locating its stores in rural communities. This is true in all states in which Casey's does business, including Kansas. In many instances where Casey's locates in a small, rural community, the Casey's General Store might be the only convenience store in that community. In fact, Casey's has located in many rural communities in which there are no other convenience or grocery stores. In those situations in Iowa, this means that the Casey's store becomes the collector for all cans and bottles in that community. This creates a hardship for numerous reasons.

First, Casey's, like most convenience stores, simply does not have the room to be the collector of cans and bottles being returned by consumers.

Second, being a collector of cans and bottles, regardless of whether a store is the only store in a community redeeming returned cans and bottles, is a dirty, stinky and sticky responsibility, and the cans and bottles collected attract all kinds of rodents, insects (including cockroaches) and other vermin. This should be considered within the context that consumers continue to rate store cleanliness and food safety as the

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Attachment 4

number one demand they have for a food store. The law in Iowa makes sanitation extremely difficult, and SB 258 would have the same effect in Kansas.

Finally, I would note that where a Casey's store is the only food store in a rural community located near one of Iowa's borders, the burden on Casey's personnel becomes exacerbated. Most grocery and convenience stores redeem far more cans and bottles than they sell. It does not take long for people to figure out that they will redeem cans and bottles where it is convenient, which is often times the nearest convenience store or grocery store. This is particularly true for a convenience store or grocery store located on the border of a state which does not have a law like Iowa's or the one being proposed in SB 258. This creates an additional problem for convenience stores and grocery stores located in these areas, and it creates an unfair burden on small grocery and convenience stores which can least afford it and do not benefit from the law. In fact, in the instance of stores in Iowa located near bordering states which do not have a law like Iowa's or the one being proposed in SB 258, it means that such stores will, in effect, be subsidizing their out-of-state competitors.

For the foregoing reasons and for all of the reasons advanced in Mr. Dietly's testimony, Casey's General Stores respectfully urges the Committee to report SB 258 unfavorably. Thank you for your attention to this testimony. I will attempt to respond to any questions members of the Committee may have.



DEPARTMENT OF HEALTH
AND ENVIRONMENT

Kathleen Sebelius, Governor
Roderick L. Bremby, Secretary

www.kdheks.gov

**Testimony on Senate Bill 258
A Bill Requiring Deposits on All Beverage Containers Sold in Kansas**

**Presented to
Senate Natural Resources Committee
By
Bill Bider
Director, Bureau of Waste Management**

February 1, 2008

Madam Chair and members of the committee, my name is Bill Bider and I serve as the Director of the Bureau of Waste Management at the Kansas Department of Health and Environment. Thank you for the opportunity to discuss SB 258, which proposes to implement a system of mandatory deposits on the sale of all beverage containers in Kansas to increase the container recycling rate. Despite the likelihood for overall positive environmental results, KDHE is neutral with respect to the passage of SB 258 as currently written. We would like to discuss with you some issues the committee might want to consider, particularly with regard to the implementation aspects of this bill.

There are currently eleven states in the United States that have passed and implemented beverage container deposit legislation, but no national effort has been successful. It has been nearly 20 years since an effort has been made to pass deposit legislation in Kansas. KDHE recognizes that there are natural resource and environmental benefits associated with deposits laws. In Kansas, about 2 billion beverage containers are sold per year. The current recycling rate for such containers is uncertain, but believed to be approximately 25-30 percent. If the return rate increases to just 60 percent with such a law, an additional 600 million containers will be recovered for recycling. This would conserve valuable landfill space, reduce the consumption of energy and other materials resources, and reduce the emissions of pollutants generated in a wide variety of manufacturing processes.

However, KDHE also recognizes that mandatory deposit systems impact the wholesale and retail business community and such programs have a cost to administer. There is also uncertainty as to negative environmental impacts caused by the transportation and handling of empty containers by the public and the businesses. Retailers and wholesalers must establish and maintain climate-controlled storage areas that require regular cleaning using cleaning chemicals and water.

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February 7, 2008
Attachment 5*

Cost to Administer SB 258

Several specific tasks associated with the implementation and ongoing administration of the proposed deposit system have been assigned to KDHE. The department estimated a fiscal impact of the bill assuming that following major duties will be KDHE responsibilities:

- Program set-up
- Training of employees in affected industry and commercial establishments
- Data collection, analysis, and reporting to measure program effectiveness
- Ongoing technical assistance and training
- Redemption center registration
- Refillable container certification
- Regulations development related to container storage and management
- Inspections and complaint investigations
- Audits of deposit collections and payments
- Public education
- Compliance and enforcement related to identified violations

KDHE recommends that the bill more clearly specify whether these responsibilities would be assigned to KDHE. We also recommend that provisions be added to authorize KDHE to adopt regulations related to the management of empty containers at retailers, wholesalers, and redemption centers.

KDHE estimates initial contractor costs of about \$300,000 to help set up the program and assist with the registration of redemption centers and certification of refillable containers. There would also be ongoing operational costs of nearly \$600,000 per year. Some other states have experienced implementation and annual operating costs that greatly exceed these amounts. It is important to note that this bill does not identify a funding source for these state expenses. Some states, such as Hawaii, have added one cent per container extra, paid by beverage wholesalers to cover state administration costs.

Data Reporting

KDHE is required to monitor the effectiveness of the program. This would require the routine submittal of reports to the department by wholesalers. We would recommend that provisions be added to require that reports be filed as requested by KDHE.

Redemption Centers

The bill allows retailers to designate and sponsor redemption centers if they prefer not to collect containers. Clarification needs to be provided regarding what constitutes an adequate number of redemption centers to serve the public. For example, could all of the retailers in a town get together and sponsor a single collection center? Or would one center be adequate to serve multiple small towns in a rural county?

Deposit System Phase-In Schedule

The bill was drafted last year, thus some implementation dates need to be updated. Even with updates, KDHE questions whether a logical phase-in schedule needs to be

developed rather than simply begin collecting deposits on July 1, 2008. There needs to be a time to develop forms for reporting and recordkeeping, to train affected businesses, to educate the public, and to hire and train new KDHE staff to implement the program. We would recommend delaying the collection of deposits for at least an additional six months (January 1, 2009).

The 2-Cent Retailer/Redemption Center Handling Fee

The bill provides for a 2-cent per container handling fee for retailers or redemption centers. This would help cover some of the costs of implementing the bill at the retail level. However, this handling fee is paid by wholesalers to retailers and redemption centers, and depending upon the container return rate, the wholesalers may lose money. The following example explains what can happen:

- A wholesaler sells 100 containers to a retailer and collects \$5.00 in deposits.
- The retailer recoups the deposit money by selling all of the 100 containers to consumers.
- 80 of the containers are returned to the retailer by the public. The retailer pays out \$4.00 in redeemed deposits to the public and is temporarily \$4.00 in the hole.
- The retailer returns the 80 containers to the wholesaler, who pays the retailer \$4.00 plus 2 cents per container (\$1.60) for a total payout of \$5.60.
- The retailer is ahead \$1.60, but the wholesaler experiences a \$.60 loss.

The wholesalers' losses begin at return rates of 72 percent. If the return rate is lower the wholesaler makes some money associated with unredeemed deposits. KDHE does not have a solution to this problem since the goal is to achieve the highest possible return rates.

Unredeemed Deposits

Unredeemed deposits can be significant. If only 60 percent of the 2 billion containers are returned, wholesalers will have a combined \$40 million in unredeemed deposits, minus the 2-cent handling fee (\$16 million) leaving them with \$24 million. Most states with deposit laws require some or all unredeemed deposits to be turned into the state, which uses the money for a variety of purposes including program administration. If this was the actual outcome in Kansas, and the bill was modified to require wholesalers to submit a percentage of unredeemed deposits to the state, the state administrative costs could be met. However, if the return rate is high, there may not be adequate funds that could be used for the state to administer the program. Also, if the wholesalers are required to turn unredeemed deposits into the state, they would receive no money to help them defray the costs of implementing this program.

Thank you for the opportunity to testify regarding this bill. I will now stand for any questions you might have.



*Kansas
Licensed
Beverage
Association*

Testimony on SB-258, February 1, 2008
Senate Natural Resources Committee

Chair McGinn, and Senators of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Association, the men and women, in the hospitality industry, who own, manage and work in Kansas bars, breweries, clubs, caterers, hotels and restaurants where beverage alcohol is served. These are the over 3000 places in Kansas you frequent and enjoy. And the tens of thousands employees that are glad to serve you. Thank you for the opportunity to speak today.

We oppose SB-258.

I realize the full schedule you have and will not repeat the numerous and varied reasons offered by the other opposing conferees. These overwhelming concerns cause us to seriously pause and ask if there is not a better way to achieve these ends. We believe this bill is not the answer and urge its defeat.

In addition we have unique business practices that further call into question the logic and reasonableness of this measure. One such statute is that we are not allowed to let any of the bottles of beverage alcohol we purchase to leave our premises. To do so is a violation of said statute and risks our very license. Most of our establishments **do not allow any** beverage containers to be carried out. We are in essence the container consumer, and only sell the liquid within. Under this act we will be required to pay our suppliers a deposit. And presumably return them to our supplier as well. So if our bottles and cans do not leave, should we be required to collect a deposit? Or even participate in a return center if we are de facto the consumers and are returning our containers as well? Please refer to the statue on the reverse side.

*Philip Bradley
CEO*

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We find many logistical problems in this act, find that our statutory requirements are in conflict and that in our unique businesses it would not achieve its intended goals. For those reasons and the other stated reasons of the opponents we ask that you defeat this measure.

I am available for your questions. Thank you for your time.

Philip Bradley

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Attachment 6*

Here is the exact statutes.

14-21-12. Storage of liquor; removal from drinking establishment prohibited. (a) Each drinking establishment shall store its liquor only upon the licensed premises of the drinking establishment unless it has received prior approval in writing from the director to do otherwise.

(b) Each drinking establishment shall not make any sales of alcoholic liquor for consumption off the licensed premises. All alcoholic liquor purchased on the drinking establishment premises shall not be removed from the drinking establishment premises.

(Authorized by K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85; implementing K.S.A. 41-2634 as amended by L. 1987, Ch. 182, Sec. 85, L. 1987, Ch. 182, Sec. 88; effective, T-88-22, July 1, 1987; effective May 1, 1988.)

When we remember we are all mad, the mysteries disappear and life stands explained.
Mark Twain

Philip Bradley
CEO
Kansas Licensed Beverage Association
phil@klba.org 785-766-7492



Since 1894

TESTIMONY

To: The Senate Natural Resources Committee
Sen. Carolyn McGinn, Chairperson

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: February 7, 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*
- *State by state enrollment in FRPP (1996-2007)*
- *Funding sources considered by SB 538 supporters*

Thank you, Madam Chair, 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. Similar bills have been considered in the House of Representatives, but this is the first hearing on this subject by a Senate Committee.

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.

*Senate Natural Resources
February 7, 2008
Attachment 7*

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.

In most instances, the agreement is perpetual.

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 530,000 acres of farm and ranchland in 49 states. (see attached spread sheet). 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. (Attached is a partial list of potential funding sources considered by the SB 538 sponsors.) Your input and recommendation is welcome!

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 and a new source of dedicated funds 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.

Kansas Conservation Easement Law

58-3810

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



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/farmbill/2002/>



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

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.

FRPP Fiscal Year 1996-2007 Cumulative Summary¹

State	Financial Assistance Cumulative Allocations	Easements Acquired		Easements Pending	
		Number	Acres	Number	Acres
Alabama	\$4,791,622	8	1,171	9	1,520
Alaska	\$430,000	0	0	1	40
Arizona	\$2,413,956	2	2,300	1	47
Arkansas	\$153,572	0	0	1	247
California	\$24,250,600	33	10,347	15	6,056
Colorado	\$20,106,630	71	29,643	11	14,850
Connecticut	\$18,714,353	61	7,910	18	1,356
Delaware	\$21,923,144	94	16,614	7	1,577
Florida	\$16,305,997	13	14,176	6	1,495
Georgia	\$6,849,563	10	1,550	9	1,492
Hawaii	\$5,005,166	1	167	3	306
Idaho	\$2,944,289	6	2,556	6	1,465
Illinois	\$9,886,419	18	2,800	5	814
Indiana	\$999,919	0	0	0	0
Iowa	\$2,682,311	13	2,757	0	0
Kansas	\$2,595,201	12	7,802	3	6,761
Kentucky	\$19,337,786	132	22,675	17	3,776
Louisiana	\$27,000	0	0	0	0
Maine	\$6,586,315	17	4,160	8	1,401
Maryland	\$31,860,667	169	22,162	88	12,973
Massachusetts	\$24,702,691	111	8,091	35	2,485
Michigan	\$18,178,514	58	7,162	24	2,462
Minnesota	\$5,138,896	16	1,495	7	789
Mississippi	\$0	0	0	0	0
Missouri	\$4,062,153	2	172	3	1,302
Montana	\$9,253,219	18	25,200	6	5,077
Nebraska	\$653,534	1	524	1	229
Nevada	\$5,165,134	4	405	1	579
New Hampshire	\$17,785,303	79	5,223	21	1,140
New Jersey	\$30,345,086	116	12,517	96	9,325
New Mexico	\$3,174,832	7	204	4	95
New York	\$19,366,664	78	15,858	17	4,436
North Carolina	\$14,496,348	50	8,113	10	1,652
North Dakota	\$1,881,605	3	140	1	68
Ohio	\$15,817,702	71	15,091	35	6,096
Oklahoma	\$4,043,466	10	991	18	1,658
Oregon	\$2,533,866	4	15,575	2	508
Pennsylvania	\$28,043,374	224	33,331	67	7,800
Rhode Island	\$16,750,057	28	1,721	13	1,133
South Carolina	\$8,673,384	22	3,259	12	2,296
South Dakota	\$267,900	0	0	1	374
Tennessee	\$2,678,464	1	420	3	526
Texas	\$7,450,796	5	2,981	2	542
Utah	\$5,516,332	10	2,572	3	399
Vermont	\$22,271,257	183	40,050	61	12,044
Virginia	\$7,990,721	16	4,247	9	1,123
Washington	\$11,186,801	42	3,950	37	2,380
West Virginia	\$8,949,557	26	2,866	31	4,230
Wisconsin	\$13,347,782	64	8,397	15	2,607
Wyoming	\$4,234,278	6	14,509	5	5,766
Total	\$511,824,226	1,915	383,859	748	135,297

¹ Easements enrolled through September 30, 2007.

7.14

Funding sources discussed by coalition supporting a Kansas Farm and Ranchland Protection Program.

The agriculture and conservation groups advocating a state program for the purchase of development rights (conservation easements) on Kansas agricultural lands have attempted to identify and recommend non-general fund sources of funding for an ongoing Kansas Farm and Ranchland Protection Program. Below is a partial list of options considered by SB 538 supporters:

- ***Agricultural land conversion fee*** – House legislation in 2006 & 2007 have contained a one-time 1.5% assessment on the value of land when it's converted from agricultural to a non-agricultural use for property tax purposes. This proposal is similar to the Maryland program.
- ***Use of gaming funds*** – Some states have appropriated a portion of their gaming revenue to conservation, including the purchase of conservation easements. We have asked ourselves if the perpetual protection of agricultural land and open spaces qualifies as “infrastructure”.
- ***Dedication of lottery proceeds*** – Some states, most notably Colorado, are dedicating a sizable portion of their lottery funds (“Go Colorado”) for conservation easement purchases.
- ***State income tax credit (transferable)*** – Colorado also has enacted a state income tax credit that is granted to anyone who donates a qualified conservation easement. This credit is transferable because many landowners do not have a significant state income tax liability to offset the credit.
- ***Mortgage registration fee add-on*** – A portion of the existing mortgage registration fee is now dedicated to historical preservation projects. A 1-cent increase, devoted to agricultural land protection, could be a source of a state Farm and Ranchland Protection Program funds.
- ***Real estate transfer fee*** – Some states have enacted a real estate transfer fee that dedicates funds for agricultural land protection and conservation.



Kansas Land Trust

MEMORANDUM TO: Senate Natural Resources Committee
Senator McGinn, Chairperson
DATE: February 7, 2008
FROM: RoxAnne Miller
RE: Senate Bill 538

The Kansas Land Trust (KLT) supports the voluntary conservation easement purchase program as presented in Senate Bill No. 538. In the last few years I have shared information with you about the KLT partnership with Ft. Riley to preserve approximately 50,000 acres of important land surrounding the military installation, through the Army Compatible Use Buffer (ACUB) program.

KLT utilizes the ACUB program and U.S.D.A. Farm and Ranch Lands Protection Program (FRPP) to fund the purchase of conservation easements and both programs require a funding match. A state funded match for these federal programs maximizes use of these funds and allows us to preserve even more of the important lands in Kansas.

KLT holds 30 conservation easements preserving 5,776 acres in Kansas. Six of these conservation easements were purchased with funding provided by a combination of sources, including ACUB, FRPP and funds from the State Conservation Commission's Conservation Easement Program.

Historically, Kansas did not have matching funds to access the federal funding. Every year between 2002 and 2005 Kansas turned back money to the FRPP program because there was no matching funds.¹ Beginning in FY2006 the Kansas Conservation Commission (KCC) budget provided conservation easement matching funds, we were finally able to match the federal funds. While annual budgeted funds have served us well in the short term, for the long term we believe Kansas would be improved if conservation easements were funded with a dedicated funding source anticipated in SB 538.

To maximize leverage of the FRPP and ACUB funds that are likely to continue for many more years, we need predictable state matching funds. Predictable state funding would result in better projects attracting more landowner participation. We can look at the success of our counterparts in other states to see what we can accomplish. All 50 states have conservation funding through **14 common funding mechanisms** and **47 less common funding mechanisms** (see Exhibit A for a list of funding mechanisms used in other states.) A portion of these are conservation ballot measures that have passed in 20 states, funded through bonds, sales tax, lottery, and oil and gas drilling revenues. Just the ballot measures collectively approved over \$18 billion dollars.²

The Kansas Land Trust needs a reliable state program to provide matching funds for the ACUB partnership with Ft. Riley in order to preserve approximately 50,000 acres of important agricultural land surrounding the military installation.

¹ In 2003 Kansas turned back \$239,087 of FRPP funds, in 2004 \$735,500, and in 2005 \$824,933.

² Bonds (\$12.9 billion), sales tax (\$3.2 billion) and other finance mechanisms including lottery revenue and oil and gas drilling revenues (\$2.4 billion).

*Senate Natural Resources
February 7, 2008
Attachment B*

Facts about the KLT ACUB project:

- Kansas Land Trust provides willing landowners in the buffer area the opportunity to sell a permanent conservation easement.
- Landowner participation is entirely voluntary.
- Ft. Riley's goal is to limit encroachment related issues:
 - Minimize neighbor conflicts over military activities,
 - Reduce or eliminate potential for military training and testing restrictions,
 - Maximize the army's training on the military land, and
 - Support conservation objectives for open space and species habitat.
- The Army has no right to use or access the buffer land.
- Kansas Land Trust's goal is to preserve important agricultural land in the buffer.
 - Approximately 45% of the buffer land is native tallgrass prairie.
 - Approximately 55% of the buffer land includes prime agricultural soils.
- KLT has completed 5 conservation easements on 1,875 acres using state matching funds and we have three more underway on 1,500 acres.
- We are now processing 5 other applications.

8.2

**Exhibit A -
State Conservation Funding Mechanisms**

Common Funding Mechanisms	Total States		
Non-game Tax Check-off	32		
Hunting and Fishing Licenses	17		
Special License Plate Sales	17		
Real Estate Transfer Tax	14		
Bonds for Land Acquisition	13		
Direct/General Appropriation	12		
Wildlife/Duck Stamp Program	12		
Lottery	6		
Cigarette Tax	3		
Mitigation Monies	3		
Sales Tax	3		
State Conservation Tax Credit	3		
General Oblig. Bond/Program Open Space Funds	2		
Trust Fund: Oil and Gas Severance Tax	2		

Less Common Funding Mechanisms	Total States		
Affinity Card	1	Motor Vehicle Registration Fee	1
Agricultural Transfer Tax	1	Narragansett Bay Clean Water Fund	1
Appropriation from the General Fund	1	Native Species Conservation Trust Fund	1
Arizona Wildlife Conservation Fund	1	Property Tax Incentives, Penalty Fees	1
Bond for Open Space	1	Real Estate Property Levy and Sales	1
Bond Funds	1	Revenue from State-owned Mineral Interests	1
Bonds for Land Acquisition, Capital Improve., Planning, Wildlife Protection	1	Special Authorizations	1
Clean Ohio Fund	1	Sporting Goods Tax	1
Conservation Grants	1	State Bond Fund	1
County and Local Dedicated Taxes	1	State Capital Funds	1
Drinking Water Supply Land Grant Program	1	State Income Tax Deduction	1
Fish and Game Fund	1	State Operating Funds	1
Forest and Park Entrance Fees	1	Tradelands/Tideland Leases	1
General Assembly Bond Allocations	1	Trust Fund	1
General Fund/Tax Revenues	1	Trust Fund: Court Settlement	1
Greenspace Program	1	Trust Fund: Mineral Tax, Penalties, License Plates	1
Housing and Conservation Fund	1	Trust Fund: Offshore Oil Drilling Tax	1
Interest Income	1	Trust Fund: State and Federal Appropriations	1
Land Acquisition Fund	1	Trust Fund: State Oil and Gas Revenues	1
Land and Community Heritage Investment Program	1	Virginia Land Conservation Foundation	1
Local and County Bonds for Land Acquisition	1	Water Protection Fund	1
Lottery Grants-Great Outdoors Colorado	1	Wildlife Trust Fund	1
Matching Grants Program	1	Wisconsin Stewardship Program	1
Mineral Severance Tax	1		

Total Funding Mechanisms

186

**Webb & Associates
4815 W. 191st
Stilwell, Kansas**

February 7, 2008

Senate Bill 538

Madam Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today on Senate Bill 538 regarding conservation easements.

My name is Dave Webb of Stilwell, Kansas. I am a former member of this body 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 Ranch Land Trust.

I appear before you today in support of Senate Bill 538. This is a conservation measure to establish a method for state funded 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 are tremendous.

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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 torch, not for yourself but for future generations.

There is a myriad of funding options available to you. We are not inventing the wheel, only improving it.

In closing let me thank you for the opportunity to appear before you today in the 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

Testimony on **SB 538**

February 7, 2008

Alan Pollom

On behalf of the Kansas Chapter of The Nature Conservancy

Before the Kansas Senate Committee on Natural Resources

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 others 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.

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February 7, 2008
Attachment 10*



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
INSTALLATIONS AND ENVIRONMENT
CENTRAL REGIONAL ENVIRONMENTAL OFFICE
601 EAST 12TH STREET, SUITE 647
KANSAS CITY, MO 64106-2896

Testimony
of
Mr. Mark Salley
Regional Environmental Coordinator, Region 7
Army Central Regional Environmental Office
Senate Bill 538

Madam Chair and members of the committee, good morning, my name is Mark Salley and I am the Regional Coordinator for the Army's Central Regional Environmental Office which includes Army installations in the state of Kansas.

I am pleased to have this opportunity to speak to you in support of Senate Bill 538. The purpose of my testimony today is to relay to the committee that we support this legislation and the potential benefit it can provide for Fort Riley's military mission. The Army believes that programs designed to minimize development adjacent to our installations is a vital part of sustaining the military mission now and far into the future.

This legislation is consistent with the Army's Compatible Use Buffers, (ACUB) program. The use of buffers or conservation easements supports the Army's mission to provide a trained and ready force by serving to mitigate the effects of civilian residential and economic development adjacent to military training boundaries.

Buffers also support the Army's responsibility as a federal agency to comply with environmental regulations, including endangered species habitat protection. 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. For example, 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.

In addition to conservation easements, we also support the objective of retaining farm and ranch lands for their traditional purposes especially when these lands serve as a buffer to our facilities. With regard to this objective the Army is encouraged by what this legislation can accomplish.

The significance of Senate bill 538 is that it provides a method to establish conservation easements which also provides our installations with the opportunity to pursue initiatives that will protect habitat and training without acquiring any new land for Army ownership. This approach advances the Army's need to identify mutual objectives for land conservation and to prevent development of critical open areas. In-turn, the military can conduct training and operations while local communities and land owners realize the added benefit of retaining lands for their original purpose.

Because this legislation facilitates our desire to accomplish mission sustainability and achieve conservation objectives that benefit a wide array of entities that share common goals, the army supports this legislation and encourages its approval by the committee.

I thank you for taking the time to consider our comments on this bill, and I am pleased to respond to your questions.

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Testimony on SB 538
to
The Senate Natural Resources Committee
by
Scott B. Carlson
Assistant Director
State Conservation Commission
January 7, 2008

Chairperson McGinn 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.

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

To: Senate Natural Resources Committee

From: Luke Bell, KAR Director of Governmental Relations

Date: February 7, 2008

Subject: **SB 538** – Establishing the Farm and Ranch Land Protection Grant Program

Chairperson McGinn and members of the Senate Natural Resources Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® (KAR) to offer testimony in opposition to **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.

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