

MINUTES OF THE SENATE AGRICULTURE COMMITTEE.

The meeting was called to order by Chairperson Derek Schmidt at 8:30 a.m. on February 6, 2001 in Room 423-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee:
 Charles Benjamin, Attorney for the Kansas Sierra Club
 Greg A. Foley, Assistant Secretary of Agriculture
 Kerri Ebert, Kansas Dairy Association

Others attending:

Upon motion by Senator Downey, seconded by Senator Umbarger, the Minutes of the January 30 and January 31 meetings were unanimously approved.

SCR 1605 - Requesting President Bush to permanently withdraw certain EPA regulations

Charles M. Benjamin, Attorney, appeared in opposition to **SCR 1605** on behalf of his clients, the Kansas Sierra Club AND Kansas Natural Resource Council. Mr. Benjamin testified in light of the rhetoric and myths circulated about outcomes of certain lawsuits instituted by the Kansas Sierra Club and the Kansas Natural Resource Council, it is hard to inject rationality or civility into a discussion.

Mr. Benjamin stated the passage of **SCR 1605** requests the President of the United States to disobey the law when ordering the EPA Administrator to withdraw the standards published in the July 3, 2000 Federal Register, as the EPA Administrator would be violating the Clean Water Act and the Sierra Club would file suit.

The July 3, 2000 Federal Register contained the EPA's proposed water quality standards for Kansas replacing those water quality standards first proposed by Kansas in 1994, which did not meet the requirements of the Clean Water Act.

The application of water quality standards to privately owned water bodies in Kansas are subject to provisions of state law, (KSA 65-171d), which provides that if a freshwater reservoir or farm pond is privately owned, and where complete ownership of land bordering the reservoir or pond is under common private ownership, it shall be exempt from water quality standards. The exception is for water discharges or seepage from the reservoir or pond to waters of the state, either surface water or ground water, or as it relates to the public health of persons using the reservoir or pond or waters from that reservoir or pond.

The EPA believes this provision of state law is inconsistent with the Clean Water Act and the EPA regulations implementing the Act. EPA believes state law would potentially exempt from water quality standards, surface water, regardless of its ownership characteristics. The EPA first identified this discrepancy and communicated the same to the Kansas Department of Health & Environment in October 1987. The legislature has taken no action on this issue since it was identified.

Mr. Benjamin further testified that any citizen may commence a civil action on his own behalf against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under the Clean Water Act which is not discretionary with the Administrator. The EPA Administrator has failed to perform her

non-discretionary duty to promulgate water quality standards for Kansas when it was determined that water quality standards proposed by the state did not meet the Clean Water Act.

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The Sierra Club in Kansas continues to exercise its rights to seek remedies in the courts when the Clean Water Act is not carried out in Kansas. The lawsuits filed by the Sierra Club have been filed as a last resort. The EPA has been out of compliance with the Clean Water Act in Kansas for many years. Members of the Kansas Sierra Club believe that environmental laws of the United States apply to Kansas and they intend to continue seeing that those laws are fully carried out in Kansas. **SCR 1605** will not deter the Sierra Club. (Attachment 1)

In response to questions from the Committee, Mr. Benjamin stated that in any suit filed by the Sierra Club, he, as the attorney, does not get any payment unless the suit has merit and attorney fees are ordered. Otherwise, the cost of the suit is borne by the attorney. He also declined to specify what actions, if any, he believes Kansas farmers and ranchers should take to improve water quality in the state. He further declined to state what cost he believes would be incurred by farmers and ranchers to comply fully with EPA regulations.

There being no further conferees, the hearing was concluded.

Senator Corbin moved that SCR 1605 be recommended favorably for passage. Senator Lee made a substitute motion, seconded by Senator Corbin that SCR 1605 be amended at Page 1, Line 15 by striking “One regulation subject to the moratorium is a”, and inserting the word “The”; and further on line 17, before the “(;)” the following “should be subject to the moratorium”. The voice vote was in favor of the substitute motion.

Senator Umbarger moved, seconded by Senator Schmidt, that SCR 1605 be further amended at Page 2, Line 34 following the word “withdraw” by adding “or withdraw, review and possibly revise”;

Senator Morris made a substitution motion, seconded by Senator Downey that SCR 1605 be amended at Page 2, Line 34 following the word “withdraw” by adding “or withdrawn, review and revise”. The voice vote was in favor of the substitute motion.

Senator Umbarger moved, seconded by Senator Schmidt, that SCR 1605 be amended at Page 2, Line 35, following the word “Resolution” by adding the following: “to fully accommodate the concerns expressed by Kansans during the public hearings conducted by the Environmental Protection Agency”; The voice vote was in favor of the motion.

Senator Corbin moved, seconded by Senator Umbarger, that SCR 1605 be recommended favorably for passage as amended. The voice vote was unanimous in favor of the motion.

SB 60 - Repealing the statute requiring the statistics division of the department of agriculture to work with county appraisers to collect agricultural data from producers.

The Chair informed the Committee that a letter from Paul A. Welcome, legislative chair for the Kansas County Appraisers' Association, had been received supporting **SB 60**. Copies were distributed to the Committee. (Attachment 2)

A letter from Judy A. Moler, Kansas Association of Counties, in support of **SB 60** was distributed to the Committee. (Attachment 3)

Senator Morris moved, seconded by Senator Huelskamp that SB 60 be recommended favorably for passage and placed on the consent calendar. The voice vote was unanimous in favor of the motion.

SB 59 - Update, clarify and streamline the Kansas dairy law

Greg A. Foley, Assistant Secretary of Agriculture, testified that **SB 59** is the result of a review of the rules and regulations, areas of duplication, unclear language and obsolete articles, undertaken by the Department of Agriculture at the direction of the Governor.

SB 59 consolidates the two existing dairy fee funds into one fund; eliminates discrepancies in statutes relating to penalties for late fee payments; removes obsolete statutes; and reorganizes the statutes

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into general categories relating to ungraded milk, grade A milk, manufacturing milk and frozen dairy desserts. The changes proposed do not have a fiscal impact on dairy producers or on the Department's revenues.

SB 59 removes all references to "dairy commissioner" and replaces it with "secretary of agriculture; it consolidates definitions into one section; it deletes definitions for "milk tester," "lowfat milk" and "skim milk," which are all obsolete terms; it incorporates current definitions found in federal reference documents, including the Code of Federal Regulations, that relate to standards of identity for various milk and dairy products; and allows for the use of civil penalties against any licensee. The current statute allows the use of civil penalties only against dairy manufacturing plants. (Attachment 4)

Mr. Foley stated **SB 59** should be amended at Page 10, Line 31, by inserting "(d)" before the "or". The subsection was inadvertently omitted.

Kerri Ebert, Executive Secretary, Kansas Dairy Association, testified in support of **SB 59**, stating the bill consolidates fee funds and organizes the dairy statute. Passage of **SB 59** is important to the dairy industry as the statutes define how dairy farms and processing plants are inspected and licensed by the Department of Agriculture. The legislation does not increase inspection fees and does not change the on-farm inspection process. The Dairy Association supports the proposed changes in **SB 59**. (Attachment 5)

Frances Kastner, Executive Director, Kansas Food Dealers Association, distributed a statement to the Committee opposing passage of **SB 61**. (Attachment 6)

The Committee adjourned at 9:30 a.m.

The next meeting is scheduled for February 7, 2001.

