

Approved: 5.2.08
Date

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on March 14, 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:

Larry Brennan, Kaw Valley Drainage District
Lenny Meier, Kansas Vegetable Growers' Association
Steve Daily, Fairfax Drainage District
Ron Gaches, Kaw Valley Drainage District
Edward Moses, Kansas Aggregate Association

Others attending:

See attached list.

Chair McGinn opened the meeting with an amendment for **HB 2657**, limitations on motorboat exhaust noise.

Senator Francisco stated that the first proposed change to the bill would allow motorboat operators to remove a boat from Kansas waters (page 2, line 33), and that the second change would allow the bill to take effect on the publication of the Kansas register (page 3, line 2). Chris Tymeson, Kansas Department of Wildlife and Parks (KDWP), stated that KDWP is comfortable with the new language. Senator Francisco motioned to approve the amendments, seconded by Senator Wysong. The motion carried. Senator Francisco then motioned to move **HB 2657** out of Committee favorably, seconded by Senator Taddiken. The motion carried.

Chair McGinn re-opened the hearing for **SB 598**, drainage district excavation limitations.

Larry Brennan, Administrator, Kaw Valley Drainage District, testified in opposition to the bill (Attachment 1). Mr. Brennan stated that a drainage district's responsibilities are both to maintain facilities and to ensure that new risks are not introduced into the system. A drainage district must review each proposed excavation before a project can be approved, and, with that purpose, submits the application to the Corps of Engineers for review. Additionally, Mr. Brennan stated that drainage districts have monetary investments in the system to ensure prevention of soil movement from hydrostatic pressure. Mr. Brennan stood for questions.

Lenny Meier, President, Kansas Vegetable Growers' Association, testified in opposition to the bill (Attachment 2) stating that limiting the drainage district board's jurisdiction to one thousand feet of the center line would be ultimately harmful. As a party interested in the usability of the land, Mr. Meier stated that the drainage district ensures protection against erosion for land that lies within the flood plain. He further stated that the enforcement of the bill would be harmful to residents of areas around drainage districts. Mr. Meier stood for questions.

Stephen Dailey, Fairfax Drainage District, testified in opposition to the bill stating that the function of a drainage district is two-fold: (1.) the maintenance of the levee to protect against flooding, and (2.) maintaining the interior drainage to protect the levee, including the storm sewer lines which run well beyond a one thousand foot area. Mr. Dailey stated that, as a drainage district's responsibilities are not restricted to one thousand feet, its regulatory authority should also not be so restricted. Mr. Dailey stood for questions.

In answer to the Committee's questions, Jason Thompson, Revisor of Statutes, clarified for the Committee that **SB 598** addresses only those drainage districts which are traversed or touched by the Kansas river and contiguous to or include a part of a city of the first class.

CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee at 8:30 a.m. on March 14, 2008 in Room 423-S of the Capitol.

Edward Moses, Kansas Aggregate Producers Association, stood before the Committee to present additional information relating to the Committee's previous discussion including a map of expected aggregate ability in California—as an example of the national trend (Attachment 3). The amendment would strike lines 22-30 of the bill and replace them with the original language from K.S.A. 19-3309, thereby, Mr. Moses stated, resolving the question of permits.

Ron Gaches, Kaw River Drainage District, stated that there is concern that, because the district engineer's sole criterion for judging the advisability of a proposed project is whether or not it is detrimental to the levee, the full scope of the drainage district's responsibilities—including internal drainage—would not be factored into the decision making process. Current interpretation of the existing statute gives the drainage district authority in the entirety of the district.

Senator Bruce stated that the Committee would need to either let the decision of interpretation be made by the judicial system, or to clarify the language. After discussion, Senator Bruce motioned for the first sentence of the proposed amendment to be accepted, seconded by Senator Francisco. The motion carried.

Chair McGinn requested that Senator Bruce offer new language for the amendment and that the Committee continue the discussion at a subsequent meeting.

The meeting adjourned at 9:30.

SENATE BILL 598
PROPOSED AMENDMENT TO KSA24-B2

STATEMENT BEFORE THE SENATE NATURAL RESOURCES COMMITTEE
BY LAWRENCE J. BRENNAN, ADMINSTRATOR
KAW VALLEY DRAINAGE DISTRICT OF WYANDOTTE COUNTY, KANSAS
MARCH 13, 2008

THE DISTRICT OPPOSES THE PASSAGE OF SB 598.

The Levee District has two primary responsibilities. The first is to maintain its flood control elements, which consists of levees, floodwalls, pumping stations, relief wells, outfall pipes, and emergency gates. These features must be in good working orders when the need arises.

The second primary duty is to investigate proposed excavations within the District. Why? We want to insure that a new risk is not introduced which many have a deleterious affect on our flood control systems. One thing is certain. Water in the river, under certain stages, because of hydrostatic pressure, will tend to move through and under the levees and reach the level of the ground surface landward of the levee. Also, the movement of the water landward will tend to move soil particles, and undermine the level foundation, causing levee failure. How can we minimize this phenomenon and its effects? The following information is required.

- a. The location, depth and extent of the proposed excavation.
- b. The permeability of the soils, and the transmissibility of the soils, or its capacity to allow water movement.

This information is generally obtained from soil borings and laboratory testing of soil samples. With this data, calculations can be made to determine how effectively the soils in place can resist the hydrostatic pressure and movement of water.

In our District with the current 24-132, there is notice to proposed developers about flood control concerns. Before our District can review a proposed excavation, we require that the developer provide the information described, which may necessitate that he engage an engineer with the appropriate experience.

This information will be submitted to the Corps of engineers for their review and comments. The District at some point will issue a permit, a permit with conditions, or deny the permit.

Our District has, except for a few cases which were patently a risk to the system, been able to work with a developer to incorporate certain measures into the project. Some of the measure added little to the cost, others added significantly to the cost of the project.

Senate Natural Resources
March 14, 2008
Attachment 1

We are currently engaged with the Corps of Engineers in to study to determine the adequacy of our levee system. When the study is completed about this time next year, we will have spent \$2,200,000 matched by the same amount from the Federal Government.

Preliminary findings of the study include recommendation to raise the levees about five feet, at an estimated cost of \$200,000,000.

Behind our levees are four billion dollars in investments. The adjacent District has behind the levees another 3 to 4 billions in assets.

With a levee raise of five feet in the future there will be higher hydrostatic pressures, more potential soils movement, and more need to monitor and control excavations.

TESTIMONY

TO: SENATE NATURAL RESOURCES COMMITTEE

FROM: LENNY MEIER, PRESIDENT
VEGETABLE GROWERS ASSOCIATION OF KANSAS

RE: HB 598

DATE: MARCH 14, 2008

Madame Chair and members of the committee, thank you for the opportunity to testify today in opposition to Senate Bill 598. 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 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.

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 do 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, and I'll be glad to stand for questions at the appropriate time.

Senate Natural Resources
March 14, 2008
Attachment 2

Subject: Comments on SB 598

May it please the committee in order to answer some of the questions arising from Senate Bill (SB 598) dealing with drainage districts. We would like to present the following points for your consideration. And while we feel it's an important matter of public policy to approve this bill:

- SB 598 does not diminish the **general authority** of drainage districts to regulate activities within their jurisdictional boundaries found in **KSA 24-401 et. seq.** grants drainage districts a great deal of power to regulate all sorts of activities within in the jurisdictional boundaries of the districts except that it does not grant **permitting** power and therefore, the burden of proof regarding activities within drainage districts is upon those districts. These districts have power of eminent domain and the power to call forth labor to repair dikes and other powers to regulate their activities, however in our opinion this **legislature stopped short of giving them the power to permit.** We do not think the Legislature by using the words "within the boundaries of" ever intended to grant permit authority. SB 598 merely reaffirms this policy.
- The power to permit is reserved to the State in KSA 24-126 and to counties through the conditional use process:

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

- SB 598 is merely asking the Legislature a public policy determination. Who, the drainage districts or the State of Kansas determines public policy with respect to the extraction of sand and gravel and other activities.
- The proposed project from which this measure arises will provide the Kaw Valley Region approximately 20 million tons of sand. Put into perspective we are looking at approximately a 20 year supply for this area. The development of this particularly project would be more preferable to opening 10 more pits with reserves of 2 million tons each. In other words, the ability to consolidate and develop a large source of sand creates less disturbance in the community. Should a three person board elected by 24 votes each be allowed to determine policy for all the residents of the Kansas River valley?

Senate Natural Resources
March 14, 2008
Attachment 3

- Timing is an issue, as the Shawnee County area currently has only one source of sand and it is very uncertain as to how long it will take the courts to decide this issue. If it is sent back to the district court for trial it may take up to 4 or 5 years. In the meantime, the project developer will probably lose his lease and probably lose current permits that have been secured in order to move the project forward.
- Access to natural resources, especially in Kansas, is increasingly becoming a critical issue. Applications for sand and gravel operations in Wyandotte county, Marshall county, Saline county and Pawnee county are stalemated for one reason or another. Meanwhile, current resources continue to diminish either through depletion or in the case of Kansas river restrictions on dredging.
- Seventy to Eighty percent of all sand produced in Kansas is sold either to townships, counties, cities or the state. In this light we feel SB 598 is very much a public policy issue.
- Support of SB 598 will make it clear that the county and the state shall maintain primacy in these issues with the exception of thousand foot limitation with respect to flood control structures.
- Please note only three out of the many drainage districts located throughout the state have registered their opposition.

Thank you for your time and attention to this issue. Please advise if have any questions.

Woody

Edward R. Moses, Managing Director
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AGGREGATE AVAILABILITY IN CALIFORNIA

Fifty-Year Aggregate Demand Compared to Permitted Aggregate Resources

By

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Department of Conservation
California Geological Survey

December 2006

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Fifty-Year Aggregate Demand Compared to Permitted Aggregate Resources

The pie diagrams show the projected 50-year demand for aggregate as of January 2005 compared to currently permitted aggregate resources in each county. The 50-year demand for a particular study area is graphically represented by one of four size diagram scales. Study area locations are shown on the index map of aggregate studies (lower left).

* Note that aggregate demand does not include aggregate resources that are allowed to be used for other purposes (e.g., aggregate production for aggregate resources). Some aggregate production information is given in county aggregate data sheets. See accompanying website for details of these studies.

Legend

- 50-year demand that will not be met by existing permitted resources
 - Permitted aggregate resources
 - 50-year demand is 25 to 200 million tons
 - 50-year demand is > 200 to 500 million tons
 - 50-year demand is > 500 to 800 million tons
 - 50-year demand is more than 800 million tons
- Examples:
- 50-year demand for aggregate is 100 million tons; permitted resources total 25 million tons of the 50-year demand;
 - 25,000 Million Tons (permitted resources) 50-year demand;
 - 50-year demand for aggregate is 200 million tons; permitted resources are greater than or equal to the 50-year demand;
 - 60,010 Million Tons (permitted resources) 50-year demand;

Areas With Short Term Aggregate Supply

- = 10 years of permitted resources remaining in the study area.

Aggregate Production Areas

(Symbol represents size of county aggregate mine, average aggregate 2005 annual production)

- △ < 0.5 Million Tons per Year
- △ 0.5 - 2 Million Tons per Year
- △ 2 - 5 Million Tons per Year
- △ 5 - 10 Million Tons per Year
- △ 10 Million Tons per Year

Population

1 Dot = 100 Persons
(Based on 2000 Census Data)

- City
- Interstate Route
- U.S. Route
- State Route
- Primary Highway
- Secondary Highway
- County Boundary

Map Usage and Limitations

This map is intended to provide general information about the current availability of California's permitted construction aggregate resources to state, regional, and local decision makers and decision makers. It is designed to support planning agencies in identifying construction aggregate needs in the regional planning process. However, the map is not intended to be used as the sole basis of any specific decision. Although the data are aggregated and summarized on this map, they are not intended to be used as the sole basis of any specific decision. For more information on aggregate resources, please contact the California Department of Conservation, Resources Division, at the following website: www.conservation.ca.gov/resources

