

MINUTES

SPECIAL COMMITTEE ON AGRICULTURE

August 30, 2001
Room 519-S—Statehouse

Members Present

Senator Derek Schmidt, Chairman
Representative Dan Johnson, Vice Chairman
Senator Janis Lee
Senator Stan Clark
Senator Larry Salmans
Senator Mark Taddiken
Representative Don Dahl
Representative John Faber
Representative Gary Hayzlett
Representative Bruce Larkin
Representative Dennis McKinney
Representative Sharon Schwartz
Representative Dan Thimesch

Staff Present

Raney Gilliland, Kansas Legislative Research Department
Amy Kramer, Kansas Legislative Research Department
Jill Wolters, Revisor of Statutes Office

Conferees

Jamie Clover Adams, Kansas Department of Agriculture
Tom Sim, Kansas Department of Agriculture
Robert Spaide, United States Department of Agriculture
Brett Myers, Kansas Association of Wheat Growers
Dusty Fritz, Kansas Wheat Commission
Tom Tunnell, President, Kansas Grain and Feed Association
Daryl Strouts, Kansas Crop Improvement Association
Patty Clark, Director, Public Policy Division, Kansas Farm Bureau

Janet McPherson, Kansas Farm Bureau
Dr. Robert Zeigler, Kansas State University
Terry Graham, United States Department of Transportation
Paula Lentz, Kansas Corporation Commission
Doug Wareham, Kansas Grain and Feed Association

Morning Session

Senator Schmidt called the meeting to order and indicated that the Committee would take up the topic—Review of Karnal Bunt.

Jamie Clover Adams, Secretary of Agriculture addressed the members of the Special Committee (Attachment 1). Secretary Adams provided a definition of Karnal bunt and explained that it was a fungal disease that affects wheat, durum wheat, and triticale. The disease affects the yield and quality of the crops, but is not harmful to animals or humans who may consume it. The infected portions of the wheat kernel get replaced with masses of dark, powdery, fishy-smelling fungal teliospores. Because of these qualities, grain with more than 3 percent bunted kernels is considered unfit for human consumption. Secretary Adams stated that the most detrimental impact Karnal bunt has is on markets, as nearly 80 countries will not import wheat from areas that have tested positive for the disease. This is nearly 60 percent of the total US wheat exports. There are even some domestic markets that will not accept infected wheat. Secretary Adams stated that 20 percent of the wheat exported from the US is grown in Kansas which translates to 24 percent of Kansas' annual wheat crop. She stated that the Kansas Department of Agriculture (KDA) has been aware of the Karnal bunt for many years, recognizing that it could impact the state and has been involved in the development of a USDA action plan. The USDA had determined that the desert southwest area of the US was at the most risk for Karnal bunt, where it first reached the US in 1996 after migrating from Mexico. The KDA's Plant Protection Program worked with the Kansas Crop Improvement Association to provide wheat growers seed that was free of Karnal bunt. Every year, labs in Kansas test 900 wheat samples collected from 12 states. The USDA quarantines all areas where Karnal bunt is found in an effort to stem the spread of the disease. This quarantine restricts the movement of any wheat testing positive in the area, requires that it be processed or used within the regulated area, and requires that facilities and equipment be sanitized according to USDA standards. There are currently four counties in north Texas that are under USDA quarantine. Secretary Adams included a Kansas Department of Agriculture Karnal bunt summary and Action Plan in her testimony. The KDA initiated the Action Plan to prevent the spread of Karnal bunt to Kansas from Texas. The Plan included notification of stakeholders, public service announcements, and offers to custom harvesters on options for equipment cleaning and certification. Then in July 2001, Secretary Adams issued an order requiring that all seed offered for sale in Kansas be tested and certified as free of Karnal bunt. (A copy of the order is included with her testimony.) Several states (known as NFACT and include New Mexico, Florida, Arizona, California, and Texas) petitioned the US Department of Agriculture Secretary Ann Veneman, to analyze the order Secretary Adams issued. (This letter and Secretary Adams' response

is included in her testimony.) A memorandum from the Agricultural Commodity Assurance Program to Secretary Adams indicates that the testing of wheat seed for Karnal bunt has been proactive and the seed industry is highly aware of the disease. Secretary Adams responded to questions from members of the Committee. A Committee member asked about how the concern was initially addressed and Secretary Adams responded that in the 1980s when it was found in Mexico, it became a trade issue and the quarantine plans were initiated. When asked what the Secretary's actions would be should Karnal bunt be discovered in one or more Kansas counties, she responded by stating that her plan is outlined in the Action Plan dated June 1996. A member stated that more than likely Karnal bunt would be found at an elevator and the first action would be to lock the facility down and stop all movement of seed. USDA would then be notified and take jurisdiction. There is a compensation regulation that has been put out by USDA and will be available from the Kansas Legislative Research Department. Concern was expressed about what happens if an area does not have wheat production, about compensation, and what may have to be addressed legislatively.

Chairman Schmidt welcomed Tom Sim, Program Manager for the Plant Protection and Weed Control Program of the Kansas Department of Agriculture (Attachment 2). Mr. Sim spoke about the scientific aspects of Karnal bunt and referred to the fact sheet included in Secretary Adams' testimony. It was first identified in India in the Province of Karnal, and then discovered in Mexico during the late 1960s and early 1970s. It has moved slowly northward and was discovered in the US in 1996. Mr. Sim provided a fact sheet issued by Kansas State University that showed the life cycle of the fungus and explained the growth. Mr. Sim explained that the fungus destroys only the kernels and is not manifested in the plant. It appears to have a life cycle of five to seven years. Mr. Sim also included two maps with his testimony. One map showed the counties that have been affected that are regulated. Only the four northern Texas counties are completely regulated. Within the regulated areas there is only about 8,000 acres of wheat. The second map shows the results of the national survey in 2000. The samples that are collected are examined for teliospores fungus and to date, teliospores have not been seen in any wheat that has been sent here for testing. In response to the question about the effect of the wind on the spores, Mr. Sim explained that it is a large spore and does not "fly" well. But the part of the spore that actually caused the infection has a short life span. The infection was actually in the counties currently infected for several years before it was detected. The USDA is still trying to determine the length of viability in the soil. Mr. Sims stated that the fungus cannot be frozen but can be eliminated with moist heat. Additional questions were asked about the legality of knowingly infecting a plant with Karnal bunt. There are locations in Texas that receive compensation for the infected wheat, but continue to plant it. However, the quarantine does allow the replanting of wheat. There is no current state law that prohibits someone from knowingly infecting a plant with a disease; however, this action is prohibited with respect to animals.

Robert Spaide, Director of Surveillance and Emergency Programs Planning and Coordination of the United States Department of Agriculture's Animal and Plant Health Inspection Service appeared before the Committee (Attachment 3). Mr. Spaide stated that his agency is working diligently to ensure Karnal bunt does not threaten the US wheat industry. His agency's objectives within this goal are to protect US wheat producers who

do not have Karnal bunt, provide the best options for those affected, facilitate the safe movement of wheat into both domestic and international markets, and promote the flow of pertinent disease information to reassure our trading partners about the safety of US wheat. Mr. Spaide outlined specific actions under each of these objectives. Mr. Spaide responded to questions from members of the Committee. Mr. Spaide also addressed the compensation issue, stating that it came from the Commodity Credit Corporation (CCC) fund. Many of those receiving compensation are planting wheat as feed for cattle. Mr. Spaide also responded to questions about treatments for contaminated grain.

Brett Myers, representing the Kansas Association of Wheat Growers, addressed the Committee (Attachment 4). Mr. Myers stated that he had been asked why, with such a small amount of acreage involved, the problem of Karnal bunt was being blow up so much. He stated that the impact is greater than for just the producers where the Karnal bunt had been found. The impact is far reaching to adjoining counties, local implement dealers, fertilizer and chemical dealers, elevators, and many others. He stated that members of the Association are going to go to Washington, DC to request research money since the only place doing research is in Mexico. Mr. Myers responded to questions from members of the Committee.

Dusty Fritz, representing the Kansas Wheat Commission, presented an economic analysis on the projected impact should Karnal bunt be detected in Kansas (Attachment 5). Ms. Fritz outlined the potential one year impact on Kansas and the impact on production, grain handling, seed, and the Kansas market. Karnal bunt is a minor disease with a potentially major impact. Ms. Fritz went through each scenario of potential costs if the disease was found in Kansas. Specifically, she estimated that the production impact could be \$6.1 to \$11.2 million, the grain handling impact may reach \$842 thousand to \$5.6 million, and seed impact in the range of \$68,000 to \$455,000. She also outlined the potential loss of Kansas exports is reaching \$270 million. Summarizing, the economic impact on Kansas could range from \$279 to \$290 million. Ms. Fritz responded to questions from the Committee members addressing the issue of deregulation and explaining this meant working together with the US wheat purchasers to create tolerances for Karnal bunt in their purchases.

Tom Tunnell, president of the Kansas Grain and Feed Association, addressed the Committee on behalf of the grain storage membership (Attachment 6). Mr. Tunnell listed several steps the organization needed to take to minimize the chances of this disease spreading further northward and ensuring cooperation from all parties. The list included continuation of the national voluntary survey, requesting the USDA to develop an adequate compensation package, continue to ensure that contaminated wheat is not exported, and taking steps to ensure that the infestation does not spread. Mr. Tunnell ended his testimony by asking the Committee to forward a letter to the USDA Secretary with these recommendations. Mr. Tunnell responded to questions from the Committee.

Daryl Strouts, Executive Director/Executive Secretary-Treasurer of the Kansas Crop Improvement Association and Kansas Seed Industry Association, provided information to the Committee on the seed industry's efforts to test wheat seed for Karnal bunt (Attachment 7). Mr. Strouts included in his testimony the recommendations his association provides to

Kansas farmers to help limit the introduction of Karnal bunt through seed. Mr. Strouts responded to questions from the Committee. A member of staff asked if the test they conducted was a visual test or a chemical test and Mr. Strouts responded that they were sampling and sending them to the Department of Agriculture, which conducts a microscopic test.

Patty Clark, Director of the Public Policy Division of the Kansas Farm Bureau, addressed the Committee (Attachment 8). Ms. Clark shared some of the questions and concerns of Farm Bureau's members. Those questions included: if eradication of Karnal bunt is improbable, is it possible; shouldn't we do everything possible to protect our borders from infestation; how do we develop a host denial strategy which is scientifically sound and economically viable; how do we effectively allocate our limited resources to slow the spread; and how do we develop producer compensation without necessarily encouraging continuous wheat planting on infested acres? Ms. Clark responded to questions from members of the Committee.

The Committee discussed the letter suggested by Mr. Tunnell, adding to it other suggestions from conferees for action by the US Department of Agriculture.

Afternoon Session

Dr. Robert S. Zeigler, Head of the Plant Pathology Department and Director of the Plant Biotechnology Center at Kansas State University addressed the Committee on Kansas State's response to the threat of Karnal bunt on Kansas agriculture (Attachment 9). He stated that the spores had a survival rate of at least five years and they were concentrating on immunity. He noted that there is resistance in the wheat germ plasma available at the University. They are working on a bio-engineered immunity, but this is a long-term process and cannot be done in less than ten years. Dr. Zeigler addressed the Department's research objectives. The research agenda is a coordinated effort among the various wheat producing states. The facilities at the University will need to be upgraded and they will need to have the spores in hand to do more detailed research. He stated that not everything can be done in India. Dr. Zeigler responded to questions from the Committee. A member of the Committee asked about research funding. Dr. Zeigler explained that those in Washington would determine its priority and how much would be received, other than grants. He stated that the University does have some flexibility in that some resources have been diverted. Dr. Zeigler stated, in response to a question, that the spores can live at least five years, if not disturbed, but could be longer. Chairman Schmidt closed the hearing on the issue of Karnal bunt.

Chairman Schmidt asked the Committee to turn their attention to the next topic on the agenda, Review of New Requirements for Implements of Husbandry Trailers Operated by Commercial Operators. The first conferee to speak to the Committee was Terry Graham, State Director for the Federal Motor Carrier Safety Administration (Attachment 10). Mr. Graham outlined his office's duties and explained the Motor Carrier Safety Assistance

Program (MCSAP), which was implemented in 1984. A portion of the regulations addresses the parts and accessories on a commercial motor vehicle which are necessary for safe operations. Section 393.1 specifically states that no employer shall have a commercial motor vehicle operated unless it is equipped in accordance with the requirements specified. The National Highway System Designation Act of 1995 exempted certain requirements, particularly those for drivers transporting agricultural commodities or farm supplies during planting and harvesting seasons. Mr. Graham's office surveyed several states to determine how they apply the safety regulations to implements of husbandry. All states surveyed had in common the exemption for nurse tanks and other implements of husbandry if being moved by individuals other than farmers in place prior to April 1988. Mr. Graham stated that the regulations, as written, are not subject to the hours of service regulation when operating in accordance with regulations and exemptions found in 395.1(k), but are subject to Part 393. He stated that any change to a law or regulation at this time which results in an incompatible rule may make the state no longer eligible for MCSAP funding and could have negative impact on safety on the Kansas highways.

Chairman Schmidt provided some background on the topic. He stated that there are some regulated entities in Kansas that believe that they fall under the regulations described that are going to be required to install braking and lighting systems on anhydrous trailers. Responding to questions from members of the Committee, Mr. Graham detailed some of the specific differences between states and the exemptions the current regulations covered.

Paula Lentz, Assistant General Counsel for the Kansas Corporation Commission (KCC), spoke to the Committee on the topic (Attachment 11). Ms. Lentz explained that the issue was brought to her agency's attention by the Kansas Grain and Feed Association and they undertook an extensive look at the law to determine whether exemptions for the nurse tanks currently existed for commercial operators. The only determination that they could come to is that these exemptions do not exist. Ms. Lentz stated that to create such exemptions may jeopardize the state's MCSAP program and funding. A member of the Committee asked if an employee of the farmer would be exempt or would it have to be the actual farmer. Ms. Lentz stated she would have to look further into the law. The Committee member further asked "who owns the cooperative," if not local farmers. The member wondered if anyone who would work for the cooperative would technically be working for the farmer. Ms. Lentz stated that the exemption of the statute says it is the owner or producer of the farm product doing the transportation and requested the opportunity to further investigate the issue. A member of the Committee asked Ms. Lentz to submit a response regarding Chapter 8 exemptions for implements of husbandry. Another member of the Committee questioned whether there was a need for an Attorney General's opinion.

Doug Wareham, Senior Vice President for the Kansas Fertilizer and Chemical Association (KFCA), spoke to the Committee (Attachment 12). Mr. Wareham stated his Association was disappointed in the Corporation Commission's opinion. He stated that as they saw it, there were two issues: the lighting requirements and the braking requirements. He opined that the current statutory exemption that KCC is not recognizing deals with lights. He noted that there was a problem with brakes even if the Commission would change their position. Mr. Wareham provided background on how the KFCA came to request an opinion from the KCC. Mr. Wareham said they have been led to the interpretation from the United

States Department of Transportation that Kansas does not have a statutory exemption that is recognized in other states. He included in his testimony copies of current Kansas statutes addressing the issue along with other states' statutes and federal regulations. Mr. Wareham shared some statistics gathered on the number of anhydrous ammonia facilities and trailers owned and operated by commercial operators in Kansas. He said there were approximately 610 facilities and 12,000 trailers. Mr. Wareham estimated that to retrofit the nearly 12,000 trailers would be just under \$14 million. He explained that his organization was appearing today to seek clarification on these costly and impractical requirements for anhydrous ammonia trailers. Mr. Wareham responded to questions from members of the Committee.

Ms. Lentz and Mr. Graham responded to additional questions from members of the Committee. Mr. Graham responded that his agency would look into the exemptions, should an opinion from the Attorney General's office indicate the KCC was "mistaken" in their interpretation of the law. He also indicated that he was not aware of any states that have installed braking and lighting systems on their commercially delivered nurse tanks.

Chairman Schmidt, after closing the hearing on the topic of Review of New Requirements for Implements of Husbandry Trailers Operated by Commercial Operators, asked the members of the Committee for discussion on a possible request for an Attorney General's opinion. Chairman Schmidt will see to the letter.

Chairman Schmidt discussed the remaining scheduled meetings. He shared the proposed locations and dates of the field hearings. The locations are Pittsburg, Garden City, Hays, and Johnson County to cover the state as much as possible. The meeting in Pittsburg will be on October 9. The meetings in Garden City and Hays will be October 29 and 30. The Johnson County date will be November 15. The Chairman also addressed the issue of format for the field hearings. He explained that he would like to include three formats, the "standard" list of conferees scheduled, a panel format, and a public hearing. He also asked members of the Committee to submit names of those they would like to appear. The Chairman suggested that each meeting have a "main" emphasis. Pittsburg could be contracting issues, Garden City could look at marketing alliance issues, Hays has been suggested to be soil conservation and environmental issues, and Johnson County could include a Federal Reserve representative addressing agriculture structural economics. These are not finalized topics, but simply a place to start. The final meeting day allowed will be set later.

There being no further business, the meeting was adjourned.

Prepared by Jo Cook

Approved by Committee on:

October 9, 2001