

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:40 a.m. on Thursday, March 10, 2005, in Room 231-N of the Capitol.

All members were present except:
Senator James Barnett (E)

Committee staff present:
Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Dee Woodson, Committee Secretary

Conferees appearing before the committee:
Norm Jennings, Co-owner of Smokey Hill Vineyards & Winery and Kansas Grape Growers & Wine Makers Association
Dr. John Brewer, President and owner of Wyldewood Cellars, Mulvane, KS
Dan Ward, Chairman, Grape & Wine Industry Advisory Council
Adrian Polansky, Kansas Secretary of Agriculture
Janna Dunbar, Kansas Department of Commerce
Tuck Duncan, Kansas Wine & Spirits Wholesale Association
Gregory Shipe, President, Kansas Viticulture and Farm Winery Association (written)
Janet Forge, Prairie Ridge Vineyards, St. George, KS (written)
Frances Riley, Jr., Overland Park, KS (written)
Amy Campbell, Kansas Association of Beverage Retailers
Neal Whitaker, Kansas Beer Wholesalers Association
Tom Groneman, Director of Alcoholic Beverage Control, Kansas Department of Revenue
Sally Pritchett, Kansas Real Estate Appraisal Board

Others attending:
A Guest List was not circulated.

Chairman Brungardt noted that Fiscal Notes had been distributed to committee members on **SB 267**, **SB 276**, and **SB 274** as information and for review. (Attachment 1)

SB 267 - Farm wineries, number of outlets and gallons of wine; liquor retailers, sampling

Chairman Brungardt opened the hearing on **SB 267**. Norm Jennings, on behalf of Smokey Hill Vineyards & Winery and Kansas Grape Growers & Wine Makers Association, testified in support of **SB 267**. He stated that this bill was a mechanism for furthering both the Kansas grape and wine industries. The grape and wine industry in Kansas is one that has the potential to be a major contributor to the state agritourism and value-added agricultural industries, as well as state alcohol tax revenue sources. He explained the three items the bill addressed: i.e. sampling, outlets and production level. The sampling off-site would greatly increase the exposure of Kansas wines. As recommended by the ABC Director, the licensee will be held responsible for the same requirements as on-site and adhering to the rules and regulations set by the ABC to monitor the tastings. Included in the sampling provisions is the ability for sampling to be conducted at retail liquor stores. He said that current state law allows for two outlets away from the winery, and this bill would allow for the number to increase to five per winery. Mr. Jennings talked about the production tap on the Kansas farm wineries. (Attachment 2)

Dr. John Brewer, Wyldewood Cellars, spoke in favor **SB 267**. He talked about the Kansas wineries as agritourism facilities, and how the wine industry advances Kansas agriculture. He said that his tasting rooms are visited by over 100,000 people every year. The changes proposed in the bill will help bring Kansas up to par with surrounding states, and help the wineries become more competitive within their region and ultimately nationally. Dr. Brewer spoke about the production levels of a "small producer" as defined by the Federal government at less than 250,000 gallons per year. He stated that Wyldewood Cellars' wine production and sales have been increasing at over 50% per year, and at the present rate of

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:40 a.m. on Thursday, March 10, 2005, in Room 231-N of the Capitol.

growth, they will be at the 50,000 gallon limit within two years. By present Kansas law, Wyldewood Cellars would be forced to stop encouraging new growers and the expansion of their present growers when they reach the limit. He pointed out that with the growth of the wineries, the tax revenue to Kansas would also be increased from the wine industry. (Attachment 3)

Dan Ward, Kansas Grape and Wine Industry Advisory Council, testified in favor of **SB 267**. He talked about the growth of grape growing and related the farm winery industry in Kansas as a positive objective for the state. He pointed out there are other products and opportunities offered by Kansas farm wineries and vineyards to include, but not limited to, agritourism activities, organic table grapes and fruits, juice production, corporate off-site meeting rooms, special event venues, nature trails, picnic areas, horticultural education events, and free research areas for our universities and colleges. Mr. Ward stated that this bill not only benefits the farm wineries, but also assists retailers and wholesales to move their patronage toward Kansas products via controlled and regulated ability to serve samples. In regard to the increase of production limitations on farm wineries, he said this was a common sense opportunity to combine efforts and bring the Kansas law in line with the federal production limits. Mr. Ward explained that by increasing the number of farm winery outlets, it will increase the opportunity of the small farm wineries, many of which are in remote areas, to set up tasting rooms closer to population concentrations. He added that farm wineries are required to ensure that the products are made from no less than 60% of Kansas fruit/products. He stated that to enable his business to grow, he must have access to the markets and must have freedom to grow his business with regard to production. (Attachment 4)

Adrian Polansky, Secretary of the Department of Agriculture, spoke in support of **SB 267**, which he said reflects the consensus of the Kansas Grape and Wine Industry Advisory Council. He talked about being authorized to form the Kansas Grape and Wine Advisory Council, and he appointed members to the council to advise himself and others about the state's burgeoning grape and wine industry. The mission of the council is to provide support to grow the industry through legislative initiatives, research, education and marketing to stimulate tourism and value-added, sustainable, environmentally responsible agriculture. Secretary Polansky stated that the grape and wine industry can grow to be profitable and successful, both as an agricultural crop and as an agritourism and entertainment venue that links rural Kansans with urban residents from around the world. In conclusion, he said **SB 267** would remove some outdated barriers to the success of this industry, and it is time to let that industry grow. (Attachment 5)

Janet Dunbar, Kansas Department of Commerce, testified in favor of **SB 267**. She explained that in December 2004, the Kansas Grape & Wine Industry Advisory Council sponsored a survey of the current market, and the results of that survey showed the possibility of a prosperous industry. The survey results are attached to Ms. Dunbar's written testimony, which shows where the current industry is at and where it is headed. She said the surveys also depict the possibility for 16 new Kansas farm wineries within the next five years which is in addition to the current eight Kansas farm wineries. The ninth Kansas farm winery location will open in May 2005. There is also the potential for 167 new acres of grapes in the next five years. There are 42 full-time employees currently employed by the grape and wine industry and 66.5 part-time employees with a payroll of nearly \$1 million. Ms. Dunbar pointed out that many of the vineyards rely heavily on volunteer labor and tourists to prune and harvest their fruits. The Kansas vineyards and wineries exemplify rural entrepreneurship, but growth should not be stagnated by outdated laws and prohibitions. (Attachment 6)

Tuck Duncan, Kansas Wine & Spirits Wholesalers Association (KWSWA), spoke in support of **SB 267**. He explained that the Grape and Wine Industry Advisory Council had several recommendations this year including that a retailer licensee be allowed to serve samples of alcoholic liquor on the licensed premises if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments. In respect to the farm wineries, the counsel recommended the wineries be allowed to serve samples of their products on licensed premises and at special events, monitored and regulated by the Division of Alcoholic Beverage Control (ABC).

Mr. Duncan stated that KWSWA supports the recommendations, but also suggested some amendments be adopted to clarify what it means to serve samples. The amendments he offered were drawn from the Missouri law: (1) that the retail licensee must apply to the Director of the ABC for a special annual permit

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:40 a.m. on Thursday, March 10, 2005, in Room 231-N of the Capitol.

to conduct alcoholic liquor tastings on the licensed premises. KWSWA suggested a \$25 fee in order to be consistent with the CMB permit fee; (2) that such samples for tasting must be withdrawn from the retailer's own inventory; and, (3) that the Director shall issue rules and regulations specifying the sizes of the sampling units. Mr. Duncan also requested that the committee amend the bill to allow distributors and farm wineries to withdraw products from their inventories for donation to charitable events, provided they pay the state's enforcement tax thereon. Again, the Director should be allowed to promulgate regulations regarding same. He spoke briefly regarding the proposed number to increase the production capacity, and said he thought that the problem could be cured by amending K.S.A. 41-701 without having to change the ceiling. The 250,000 quantity ceiling was originally developed because that was the small producer's definition for purposes of a tax credit at the federal level. (Attachment 7)

Senator Vratil stated that the intent of the bill in authorizing the service of samples was that the samples would be provided free of charge, and would he propose an amendment to clarify that provision. Mr. Duncan said he had no problem with that clarification. Senator Vratil asked what the application fee was for a farm winery license. Mr. Duncan responded that it was a \$250 license fee plus a \$10 administrative fee and a required grocery license.

Written testimony in support of **SB 267** was submitted by:

Gregory Shipe, Kansas Viticulture and Farm Winery Association (Attachment 8)
Janet Forge, Prairie Ridge Vineyards (Attachment 9)
Francis Riley, Jr., Overland Park, KS (Attachment 10)

Amy Campbell, Kansas Association of Beverage Retailers (KABR), testified in opposition to **SB 267**. She explained the bill seeks to bypass the primary principles of the three tier distribution system and create exceptions for a few licensees, which threatens the business of retail liquor store licensees by: (1) creating loopholes in Kansas liquor law which make the state vulnerable to questions of fair competition under the Commerce clause of the U.S. Constitution; (2) expanding the number of retail outlets for farm wineries from two to five while liquor store owners may hold one retail license; and (3) blurring the lines of separation between manufacturer, distributor, and retailer. Ms. Campbell stated that KABR has repeatedly advocated for uniform State law regulating the licensees who sell alcoholic liquor. She said they could not support the overall legislation including off-premise retailers in the sampling provisions of the bill. She talked about cases currently before the U.S. Supreme Court regarding fair competition under the Commerce clause involving the state's authority to grant preferential treatment to in-state wineries over out-of-state wineries. Ms. Campbell concluded by stating KABR does not want to be here as a roadblock, but is urging caution. (Attachment 11)

Neal Whitaker, Kansas Beer Wholesalers Association (KBWA), spoke in opposition to **SB 267**, and what is happening nationally to the state's ability to regulate the alcoholic beverage industry. He distributed CD's to each committee member which contained a detailed explanation of the three tier system: i.e. its history, where it came from, and why it is used in the United States (copy available upon request from the Kansas Beer Wholesalers Association). He stated that this bill creates privileges for farm wineries across the tiers, and with exceptions continuing to be made; Kansas comes closer to having a federal court limit its ability to regulate its liquor laws. He reiterated that Kansas needed to wait until a decision is rendered by the Supreme Court, and examine how Kansas can continue to regulate beverages the way it has been done the last 50 years. He pointed out that another issue in the bill allowed liquor retailers to sample, and KBWA believes that is inadvisable at this time. There are over 600 liquor retailers in Kansas, and most of them have no experience in dispensing alcoholic beverages by the drink to the public. (Attachment 12)

Tom Groneman, Director of the Alcoholic Beverage Control Division (ABC), testified as a neutral conferee on **SB 267**. He said the ABC requests clarification of Section 2 (a)(4) regarding the new language "and at special events, monitored and regulated by the division of alcoholic beverage control." He explained the proposal does not define what constitutes a special event and whether special events monitored and regulated by the division meant that an agent has to be present at each of these events. The department can develop rules and regulations defining and regulating special events, but it would be helpful to have these terms defined further within the proposal. He briefly talked about the field

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:40 a.m. on Thursday, March 10, 2005, in Room 231-N of the Capitol.

inspections at each of the 13 licensed farm wineries and 6 outlets, production totals for 2004 in Kansas, and the Kansas farm products used in the manufacture of wine other than grapes. (Attachment 13)

Committee questions and discussion related to what the fees are for farm winery outlets, whether there were rules or guidelines for the samplings, how often the six outlets are inspected, how many full-time ABC agents does it take to cover the outlets, and how much time is involved in monitoring the farm wineries. Question was asked where the collected licensed fees go, and if they went to the ABC Division to help with inspections and enforcement. Mr. Groneman said the fees go into the State General Fund.

Senator Vratil referred to the fiscal note on **SB 267**, and asked why two positions would be required. Mr. Groneman replied that the licensed wineries could have five outlets according to the proposed bill, and it also was because of the added number of special events around the state plus monitoring the 720 liquor stores if those were allowed to have sampling.

Chairman Brungardt closed the hearing on **SB 267**.

SB 276 - Transitional licenses for appraisers

Chairman Brungardt opened the hearing on **SB 276**. Sally Pritchett, Kansas Real Estate appraisal Board, testified in support of **SB 276** which would repeal K.S.A. 58-4109 sections (f) and (g). She explained the reason for requesting the repeal of 58-4109 (f) is that it was recently brought to the attention of the Board that the time frame for passing an examination was changed to two years effective in April of 2000. The current statute specifically allows for five years, and by repealing this section it would not take away the Board's authority to monitor examination requirements as this is still covered in 58-4109(c)(3) which gives the Board authority to establish examination specifications. Ms. Pritchett stated that the request to repeal the statute is simply being done as a cleanup measure since the statute is outdated. (Attachment 14)

There being no other conferees to appear to speak on this bill, Chairman Brungardt closed the hearing on **SB 276**.

Final Action:

SB 68 - Elections; establishing requirements for daily reporting of campaign contributions

Chairman Brungardt called for discussion and possible final action on **SB 68**. He asked the Revisor about possible change in regard to electronic filing. The Revisor explained that it was a recommendation by the Secretary of State's Office that the filings be with the Secretary of State rather than with the commission. The Revisor said that the new proposed substitute bill for **SB 68** had not been formally printed because the committee had not passed it out yet, and the draft form was handed out to committee members at the March 2 meeting.

Senator Vratil made a conceptual motion to amend new subsection (c), to say, "Reports required by this section shall be filed by hand delivery, express delivery service, facsimile transmission or any electronic method authorized by the Secretary of State." The motion was seconded by Senator Reitz, and the motion carried.

The Chairman called for discussion on the proposed substitute bill. Senator Reitz stated some of the members had spoken to the fact they do not like this bill, but he had to take exception to that as all these campaign finance measures had been brought to the Legislature by the Ethics Commission and were valid and worthwhile. He supported the Commission's requested changes wholeheartedly, and he supported the substitute bill in the same way.

Senator O'Connor asked if the balloon amendment offered earlier was included in the draft of the substitute bill. The Revisor responded that it was incorporated into the proposed substitute. Senator O'Connor referred to Mr. Stern's recommendations when he testified before the Elections and Local Government, and whether those recommendations had been included in this substitute bill. The Chairman asked Carol Williams to respond, and she said that language was included on page 2. Senator O'Connor inquired about page 1, line 14, regarding raising the \$300 threshold to \$500, which is the threshold for committees filing reports section 25-4175, and whether that was done. Ms. Williams said that was not

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:40 a.m. on Thursday, March 10, 2005, in Room 231-N of the Capitol.

done because that was in **SB 68** and it was never in Elections and Local Government. She explained that original **SB 68** was in this committee from the beginning so there were no changes made to it based on the comparable changes made in Elections and Local Government on **SB 64**. Senator O'Connor asked if the committee was putting **SB 64** into **SB 68**. Ms. Williams said that was correct.

Senator O'Connor expressed her dissatisfaction with and the problems caused by the committee trying to by-pass the normal process. She stated that this bill belongs in the Elections and Local Government Committee and not in the Federal and State Affairs Committee. Chairman Brungardt reminded Senator O'Connor that the bills were referred to this committee by the Senate President and this committee was trying to work the bills referred.

Senator O'Connor stated that she objected to everything that was going on in this committee, stated her reasons, and that she would oppose this whole procedure.

Senator Vratil made a motion to recommend the proposed bill favorable for passage as amended. He stated that it was very important for this committee to put **SB 64** and **SB 66** into the proposed substitute bill, along with **SB 68**, because these issues should be dealt with by the entire Senate and not have them bottled up in committee. The motion was seconded by Senator Reitz.

The Chair called for discussion. Senator Barnett asked Carol Williams if there were reasonable recommendations that the committee was not hearing about or ignoring. Ms. Williams responded that the recommendations certainly had merit and were reasonable, and the Commission would be agreeable to them. Senator Barnett suggested that since these were reasonable changes that the committee continue to work on the proposed substitute bill. He said he had a great deal of faith in Ms. Williams' work and her expertise on these type matters.

Senator Vratil stated that he would withdraw his motion, with permission of Senator Reitz who seconded his motion, because he did not realize there were additional amendments to be offered. Senator Reitz was in agreement.

Senator Barnett asked if those additional changes involving the recommendations could be explained in order for the committee to consider amending those into the substitute bill. Chairman Brungardt agreed, and explained that the committee was looking to make things uniform across the various reporting thresholds, and that sort of thing. He asked Ms. Williams to go over the recommendations.

Ms. Williams explained that Mr. Stern's first suggestion was to change the language in **SB 64**, page 1, line 13, by deleting "makes or contracts to make an expenditure" and substitute "spends or contracts to spend." The second recommendation regarded a policy decision on page 1, line 14, raising the \$300 threshold to \$500, which is the threshold for committees filing reports under Section 25-4175. Mr. Stern's third suggestion was on page 1, line 19, to change the occupation threshold to \$150 because that was not addressed in the original bill. She explained that \$150 was what all the legislators had to do when they filed their reports; and for consistency purposes, this was not an issue for the Commission.

Senator Vratil asked where the occupation threshold provision was in the substitute bill. Ms. Williams responded that it was in new Section 2, beginning on page 2.

Ms. Williams said Mr. Stern's fourth suggestion was on page 1, line 23, deleting "the expenditure" and add "a payment of \$50 or more." This would again have the same threshold for a payment as is required for committee payments. She explained that would also be in new Section 2, page 2, and would be in Sub. Section 4 under (a).

Chairman Brungardt asked Ms. Williams if the five bills that the Ethics Commission brought to the Legislature now have better consistency in terms of thresholds, amounts, etc. Ms. Williams replied that was correct and that two of the bills have already gone to the House.

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:40 a.m. on Thursday, March 10, 2005, in Room 231-N of the Capitol.

Senator Barnett made a motion to adopt those amendments as explained. Senator Brownlee seconded the motion, and the motion carried.

Senator Vratil made a motion to recommend Substitute Bill for **SB 68** as amended for passage, and seconded by Senator Reitz.

The Chairman called for discussion.

Senator O'Connor stated that **SB 64** and **SB 66** have not been heard in this committee although copies of the testimony on those bills from Elections and Local Government were furnished to this committee's members. She said no one in this committee heard the testimony as given nor the questions and responses to the questions asked during the hearing on these bills. She expressed that she still finds this committee's actions inappropriate, and will continue to vote "no" as a protest on how these bills are being dealt with in circumventing the committee the bills were assigned to originally.

Chairman Brungardt asked if she wanted her remarks recorded, and she responded not particularly. She just wanted her position stated and explained.

Senator Hensley commented that he thought Senator O'Connor made a good point. He explained that **SB 68** was assigned to this committee, but noted that it had been introduced by the Committee on Elections and Local Government as well as **SB 64** and **SB 66**. He expressed a general concern about other bills that have been assigned to committees that are not of that jurisdiction, i.e. consolidation. The issue of city and county consolidation is a issue that should have gone to the Elections and Local Government Committee. He said he understands that there is going to be a change of venue on the gaming issue, which should come to this committee because it deals with gaming issues, but it is now going to the Ways and Means Committee. Senator Hensley stated that this is a trend that is not positive to the process, and bills should be assigned to the committees where they are applicable to that particular committee.

Senator Brownlee requested that she be on record as being in agreement with comments from both Senator O'Connor and Senator Hensley. Senator Ostmeyer stated that he also wanted to be on record that he agreed with the previous comments.

Chairman Brungardt called for the vote on the motion to recommend Substitute Bill for **SB 68** as amended. The Chair was in doubt of the voice vote and called for a show of hands. The vote was four (4) for the motion, and four (4) against the motion, with one (1) member abstaining. Motion was lost on a tie vote.

SB 263 - Administrators of ambulance services added to membership of emergency medical services board

Senator Brungardt called for discussion and final action on **SB 263**. He said there was possibly an amendment regarding the designated number of members for the emergency medical services board. The Revisor clarified that there had been committee discussion at the time of the hearing to possibly not add two new members, but instead the committee had suggested designating one of the current members to be an administrator in order to hold the size of the board to its current number.

Senator Brownlee made a motion to amend **SB 263** on page 1, paragraph (G), beginning on line 34, that one of those positions would be the administrator of ambulance services as described in paragraph (F). Senator Barnett seconded the motion, and the motion carried.

Senator Brownlee moved to pass **SB 263** out favorably as amended, seconded by Senator Reitz, and the motion carried.

HB 2027 -Library boards; reduction of waiting period for reappointment

Chairman Brungardt called for discussion and final action on **HB 2027**. He explained the bill would reduce from two years to one year the recess period a person would have to serve before that person could be reappointed to a library board.

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:40 a.m. on Thursday, March 10, 2005, in Room 231-N of the Capitol.

Senator Barnett made a motion to pass **HB 2027** out favorably, seconded by Senator Reitz, and the motion carried.

SB 262 - Administrators of ambulance services added to membership of emergency medical services board

HB 2083 - Consolidation of Topeka and Shawnee County

Chairman Brungardt called for discussion and possible final action on either one or both of the consolidation bills. He inquired what the committee's pleasure would be on the consolidation bills.

Senator Hensley moved that the committee report **HB 2083** favorable for passage, seconded by Senator O'Connor, and the motion carried.

Senator Hensley moved that the committee report favorably for passage **SB 262**, seconded by Senator Gilstrap, and the motion carried.

The meeting was adjourned at 11:53 a.m. The next meeting is scheduled for March 15, 2005.