

MINUTES OF THE SENATE AGRICULTURE COMMITTEE.

The meeting was called to order by Chairperson Derek Schmidt at 8:30 a.m. on March 13, 2002 in Room 423-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Alan Alderson, Legislative Counsel, Western Association
Joe Lawhon, Legislative Post Audit
Jamie Clover Adams, Secretary, Kansas Department of Agriculture
Representative Daniel Thimesch

Others attending: See attached list

HB 2660 – Repurchase of machinery, equipment and parts upon termination of dealership franchise agreements

Alan Alderson, Legislative Counsel, Western Association, testified in support of **HB 2660**, stating the bill amends the “buy-back” laws which regulate the obligations of manufacturers of farm equipment, outdoor power equipment, and lawn and garden equipment to repurchase equipment and parts when a dealership contract has been terminated. Western Association has recently become aware that some manufacturers have taken the position that, when a dealership contract is terminated, they are not obligated by Kansas law to repurchase parts and equipment which have been purchased from other than the manufacturer or distributor. The proposed amendments in **HB 2660** make an exception to the provisions which do not require repurchase of these parts or equipment.

Mr. Alderson stated there are instances in which the dealer has acquired the parts from other sources at the direction or by the authorization of the manufacturer or distributor, and other instances in which the manufacturer or distributor arranges for the equipment or parts to be acquired from other sources arranged by the manufacturer or distributor. The Association believes that repurchase should be required. **HB 2660** provides for such a requirement. (Attachment 1)

Joe Lawhon, Auditor, Legislative Post Audit, briefed the Committee on the Performance Audit Report “*Department of Agriculture: Reviewing the Water Structures Program*”. (A copy is on file in the Office of Legislative Research) The Audit Report was initiated by the Secretary of Agriculture who expressed concerns about the ability of Program staff to keep up with their workload, in particular their inability to issue permits and inspect dams on a timely basis. In addition, legislative concerns were expressed about bridges being built without permits in Sedgwick County, and those bridges contributing to flooding in that area. To address these concerns, the performance audit answers two questions: “Is the Department of Agriculture’s Water Structures Program able to issue permits for new water structures on a timely basis and complete timely inspections of existing structures, and if not why not?”, and “Are water structures being built in Kansas without approved permits and have unpermitted projects contributed to localized flooding in Sedgwick County?”

The Report concluded the Water Structures Program has significant problems, many of which have been ongoing for quite some time. The problems can be fixed, but it will take time and hard work. The effort will require commitment from Department management, and may require a commitment from the Legislature as well. The Report recommends: 1) amending the statutory definition of a dam to more closely follow the definition suggested by the Association of State Dam Officials; 2) developing written procedures for processing permit applications, examining the checklists used by Program staff during the review of permit applications to ensure the checklists contain the appropriate items and consider ways for reassigning work when an employee leaves and assigning priorities; 3) making the process of inspecting

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dams and managing the dam database more efficient, effective and accountable; 4) making the investigating of complaints more efficient, effective and accountable; 5) ensuring information contained in the Program's database is accurate, reliable, and protected; 6) ensuring Department officials receive timely and accurate information relating to work that remains to be completed; (the manager should prepare a monthly summary report that provides comprehensive information about the workload of the program and whether that workload is progressing at an acceptable rate); 7) reducing staff turnover and position vacancies; and 8) keeping the Legislature informed about the progress being made to address the problems identified in this report.

The Report relating to the second question regarding "water structures being build in Kansas without approved permits and have unpermitted projects contributed to localized flooding in Sedgwick County", the Report concluded that unpermitted bridges and other stream obstructions are being built within the State and it is impossible to ascertain the exact number because the Program has few ways to detect unpermitted structures. The Report further concluded the Program is doing all it should to evaluate potential damage to landowners as a result of water structure projects; however, the Department should reevaluate its procedures in its narrow look at upstream and downstream impact, particularly in view of the Kansas Supreme Court's 1996 ruling. The Report recommended that the Department should review its philosophy concerning what types of projects should and shouldn't be permitted, how far upstream and downstream they need to look, etc.; and Department officials should seek the power to levy fines against violators who do not obtain the necessary permit applications.

Jamie Clover Adams, Secretary, Kansas Department of Agriculture (KDOA), appeared before the Committee and in responding to the Performance Report, stated she requested the audit because she had serious concerns about the program's efficacy. Ms. Adams stated she had no excuses for the audit findings and has made a commitment to "fix it".

Ms. Adams stated KDOA does advocate amending the statutory definition of a dam to more closely follow the definition suggested by the Association of State Dam Officials. Kansas defines a dam as "any structure that impounds, or holds back, more than 30 acre-feet of water". The National Dam Safety Act raises that threshold to 50 acre-feet, as does the Association of State Dam Officials' Model State Dam Safety Program. The National Act and Model Act also specify that if a dam doesn't impound 50 acre-feet of water, it may be considered a dam if it's at least 25 feet tall. Kansas law does not address the issue of height.

Plans are being made to ensure the accuracy of data maintained by the Program and to develop a data base which can be relied upon to support processes and to provide management support. Efforts also have been redoubled to attract and retain qualified, experienced professional employees and to track and assign their work more efficiently. Ms. Adams further stated that in regards to the recommendations relative to unpermitted structures and the Kansas Supreme Court's 1996 ruling, she agrees to review department philosophy and policies about unpermitted bridges and stream obstructions, but disagrees with the audit's conclusions about legal implications of the 1996 Kansas Supreme Court ruling.

Representative Daniel Thimesch appeared in regards to the flooding downstream from new bridges stating there should be the same concern for the free flow of water downstream as there is upstream.

SB 436 - Fees and inspection of dams, levees and other water obstructions

The Chair announced the appointment of a subcommittee consisting of Senators Huelskamp, Lee and Schmidt to consider **SB 436**. A meeting is scheduled for Thursday, March 14, 2002, in Room 234-N, upon adjournment of the Senate.

Upon motion by Senator Downey, seconded by Senator Tyson, the Minutes of March 5 and March 6, 2002, were unanimously approved.

The meeting adjourned at 9:30 a.m.

The next meeting is scheduled for March 19, 2002