

MINUTES OF THE SENATE AGRICULTURE COMMITTEE.

The meeting was called to order by Chairperson Derek Schmidt at 8:30 a.m. on March 13, 2001 in Room 423-S of the Capitol.

All members were present except:

Committee staff present:       Raney Gilliland, Legislative Research Department  
  Jill Wolters, Revisor of Statutes  
  Betty Bomar, Secretary

Conferees appearing before the committee:

  Doug Wareham, Kansas Fertilizer and Chemical Association  
  Jamie Clover Adams, Secretary, Department of Agriculture  
  Jere White, Kansas Grain Sorghum Producers Association and  
  Kansas Corn Growers Association  
  Al LeDoux, Director, Kansas Water Office  
  David Pope, Chief Engineer, Division of Water Resources,  
  Department of Agriculture

Others attending: See attached list

**Proposed substitute for SB 255 - Civil penalties for violation of the fertilizer act**

Dave Wareham, Kansas Fertilizer and Chemical Association (KFCA), testified in support of the **Proposed Sub for SB 255**, stating the legislation enables the Kansas Department of Agriculture (KDA) to better enforce fertilizer storage laws and containment regulations designed to protect against the contamination of soil, surface waters and groundwater in Kansas. It is imperative that KDA is equipped with adequate enforcement tools to enforce the laws and regulations they are charged with, whether they relate to weights and measures, pesticide use, water use, feed manufacturing or fertilizer use. KDA currently has civil penalty authority to ensure laws and regulations relating to weights and measures and pesticide use are enforced; **Proposed Sub for SB 255** provides KDA with the same civil penalty authority when dealing with fertilizer storage laws and containment regulations.

Mr. Wareham submitted an amendment which ensures that any penalties collected by KDA associated with enforcement of the Kansas Commercial Fertilizer Law be deposited in the fertilizer fee fund. Without the proposed amendment the penalties collected would be deposited in the State General Fund. (Attachment 1)

Mr. Wareham requested the Committee and the Senate pass the proposed legislation, holding it over the interim in order to provide the Secretary of KDA time to promulgate regulations regarding bulk liquid fertilizer tank requirements presently not protected by containment structures in Kansas. Mr. Wareham advised he had talked with the Kansas Corn and Sorghum Producers Association and the Kansas Corn Growers Association, who were interested in using the interim time to participated in the rules and regulation process to see if an agreement can be reached.

Jere White, Kansas Grain Sorghum Producers Association and Kansas Corn Growers Association, in responding to a question, stated that the Association is agreeable to the proposed legislation being held over until rules and regulations are promulgated.

Jamie Clover Adams, Secretary, Kansas Department of Agriculture (KDA), testified in support of **Proposed Sub for SB 255**, stating KDA needs the additional enforcement tool for the Kansas Commercial Fertilizer Law which encompasses fertilizer, anhydrous ammonia and bulk fertilizer containment.

Presently the Commercial Fertilizer Law provides KDA with the following enforcement tools: 1) product

registration revocation, 2) product stop sale, 3) product misdemeanor/seizure, anhydrous & bulk

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fertilizer containment stop sale/stop use, and 4) anhydrous & bulk fertilizer containment misdemeanor/injunction. In FY 2000, KDA issued four bulk fertilizer containment stop use orders and 28 fertilizer stop sales from 936 samples. Currently, KDA is in a situation where use of the full range of the tools outlined is proving to be both time-consuming and ineffective. Specifically, a first order was issued in late December 1999 and formally advanced no fewer than four alternatives to the firm in the form of consent orders to avoid further administrative or judicial adjudication. The firm, however, continued to resist KDA efforts for bulk fertilizer containment compliance, and the matter is presently in district court under the criminal misdemeanor provisions of the statute. This experience has illustrated the need for other options.

**Proposed Sub for SB 255** provides an enforcement tool that will allow KDA to more effectively implement the Commercial Fertilizer Law. The proposed legislation gives the Secretary civil penalty authority of not more than \$5,000 per violation, paralleling penalties under the Federal Insecticide, Fungicide and Rodenticide Act, and provides for review of agency actions by the district court. (Attachment 2)

The Secretary, in responding to a question, stated there currently is approximately \$500,000 in the fertilizer fund. The fertilizer tonnage fee is assessed in the amount of \$1.67 per ton. Of that amount, \$1.40 goes to the state water plan fund, \$0.04 goes to the fertilizer research fund at Kansas State University and \$0.23 goes to the fertilizer fee fund at KDA. The KDA portion of the money, by law, can only be used for the purposes of administering the provisions of the Fertilizer Act.

There being no further conferees, the hearing was concluded.

The Chair informed the Committee that action on the bill is deferred until next week.

### **HB 2316 - Civil penalties for violations of water laws and orders; terms, conditions and limitations imposed by the chief engineer of the division of water resources**

Jamie Clover Adams, Secretary, KDA, testified in support of **HB 2316**. Ms. Adams stated KDA needs an enforcement mechanism that is more efficient and effective than is currently available to enforce the provisions of the Kansas Water Appropriations Act.

Ms. Adams testified that **HB 2316** spells out consequences of violating the Water Appropriations Act, provides innovative ways to give flexibility to individual water right holders, and increases responsibility in establishing adequate administrative control over the appropriation of water to prevent injury to established uses and the underlying source of water supply.

Ms. Adams submitted an amendment for consideration clarifying existing law regarding the sole authority of the chief engineer to appropriate water in Kansas. (Attachment 3)

Al LeDoux, Kansas Water Office, testified in support of **HB 2316**, stating enforcement of the Water Appropriation Act is consistent with the goals, policies, and objectives of the Kansas Water Plan. (Attachment 4)

David Pope, Chief Engineer, Division of Water Resources, KDA, testified in support of **HB 2316**, stating that permits and water rights have conditions and limitations imposed on them to protect other water users from impairment and to ensure that water is available to all citizens. Implementing **HB 2316**, improves the division of water resource's ability to administer the Kansas Water Appropriation Act by providing a tool to more effectively and efficiently enforce provisions of the act.

Currently the court has the authority to require the enforcement of the administrative order of the chief engineer for violation of water right permits; however, there is no monetary penalty association with noncompliance. Court enforcement options include: 1) bringing of civil enforcement action of administrative orders, 2) request the county attorney to conduct criminal proceedings as a class C misdemeanor, 3) request the attorney general to bring an enforcement action in the name of the state.

**HB 2316** provides KDA a direct, consistent and effective method of assessing civil penalties for compliance violations. The bill establishes limits on penalties. Enforcement actions follow current rules established in the chief engineer's enforcement regulation, except that an administrative fine or suspension

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become options. The options authorized by **HB 2316** replaces the time-consuming, costly and often inconsistent court procedures currently used to assess penalties. A penalty matrix with violation categories arranged in order of severity is envisioned depending on damage to others, the impact on water supplies, and the cost to the public. Three categories of violations are envisioned based on the violator's circumstances and past actions, these include: 1) least severe penalty - circumstances indicate the violation is not apparent without observation and possibly measurements; 2) more severe penalty - violator had knowledge or should have had knowledge, that a violation occurred, yet made no effort to correct the violation; and 3) most severe civil penalty - repeat offenders who have ignored prior legal notice of an offense; made an obvious effort to circumvent or avoid compliance requirements, or, made an attempt to cover up an obvious violation.

Mr. Pope stated water appropriations are nearing the limit of available water supplies, and it is essential that KDA have enforcement options in place to protect water users. **HB 2316** improves the ability of KDA to bring enforcement actions against violators, and brings a more direct and consistent approach to resolving violations of the Kansas Water Appropriation Act. The proposed penalties provide a meaningful enforcement tool in circumstances where currently none exist, and repeat offenders hopefully will be deterred by the threat of enhanced penalties. (Attachment 5)

The hearing was continued to Tuesday, March 20, 2001.

**Upon motion by Senator Downey, seconded by Senator Umbarger, the Minutes of the Meetings of March 6<sup>th</sup> and March 7<sup>th</sup>, 2001, were unanimously approved.**

The meeting adjourned at 9:30 a.m.

The next meeting is scheduled for March 14, 2001.

