1320 Research Park Drive
Manhattan, KS 66502
785-564-6700
www. agriculture.ks.gov

Kansas
Department of Agriculture

900 SW Jackson, Room 456
Topeka, KS 66612
785-296-3556

Mike Beam, Secretary

Laura Kelly, Governor

Neutral Testimony on HB 2025
to the House Committee on Federal and State Affairs
by Kenneth Titus, Chief Counsel
Kansas Department of Agriculture
February 4, 2021

Chairman Barker and members of the committee, I am Kenneth Titus and I serve as Chief Counsel to the Kansas Department of Agriculture (KDA). I appreciate the opportunity to provide neutral testimony regarding House Bill 2025.

House Bill 2025 prohibits conservation officers employed by the Kansas Department of Wildlife, Parks and Tourism and county weed supervisors from conducting surveillance on private property related to the enforcement of any laws of the State of Kansas without first acquiring a criminal search warrant pursuant to K.S.A. 22-2502. KDA does not have a position on the need to require such search warrants for conservation officers but we do have some reservations about requiring a warrant for county weed supervisors to carry out their duties.

KDA is not directly responsible for enforcement of the Noxious Weed Law (K.S.A. 2-1313a *et seq.*) at the county level, but KDA – with input from stakeholders – identifies species of noxious weeds, develops standards and control methods for the control and elimination of noxious weeds, and generally assists and provides coordination to county weed supervisors. Requiring a county weed supervisor investigating a civil matter to meet the same burden as a law enforcement officer investigating criminal violations would most likely result in weed supervisors being unable or unwilling to properly enforce the Noxious Weed Law.

Landowners and county and state officials have been responsible for the control and elimination of noxious weeds pursuant to state statute since 1895. The current model of the Noxious Weed Law, adopted in 1937, shifted government responsibility from highway overseers to county weed supervisors. Since 1937 the Noxious Weed Law has allowed weed supervisors access to private property in order to inspect for noxious weeds.

K.S.A. 2-1316 requires that weed supervisors make an annual survey of their area to determine the amount of land infested with noxious weeds. It is also important to note that weed supervisors do not have unfettered access to private property when carrying out this mandate. Currently, K.S.A. 2-1330 grants a weed supervisor at all "reasonable times, free access to enter upon such premises, without interference or obstruction to inspect property, both real and personal, regardless of location… Entry upon such premises in accordance with this act shall not be deemed a trespass." Most importantly, a weed supervisor is required by K.S.A. 2-1330 to attempt to notify the owner

of any property about an inspection prior to entering the property and must allow the owner of the property to accompany the weed supervisor during such inspection.

If noxious weeds are found during this inspection process, there is no arrest or criminal charge against the landowner.[1] Rather, the Noxious Weed Law most often results in the civil enforcement of weed control requirements as weed supervisors are not law enforcement agents. The primary purpose of the Noxious Weed Law is to control the growth of noxious weeds, not to seek criminal enforcement of the law. Along with requiring notice prior to entering private property, K.S.A. 2-1331 and K.S.A. 2-1332 set forth a detailed procedure for notifying landowners that they are in violation of the Noxious Weed Law and the methods by which compliance may be achieved.

From a technical standpoint, House Bill 2025 presents several problems. For example, the language in the bill would apparently be adopted separate from the Noxious Weed Law, causing the bill as written to directly contradict the various notice requirements already in place. At the very least, it appears that substantial changes to the Noxious Weed Law would be necessary to properly implement the warrant requirement. Further, requiring non-law enforcement agents to seek out a warrant under criminal procedure requirements also seems like an unnecessary burden and a process to which noxious weed inspections seem ill-suited. There is a stark contrast between a conservation officer with law enforcement authority and a county weed supervisor who follows up an inspection with a request to the landowner to spray weeds that are stated by law to be noxious weeds. In even the most egregious cases, the harshest "penalty" usually applied is that the county weed supervisor must treat the noxious weeds on private property if the owner refuses to take action and then assess the cost to the county against the landowner – a process not much different than that used against homeowners who refuse to mow their lawn within the limits of most cities. Both the county weed supervisors' authority to inspect and the authority to enforce the law are far less than the authority possessed by conservation officers. In addition, the owners of properties infested with noxious weeds are seldom, if ever, considered to have committed a "crime" as must be established when requesting a warrant under K.S.A. 22-2502.

The current Noxious Weed Law has been in place since 1937 and the present version provides detailed requirements for notifying landowners. In particular, we ask the committee to consider whether these notice procedures are sufficient for the level of civil enforcement required to control noxious weeds in Kansas. We would further ask that the committee carefully consider whether the activities carried out by conservation officers and county weed supervisors are similar enough to warrant inclusion in the same bill.

[1] Since 1895 Kansas law has made it a misdemeanor offense to violate the Noxious Weed Law but also since 1895 Kansas law has also allowed for reimbursement to the county for destruction of noxious weeds when the property owner refuses to act, thus there has never been much incentive to turn over a noxious weed violation to the county attorney for criminal prosecution when the goal is to eliminate the noxious weeds to protect neighboring properties. *See e.g.*, Revised Statutes of Kansas, 2-1307 and 2-1308 (1923) and the General Statues of Kansas, 2-1320 and 2-1323 (1937 Supplement).