

MINUTES OF THE HOUSE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on March 15, 2004, in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Justin Holstin, Executive Vice President, Propane Marketers Association of Kansas
Karl McNorton, Chief Deputy State Fire Marshal
Jim Brewer, Jim's Propane, Inc., Leon
Dave Lybarger, Lybarger Oil, Inc., Garnett
Doug Wareham, Kansas Grain & Feed Association and Kansas Agribusiness Retailers Association
Leslie Kaufman, Director, Government Relations, Kansas Cooperative Council
Kevin Kelly, General Manager, Two Rivers Coop, Arkansas
Hal Hudson, Executive Director, Kansas Pest Control Association
Chris Wilson, Executive Director, Kansas Agricultural Aviation Association

Others attending:

See attached list.

Minutes of the March 3, 8, and 10 meetings were distributed. Members were asked to notify the committee secretary of any corrections or additions prior to 5:00 p.m., March 17, or the minutes will be considered approved as presented.

Hearing on Sub. SB 335 - Regulation of liquefied petroleum gas

Chairman Johnson opened the hearing on **Sub. SB 335**. Raney Gilliland explained that **Sub. SB 335** would enact the Kansas Propane Safety and Licensing Act and give the State Fire Marshall authority to establish programs relating to the regulation and licensing of the liquefied petroleum gas industry in Kansas. The State Fire Marshall would be required to establish rules and regulations to include, but not be limited to, eight classes of licenses to be renewed annually including fees as set forth in the bill; establish education requirements for each class of license; and establish inspection programs and requirements for all LPG facilities, operations, installations, and businesses.

The bill would require that a plan and application for design, construction, major modification, and installation of a LPG facility with an aggregate water capacity exceeding 2,000 gallons be submitted to the State Fire Marshall for review and approval. In addition, the bill would provide that in any action brought against a LPG marketer for personal injury or property damage, an end retail user's damages would be reduced by the comparative negligence of the customer or any third party to the extent the action of the customer or third party contributed to the cause of the personal injury or property damage. Another provision of the bill would require that every LPG marketer maintain continuous general liability coverage of not less than \$1,000,000. The bill would establish a nine-member Liquefied Petroleum Gas Advisory Board to be appointed by the Governor, create a State Fire Marshal Liquefied Petroleum Gas Fee Fund in the office of the state treasurer, and provide for civil penalties for any person who violates the provisions of the bill or the rules and regulations adopted pursuant to the bill.

He called the committee's attention to Section 5, page 3, lines 30 and 31, creating the "liquefied petroleum gas advisory board" and the conflicting language on page 3, line 39, and page 4, lines 6 and 7, referring to the "fire marshal advisory board." This language should be consistent. In addition, the definition of "business" on page 1 of the bill tells us what a business is not, but does not tell us what a business is specifically. Likewise, the definition of a "liquefied petroleum gas system" may need to be broadened to include a system outside of a building with a line going into a building. He noted that the Kansas Trial Lawyers Association opposed the liability provisions in the original bill; **Sub. SB 335** addressed those concerns.

CONTINUATION SHEET

MINUTES OF THE HOUSE AGRICULTURE COMMITTEE at 3:30 p.m. on March 15, 2004, in Room 423-S of the Capitol.

Justin Holstin, Executive Vice President, Propane Marketers Association of Kansas, appeared in support of **Sub. SB 335** introduced at their request to provide increased safety to customers and members of the industry, create a level regulatory playing field, provide some relief in the court system, and attract insurers to Kansas. He stated that the propane industry in Kansas is facing an insurance crisis, ten years ago there were over ten insurance companies writing propane companies in Kansas, now there are only two or three. He explained that the bill is a culmination of research, analysis, and input from interested parties. It combines the best of several states' laws including Texas, Oklahoma, Colorado, Nebraska, Iowa, and Missouri. The bill addresses what propane and insurance industry representatives believe to be an answer to availability and affordability of insurance coverage for propane marketers in Kansas. He introduced Lyn Klein, Westland Energy of Hays, who experienced insurance premium rate increases of 18% and 28% in the last two years. ([Attachment 1](#))

Karl McNorton, Chief Deputy State Fire Marshal, testified in support of **Sub. SB 335**. He reported that at present no state agency or organization has the ability to identify or locate all of the propane facilities, dealers, distributors, or cylinder exchange locations in the state. He said this bill establishes that single point of contact and provides their office with the opportunity and resources to provide a safer environment for all Kansans. ([Attachment 2](#))

Jim Brewer, Jim's Propane, Inc., Leon, appeared in support of **Sub. SB 335** that would provide funding for the State Fire Marshall, by the propane industry, to provide the industry with inspectors to make sure all marketers are in compliance with the law and, hopefully, more insurable. The propane industry in Kansas is facing an insurance crisis. He reported that several propane companies in the state have been put out of business, or forced to merge with another company, because they were cancelled by their insurance carrier. ([Attachment 3](#))

Dave Lybarger, Lybarger Oil, Inc., Garnett, testified in support of **Sub. SB 335**. He expressed his concern about the rising costs of insurance for his propane business and possible future uninsurability. Currently, there are only two companies writing insurance for propane businesses in Kansas. He believes this bill is the best first step in attracting new insurance carriers to the industry. ([Attachment 4](#))

Doug Wareham on behalf of the Kansas Grain & Feed Association and Kansas Agribusiness Retailers Association appeared in support of **Sub. SB 335**. They believe one reason for the reluctance on the part of insurance companies to offer policies for propane suppliers is the fact that in Kansas there is no license, insurance, or other regulatory requirements in place to ensure the safe handling, storage, and distribution of this product. This bill addresses this concern. ([Attachment 5](#))

Leslie Kaufman, Director, Government Relations, Kansas Cooperative Council, appeared in support of **Sub. SB 335** and efforts to implement a registration and licensing program to help ensure that those delivering propane do so in a conscientious manner. The KCC supports initiatives to limit liability for those meeting the registration and licensing requirements. The Council also encourages protections from liability for dealers if an accident occurs on a system through no fault of their own. ([Attachment 6](#))

She referred to the written testimony submitted by Kevin Kelly, General Manager, Two Rivers Coop, Arkansas, in support of **Sub. SB 335**. He provides information on propane safety regulations in the state of Oklahoma. ([Attachment 7](#))

Tom Palace, Petroleum Marketers and Convenience Store Association of Kansas, offered his support for this legislative initiative to license and regulate the propane industry in Kansas.

There being no other conferees, Chairman Johnson closed the hearing on **Sub. SB 335**.

Hearing on SB 326 - Licensure requirements for pesticide businesses

Chairman Johnson opened the hearing on **SB 326**. Raney Gilliland explained that this bill would increase the amounts of financial responsibility required in statute for a person wishing to be granted a pesticide business license. Under current law, an applicant for a pesticide business license may choose from providing a surety bond, a certificate of liability insurance, a letter of credit from a Kansas financial institution, or maintaining a minimum balance in an escrow account in a Kansas financial institution. The bill would increase those amounts to: surety bond - \$10,000 per year; certificates of liability insurance - not less than \$250,000 for bodily injury liability for each occurrence and not less than \$250,000 for property damage

CONTINUATION SHEET

MINUTES OF THE HOUSE AGRICULTURE COMMITTEE at 3:30 p.m. on March 15, 2004, in Room 423-S of the Capitol.

liability for each occurrence; letter of credit - \$10,000; and minimum balance in an escrow account - \$10,000. The bill would allow an exception to these financial responsibility requirements for those pesticide business licensees who are aerial applicators. In these cases the financial responsibility requirements would remain the same as they are under current law for pesticide business licensees.

He noted that a technical amendment would be necessary on page 1, lines 17 and 18, as there is no subsection (b) in this section of statute. This needs to be either eliminated or clarified.

Hal Hudson, Executive Director, Kansas Pest Control Association, spoke in support of **SB 326** requested by their association as they believe the current requirements on dollar amounts of insurance, bonding, and letters of credit necessary for obtaining a pesticide business license are too low. He reported that Kansas currently ranks 49th in the nation in requirements for insurance coverage. Colorado is number one with a requirement of \$400,000; Nebraska requires no insurance or bonds. (Attachment 8)

Doug Wareham, Senior Vice President, Kansas Agribusiness Retailers Association, appeared in support of **SB 326** that would increase the minimum thresholds of financial responsibility for pesticide business licensees that secure either a surety bond, certificate of liability insurance, or letter of credit. Liability insurance costs are a significant cost component for agribusiness retailers. KARA believes there is reason to be concerned that a growing percentage of custom application work in Kansas is being performed by certified private applicators that do not maintain a pesticide business license and are not subjected to the minimum liability insurance required of licensed pesticide businesses. It is believed many of these certified private applicators performing custom application services are under the false assumption that their farm/ranch insurance policy will cover damage claims that arise from custom application business activities. He provided copies of two insurance policies that show this is not the case. KARA strongly believes that all parties that apply pesticides should maintain adequate liability insurance coverage to cover any spray drift or other claims that might arise from their actions. (Attachment 9)

Chris Wilson, Executive Director, Kansas Agricultural Aviation Association, testified in support of **SB 326** as amended by the Senate. Because of how aviation insurance coverage is provided, this bill as originally written would have had a devastating effect on agricultural aviation in Kansas. She provided a copy of Senate testimony from Randy Hardy, President, Hardy Aviation Insurance, Inc., explaining that the higher limits of chemical liability proposed in **SB 326** are not available, so any state that requires more, has in effect put aerial applicators out of business. (Attachment 10)

There being no other conferees, the Chairman closed the hearing on **SB 326**.

Hearing on SB 524 - Updating references in department of agriculture statutes with respect to departmental duties

Chairman Johnson opened the hearing on **SB 524**. Raney Gilliland explained that **SB 524** would amend numerous sections of law dealing with the Kansas Department of Agriculture and the Secretary of Agriculture to strike references to the previous State Board of Agriculture. In 1995, legislation was enacted as a result of a lawsuit which declared that the manner of selection of the Secretary of Agriculture by the then State Board of Agriculture was unconstitutional. This legislation provided for the establishment of the Kansas Department of Agriculture and the current manner of selection of the Secretary of Agriculture. Since that time, no legislation has been enacted to clean up the statutory references to the previous State Board of Agriculture.

There are no policy changes included in **SB 524**; however, Staff indicated there were several technical corrections that should be addressed by the committee. Staff will review the bill and make recommendations. No one spoke to the bill. The hearing on **SB 524** was closed.

The meeting adjourned at 5:40 p.m. The next meeting is scheduled for March 17, 2004.