

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Vice-Chairman Tim Huelskamp at 8:30 a.m. on February 10, 2004 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Legislative Research  
Lisa Montgomery, Office of the Revisor of Statutes  
Robert Myers, Committee Secretary

Conferees appearing before the committee:

Mark Hassman - Chairman Government Affairs, Kansas Pest Control Association  
Doug Wareham - Senior Vice President, Kansas Agribusiness Retailers Association  
Chris Wilson - Executive Director, Kansas Agricultural Aviation Association  
Randy Hardy - President, Hardy Aviation Insurance, Inc.  
Ken Johnson - Vice President, APAC Shears - Kansas  
Woody Moses - Managing Director, Kansas Aggregate Producers' Association  
David Pope - Chief Engineer, Kansas Department of Agriculture's Division of Water Resources

Others attending:

See Attached List.

**SB 326:**      **Licensure requirements for pesticide businesses.**

Vice-Chairman Huelskamp opened the hearing on **SB 326**.

Mark Hassman appeared before the committee as a proponent of **SB 326**. He expressed, on behalf of the Kansas Pest Control Association, the opinion that current amounts of insurance, bonding and letters of credit necessary for obtaining a Pesticide Business License are too low. He further stated the belief that most companies would exceed the higher limits asked for by the bill, but that there are currently some that have less than the \$250,000.00 minimum coverage that it asks for. His stated concern was that, without the implementation of the bill, the claims of consumers would be impeded by insufficient resources in these cases of low minimum coverage. In ending, Mr. Hassman stated that Kansas ranks next-to-last with regard to requirements for insurance coverage (Attachment 1).

Doug Wareham appeared before the committee as a proponent of **SB 326**. He stated that the bill achieves an increase in the minimum thresholds of financial responsibility for pesticide business licensees that secure a certificate of liability insurance, surety bond or letter of credit. He further pointed out the statistic that those retail members maintaining a pesticide license generally carry a minimum of \$1,000,000.00 in commercial liability insurance, typically quoted on a basis of "premium per 1000 acres treated." Mr. Wareham continued by expressing concern for the growing percentage of custom application work that is being performed in Kansas by non-pesticide business licensed parties (i.e., farmers) that are not subjected to the liability and requirements proposed in the bill. Furthermore, he expressed the belief that many farmers that are performing custom application services have the false belief that these activities are covered by their farm/ranch insurance policies. In closing, he stressed the Kansas Agribusiness Retailers Association's belief that all applicators, licensed or not, should be required to meet the same minimum liability insurance requirements. Attached with Mr. Wareham's written testimony were the following two documents: State Farm Insurance Farm/Ranch Policy and Farm Bureau Farm and Ranch Policy (Attachment 2).

Chris Wilson appeared before the committee as an opponent of **SB 326**. She stressed the potentially negative effect that the bill could have on agricultural aviation in Kansas, due to the fact that insurance in this sector is on each individual aircraft, not on the business as a whole. In addition, she noted the requirement faced by these businesses to have comprehensive chemical coverage, stating though that it is unavailable at the increased level sought by the bill. Chris also expressed concern for the bills' proposed increase of other financial stability requirements, giving the example of fees paid to obtain a letter of credit. She stated the concern that the increased licensure costs would make such letters of credit, as well

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as surety bonds or escrow accounts, cost prohibitive or unavailable for businesses. In closing, she asked that the committee allow further study of the bill. According to Chris, there is no need for change in the industry due to the already low occurrence of violations, as well as the generally small damage amounts seen in the event of a claim. Along with her written testimony, Chris submitted to the committee the Open Records Request that she had made to the Records Center regarding the number of pesticide business licenses using a letter of credit, escrow account, or surety bond ([Attachment 3](#)).

Randy Hardy appeared before the committee as an opponent of **SB 326**. He described the following three points as being the foundation of his opposition to the bill:

1. The \$250,000 limit of insurance required of the aerial application industry is simply unavailable. He further noted that if that level of insurance were to become available, then the already-high insurance rates would probably double.
2. The bill is cost prohibitive.
3. The higher insurance limits would affect the ability of those in the aerial applicator industry to hire new personnel (i.e., new pilots).

In closing, he suggested that the law be re-written in order to separate the nonchemical and the chemical portions. Mr. Hardy submitted to the committee a piece of written testimony that further elaborates on the main points of his argument ([Attachment 4](#)).

Upon the urging of Chairman Schmidt, representatives of both sides of the debate over **SB 326** agreed to have further discussions in an attempt to reach an agreement on the issue.

**SB 409: Sand and gravel pits; when net evaporation of water is a beneficial use or diversion of water; perfection of water right.**

Chairman Schmidt opened the hearing on **SB 409**.

Ken Johnson appeared before the committee as a proponent of **SB 409**. He stressed the importance of sand as one of the most common construction materials in the world. Furthermore, he touched upon the fact that sand mining, and its consequent water use, cannot be readily moved or relocated. He stated that he supports the bill because it both allows for the continued mining of a vital commodity and complies with the Kansas Water Appropriations Act. Included with his written testimony were both the Economic Impact of the Kansas Aggregate Industry, as composed by Chris Haugsness; and the testimony of Leland E. Rolfs, of the Kansas Department of Agriculture, before the Special Committee on the Environment on October 14, 1999 ([Attachment 5](#)).

Woody Moses appeared before the committee as a proponent of **SB 409**. He spoke of the current requirement that sand and gravel operators must secure an amount of water sufficient to cover the net evaporation that is estimated to occur over the life of a project (K.A.R. 5-13-5). He further stated that in many cases the life of a project may last up to one hundred years, thus not cooperating with the allowance of an operator to perfect water for only up to forty years (K.A.R. 5-13-11). He stated that it is on this discrepancy in time periods that his opposition to the bill is based. More specifically, Mr. Moses made note of his disagreement with the forty year time limit. In addition to his written testimony, he submitted the following: the Kansas Geological Survey's Progress Report on Aggregate and Groundwater Resources Task Force; a copy of House Bill 2251, as well as Kansas Administrative Regulations 5-13-5, 5-13-10, and 5-13-11; and finally, a letter from William J. Gilliland, L.G. of the Water Appropriation Program to the ALSOP Sand Company, Inc. in Concordia ([Attachment 6](#)).

David Pope appeared before the committee as an opponent of **SB 409**. He declared the proposed bill to be unnecessary, as well as saying that it would set a bad precedent by amending the Kansas Water Appropriation Act with regard to the perfection of water rights. He stated his belief that the bill would give special treatment to one industry, allowing its avoidance of the requirement that diversion works have been completed and that water is actually applied to beneficial use as authorized by the permit to appropriate water. Mr. Pope stated that a result of this failure to determine whether or not beneficial water use is taking place would be the appropriation of water to sites where no development is occurring at all. In closing, he questioned the ability to administer the provisions of the bill during periods of water shortage ([Attachment 7](#)).

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Chairman Schmidt asked of David Pope that he later provide for the committee a list of particulars with regard to potential problems resulting from such periods of water shortage.

Patrick T. Lehman, on behalf of the Northwest Kansas Groundwater Management District #4, submitted written testimony to the committee in opposition to **SB 409** (Attachment 8).

The next meeting is scheduled for Wednesday, February 11, 2004.