

MINUTES OF THE HOUSE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on February 13, 2006, in Room 423-S of the Capitol.

All members were present except:

Representative Larry Powell- excused
Representative Jerry Williams- excused

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Gordon Self, Revisor of Statutes Office
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Callie Jill Denton, Kansas Trial Lawyers Association (written only)
Duane Simpson, Kansas Agribusiness Retailers Association
Leslie Kaufman, Executive Director, Kansas Cooperative Council (written only)
Brad Harrelson, State Policy Director, Governmental Relations, Kansas Farm Bureau (written only)
Constantine Cotsoradis, Assistant Secretary, Kansas Department of Agriculture
Michael LeValley, Field Supervisor, U.S. Fish and Wildlife Service
Keith Sexson, Assistant Secretary for Operations, Kansas Department of Wildlife and Parks
Ron Klataske, Executive Director, Audubon of Kansas
Gene Bertrand, Wallace, Kansas
Lillian Becker, Russell Springs, Kansas
Larry Haverfield, Winona, Kansas
Gordon Barnhart, Bucklin, Kansas
Keith Yearout, Z Bar Ranch Manager, Lake City, Kansas
Dan Pace, Hutchinson, Kansas
Stan Roth, Naturalist - Educator
Alan Pollom, Kansas State Director, The Nature Conservancy
Donn Teske, Kansas Farmers Union
Dan Ward, Kansas State Rifle Association (written only)
Judith Roe, President, Northern Flint Hills Audubon Society (written only)
David London, Defiance, Missouri (written only)
Carl Uhrich, Logan County Commissioner
Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau
Doug Smith for Duane Mathes, President, Kansas Legislative Policy Group
Mike Beam, Senior Vice President, Kansas Livestock Association

Others attending: See attached list.

Chairman Johnson withdrew his request for a committee bill concerning oil and gas pipes on agricultural land.

Hearing and action on HB 2798 - Immunity from liability for owners of anhydrous ammonia; sunset extended from July 1, 2006, to July 1, 2009.

Chairman Johnson opened the hearing on **HB 2798**. Raney Gilliland explained that this bill would extend the current sunset provision for immunity from liability for owners of anhydrous ammonia. The 2002 legislation states that owners of anhydrous ammonia shall not be held liable or subject to a lawsuit for any negligent act or omission which may cause personal injury, death or other economic or non-economic loss to a third party. Immunity from liability and suit authorized by this section is expressly waived for owners whose acts or omissions constitute willful, wanton, reckless or intentional conduct.

Callie Jill Denton, Kansas Trial Lawyers Association, submitted written testimony neutral on **HB 2798** to extend the sunset provision for immunity for owners of anhydrous ammonia. KTLA opposed the immunity provisions in 2002. They believe the solution to the problem of anhydrous ammonia theft is not to insulate the owner from liability, but to encourage owners to take precautions against theft including valve locks, regular monitoring, keeping the tank well-lit, and fencing for unattended tanks. (Attachment 1)

CONTINUATION SHEET

MINUTES OF THE House Agriculture Committee at 3:30 p.m. on February 13, 2006, in Room 423-S of the Capitol.

Duane Simpson, Kansas Agribusiness Retailers Association, appeared in support of **HB 2798** to extend the sunset provision in the 2002 legislation introduced at KARA's request. This law grants immunity from lawsuits for theft-related damages to the thief and third parties. He explained that at the time of passage, there was concern by opponents of the bill that third parties injured by a methamphetamine thief's actions would not be able to be compensated, hence the sunset provision. After four years experience, he said there has not been a single case of a third party being injured or having property damage resulting in a lawsuit. He stated that prior to passage of the 2002 law, the average agribusiness retailer was seeing 30-40% increases in their liability insurance; many insurance companies had stopped writing liability insurance for the industry. With passage of the immunity legislation, their members are now able to get affordable insurance.

(Attachment 2)

Leslie Kaufman, Executive Director, Kansas Cooperative Council, submitted written testimony in support of **HB 2798**, stating that agriculture producers and agribusinesses, legitimate owners and users of anhydrous ammonia still need this liability protection. (Attachment 3)

Brad Harrelson, State Policy Director, Governmental Relations, Kansas Farm Bureau, provided written testimony in support of **HB 2798**, stating that responsible agriculture producers or distributors should not be held liable for actions of criminals that may result in injury or loss during the theft of anhydrous ammonia. KFB believes the statutory protections provided in K.S.A. 60-4601 are appropriate and should be extended indefinitely by striking the sunset provision in line 40. (Attachment 4)

There being no opponents, Chairman Johnson closed the hearing on **HB 2798** and opened the floor for discussion.

Representative Carlson moved to recommend **HB 2798** favorably for passage and, because the bill is of a noncontroversial nature, be placed on the consent calendar. Seconded by Representative Dahl, the motion carried.

Hearing on HB 2836 - Revisions to Kansas egg law.

Chairman Johnson opened the hearing on **HB 2836**. Raney Gilliland reviewed the revisions to the Kansas egg law, noting several technical corrections the committee may wish to consider.

Constantine Cotsoradis, Assistant Secretary, Kansas Department of Agriculture, testified in support of **HB 2836** requested by the department to clarify sections of the Kansas egg law that, as written, are confusing in regard to who pays inspection fees and provisions that affect small, direct marketers and persons selling eggs from their own small flocks. The bill also adds other kinds of eggs and egg products. He explained that the new law:

- Adds balut (fertilized eggs) to allow for regulation of labeling and handling.
- Requires retailers and food purveyors to be licensed, but exempts them from the licensing fee.
- Expands record keeping requirements for license holders.
- Maintains the exemption for producers selling from their own flock, but adds some size, handling and temperature requirements to clarify direct marketing rules.
- Clarifies labeling requirements.
- Limits repackaging of eggs by retailers.
- Provides civil penalty authority.

Mr. Cotsoradis noted that these proposed changes were discussed at their stakeholder meetings and the response, while limited, was positive. (Attachment 5)

Donn Teske, Kansas Farmers Union, spoke in support of **HB 2836** to clarify the Kansas egg law, noting that he represents a number of small producers in the state.

There being no opponents, the Chairman closed the hearing on **HB 2836**.

CONTINUATION SHEET

MINUTES OF THE House Agriculture Committee at 3:30 p.m. on February 13, 2006, in Room 423-S of the Capitol.

Hearing on HB 2783 - Prairie dog management and control by townships and counties.

Chairman Johnson opened the hearing on **HB 2783**. Raney Gilliland explained that this bill would repeal K.S.A. 80-1201 through 80-1208. The bill would allow the township board of any township or the county commission of any county to take the necessary steps to manage and control prairie dogs within the limits of the township or county. Any expense incurred would be paid for out of the funds of the township or county. The bill would also authorize the Department of Wildlife and Parks, the Department of Agriculture, and K-State Research and Extension to assist townships, counties, and landowners with management or control, or both, of black-tailed prairie dog colonies. This assistance could consist of education efforts, technical assistance, research, cost-share of management or control, and incentive payments to landowners. The bill carries a fiscal note of \$2.2 million.

Michael LeValley, Field Supervisor, U.S. Fish and Wildlife Service, provided the perspective of the U.S. Fish and Wildlife Service regarding black-tailed prairie dog conservation and management in Kansas, stating that as a federal agency, their policy is to not take positions on state legislation. He reported that the Service removed the species from candidate status under the Endangered Species Act in 2004. They are hopeful that by managing and controlling prairie dogs, rather than pursuing eradication, a sufficient number of prairie dog colonies can be maintained to avoid listing. Their second interest in maintaining some populations of prairie dogs in the shortgrass prairie landscape is to aid recovery of black-footed ferret, the most endangered animal in North America. The Service will assist landowners who wish to conserve and manage biological diversity on their own private property. (Attachment 6)

Keith Sexson, Assistant Secretary for Operations, Kansas Department of Wildlife and Parks, addressed the committee stating that Kansas is and continues to be a state with onerous laws regarding the eradication of the black-tailed prairie dog. The Department supports revisions to the century old laws in Kansas. They feel that the black-tailed prairie dog is a necessary and vital component to keeping the short grass prairie ecosystem healthy and, in addition, would be a step in the right direction in the event that the USFWS is petitioned once again to list the species as threatened. The Department is supportive of private-public cooperative agreements for the enhancement of wildlife species and believe repealing the antiquated laws regarding prairie dogs would help foster those arrangements. (Attachment 7)

Ron Klataske, Executive Director, Audubon of Kansas, testified in support of **HB 2783** introduced at his request. He stated that these antiquated statutes don't just mandate eradication of prairie dogs in Kansas, they eradicate the rights of landowners to conduct conservation of native wildlife as part of their land stewardship; eradicate an element of agri-tourism and outdoor recreation on private lands; specify that township and county officials have no choice but to eradicate or they are automatically deemed guilty of a misdemeanor; and by eradicating agri-tourism and nature-based tourism, a considerable and growing economic necessity for rural communities is lost. (Attachment 8)

Gene Bertrand, Wallace, Kansas, appeared in support of **HB 2783** for the management and control of prairie dogs. He explained that since 2002, by advertising in *The Kansas City Star* he has established a new commercial "guest service" hunting facility—a method of prairie dog control that generates income and provides recreation that seems to be in demand. He reported that his business has continued to grow with 90 percent of the hunters from out of state. He admitted that he will always have to perform control work to protect neighbors, but believes his business is a better method of management than extermination. He reported that in November, 2005, he was advised by the Logan County Attorney that he must eradicate the prairie dogs on his land or the county will proceed with the eradication and he will be billed. (Attachment 9)

Lillian Becker, Russell Springs, Kansas, testified in support of **HB 2783**. She reported that they have received numerous complaints from the Logan County Commissioners concerning the eradication of prairie dogs on their land in spite of the fact that poison has been applied every year since 2000. She said the county commissioners refuse to discuss the economic development resulting from the agri-tourism program of prairie dog shoots on their property. (Attachment 10)

Larry Haverfield, Winona, Kansas, appeared in support of **HB 2783** for the control and management of prairie dogs.

CONTINUATION SHEET

MINUTES OF THE House Agriculture Committee at 3:30 p.m. on February 13, 2006, in Room 423-S of the Capitol.

Gordon Barnhart, Bucklin, Kansas, testified in support of **HB 2783** and agri-tourism and recreation as a means of prairie dog management and control. (Attachment 11)

Keith Yearout, Z Bar Ranch Manager, Lake City, Kansas, appeared in support of **HB 2783** as a significant step toward improving conservation of the black-tailed prairie dog and other species that utilize or depend on prairie dog towns. He reported that Turner Enterprises, Inc.'s mission is to manage their land in an economically sustainable and ecologically sensitive manner while promoting the conservation of native species. He noted that an important aspect of their prairie dog conservation program is containment to ensure that colonies from the Z-Bar Ranch do not encroach onto neighboring lands. Once their 1000 acre objective is achieved, they hope to collaborate with the Kansas Department of Wildlife and Parks and U.S. Fish and Wildlife Service to restore black-footed ferrets to the ranch. (Attachment 12)

Dan Pace, Hutchinson, Kansas, submitted written testimony in support of **HB 2783** as both a conservation matter and a property rights issue. (Attachment 13)

Stan Roth, naturalist and former educator, spoke in support of **HB 2783** for the conservation and management of prairie dogs.

Alan Pollom, Kansas State Director, The Nature Conservancy, testified as a proponent for change of the existing statutes regulating control of prairie dogs. The Nature Conservancy believes that legislative action leading to a more progressive and wildlife friendly approach to prairie dog management should be pursued. They believe such action is in the long-term best interests of both landowners who desire the presence of prairie dogs and those who do not. They are uncertain whether **HB 2783** is the vehicle that will accomplish that outcome. (Attachment 14)

Donn Teske, Kansas Farmers Union, appeared in support of **HB 2783** as a sensible bill that addresses the control and management of prairie dogs. (Attachment 15)

Dan Ward, Kansas State Rifle Association, submitted written testimony outlining their support of **HB 2783**. (Attachment 16)

Judith Roe, President, Northern Flint Hills Audubon Society, sent written testimony in support of **HB 2783** to allow prairie dog retention on private lands. (Attachment 17)

David London, Defiance, Missouri, provided written testimony in support of **HB 2783** and the black-tailed prairie dog as a game animal and economic resource. (Attachment 18)

Jay Haverfield and Joe Becker offered their verbal support of **HB 2783**.

Carl Uhrich, Logan County Commissioner, testified in opposition to **HB 2783** expressing the concern of many landowners in Logan County. He explained that Logan County has been struggling with a tremendous infestation of prairie dogs and their only hope in getting the problem under control is to allow the county to manage and control prairie dogs when landowners choose not to do so themselves. He stated that they are not trying to tell these landowners that they cannot have prairie dogs on their property, but if they choose to have them, they should be responsible for the damage they cause to the landowners around them. (Attachment 19)

Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau, stood in opposition to **HB 2783** addressing the control of prairie dogs. He noted that KFB offered support to a similar measure during the 2003 legislative session due to concerns that the black-tailed prairie dog would be listed as an endangered species under the Endangered Species Act and areas of Kansas would be designated as critical habitat. However, in August 2004, USFWS issued their finding that concluded the black-tailed prairie dog is not likely to become an endangered species within the foreseeable future. KFB doesn't believe anything in existing law precludes individuals, townships, counties, state agencies, or research institutions from participating in the development of management plans, cooperative agreements, providing technical assistance or any of the other activities listed in the bill. (Attachment 20)

CONTINUATION SHEET

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Doug Smith presented testimony from Duane Mathes, President, Kansas Legislative Policy Group, in opposition to **HB 2783**. The bill does not provide counties with any authority to assist owners of land adjacent to sanctioned prairie dog conservation programs with control or management, nor does the bill allow counties to recover costs for control and management when participating landowners do not follow the obligations of management plans and allow colonies to establish new territories or expand beyond the fixed boundaries of a conservation habitat. KLPG believes that communities should have the ability to control prairie dogs at the local level. (Attachment 21)

Mike Beam, Senior Vice President, Kansas Livestock Association, appeared in opposition to **HB 2783**, reporting that during the 2003 legislative session, KLA supported legislation as a good faith effort to address concerns by the petitioners and U.S. Fish and Wildlife Service to keep the black-tailed prairie dog off the endangered species list. They believed in 2003 that it was important to preserve the statute (K.S.A. 80-1202) that allows local officials to control prairie dogs if they are determined to be a nuisance to neighboring ranchers and landowners. **HB 2783** proposes to repeal this statute. KFB believes that when a management decision is made to not control species that spread to neighboring landowners there should be a mechanism to allow local or state officials the ability to address the problem. If the committee feels it is necessary to take action in 2006, KFB urged consideration of a proposal similar to the 2003 plan. (Attachment 22)

Following a question and answer period, Chairman Johnson closed the hearing on **HB 2783**.

The meeting adjourned at 5:20 p.m. The next scheduled meeting of the House Agriculture Committee is scheduled for February 15, 2006.