

MINUTES OF THE HOUSE AGRICULTURE & NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Larry Powell at 9:00 a.m. on February 17, 2011, in Room 783 in the Docking State Office Building.

All members were present except:

Representative Rocky Fund - Excused
Representative Charlotte O'Hara - Excused
Representative Michael Peterson - Excused

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes
Raney Gilliland, Kansas Legislative Research Department
Michael Wales, Kansas Legislative Research Department
Kay Scarlett, Committee Assistant

Conferees appearing before the Committee:

Senator Dennis Pyle
David Barfield, Chief Engineer, Kansas Department of Agriculture
Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau

Others attending:

See attached list.

Hearing on HB 2272 – Exempting certain minor construction projects from state and federal water regulations.

Chairman Powell opened the hearing on **HB 2272**. Sean Ostrow, Office of the Revisor of Statutes, explained that this bill would exempt from regulation under the Obstructions in Streams law of the Kansas Department of Agriculture certain minor construction projects such as the construction of farm ponds and farm road stream crossings. The drafted language is adopted from the Federal Clean Water Act.

Senator Dennis Pyle offered testimony in support of **HB 2272** exempting production agriculture from the costly, burdensome regulation and permitting process. He said these activities are exempt for production agriculture under the Federal Clean Water Act, included with his testimony. He provided copies of all relevant state statues and regulations and a draft copy of the proposed Kansas Department of Agriculture, Division of Water Resources, Water Structure Rules and Regulations, dated November 29, 2010. He stated that the purpose for requesting this bill was to get these federal exemptions for agricultural activities exempted at the state level. (Attachment 1)

David Barfield, Chief Engineer, Kansas Department of Agriculture, appeared in opposition to **HB 2272** as it is overly complex, unclear, and inconsistent with state law. He believes there is a much simpler remedy to the problem it seeks to address. He explained that within the existing statutes and regulations, small dams are exempt from the permitting process; fundamentally, the proposed legislation seeks to expand the types of projects exempt from regulation. He noted that the federal Clean Water Act is focused on wetlands and protecting water quality, while the state law is designed to protect Kansans' safety and property from hydraulic effects of regulated activities in our streams and watercourses.

Mr. Barfield said **HB 2272** was unnecessary as the Division of Water Resources is developing an amendment to the rules and regulations, which is included with his testimony, to streamline permitting for minor stream obstructions where the contributing drainage area is sufficient to make the project jurisdictional. He said the streamlined requirements are basic and simple to complete, while providing sufficient information to allow the Division to accomplish responsibilities under the Obstructions in Streams law to protect Kansans' safety and property. (Attachment 2)

Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau, appeared as a neutral conferee on **HB 2272**. Although Kansas Farm Bureau has a general policy that supports decreasing regulatory burdens on agriculture producers and providing exemptions for normal farming activities and projects, he doesn't believe the language in **HB 2272** accomplishes what the bill's sponsor is seeking. The Kansas Department of Agriculture, Division of Water Resources, and the Kansas Water Office have no authority

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in 404 permitting or providing exemptions to those permits as detailed in the bill. Although an exemption from 404 permitting is provided by federal law, KFB believes there does need to be an examination of the potential threat to public safety and private property when impoundments are constructed. (Attachment 3)

There being no other conferees, Chairman Powell closed the hearing on **HB 2272**. Chairman Powell then appointed a subcommittee to address the issues raised during the hearing to see if a compromise can be reached. He appointed Representative Dan Kerschen, Chairman; Representative Vincent Wetta; and Representative Willie Prescott to the subcommittee on **HB 2272**.

Discussion and action on HB 2282 – Lodging inspections and food safety fees.

Chairman Powell opened **HB 2282** for discussion. Representative Moxley reported that he had been in contact with the Kansas Department of Agriculture and the Kansas Department of Health and Environment concerning the procedure to file a complaint against a lodging establishment in Kansas. He said both departments will be updating their web sites and the Department of Agriculture, in addition to requiring licensed establishments to post their official authorization document, will now be required to also post a larger sign notifying the public as to how to report concerns with the safety or cleanliness of the facility. (Attachment 4)

Representative Hayzlett moved to recommend **HB 2282** favorably for passage. The motion was seconded by Representative Wetta.

The revisor of statutes noted two technical amendments to **HB 2282**. On page 2, line 5, “facility” should read “establishment” to be consistent, and on page 3, line 32, the “(b)” should be removed. Representative Tyson moved to make the technical corrections. Seconded by Representative Williams, the motion passed.

Chris Wilson, Deputy Secretary, Kansas Department of Agriculture, requested an amendment to put the newly created lodging inspection fee fund in statute. (Attachment 5) Representative Brookens moved to amend **HB 2282** as requested by the Deputy Secretary. Seconded by Representative Tyson, the motion passed.

Representative Hayzlett moved to recommend **HB 2282**, as amended, favorably for passage. Seconded by Representative Brookens, the motion carried.

Discussion and action on HB 2231 – Updating the provisions regarding water bank flex accounts.

Chairman Powell opened **HB 2231** for discussion.

Representative Hayzlett moved to recommend **HB 2231** favorably for passage. The motion was seconded by Representative Arpke.

Staff reminded the committee that the Kansas Department of Agriculture had requested a technical amendment on page 1, line 1, of **HB 2231**, “water bank” should be corrected to “multi-year.” They also requested clarifying language on page 2, line 31, to add “authorized by the term permit” to the end of the sentence. Representative Moxley moved to amend **HB 2231** as requested by the Department. Seconded by Representative Brookens, the motion passed.

Representative Hayzlett moved to recommend **HB 2231**, as amended, favorably for passage. The motion was seconded by Representative Arpke. The motion carried.

The meeting adjourned at 10:05 a.m. The next meeting of the House Agriculture & Natural Resources Committee is scheduled for February 18, 2011.