

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Mark Taddiken at 8:30 A.M. on March 8, 2005 in Room 423-S of the Capitol.

All members were present except:

Derek Schmidt- excused

Committee staff present:

Raney Gilliland, Kansas Legislative Research

Lisa Montgomery, Office of Revisor of Statues

Jacqui Jones, Committee Secretary

Hearing on:

SB-265 - Requires a licensed professional engineer to prepare plans and specifications for construction or expansion of confined feeding facilities

Conferees appearing before the Committee:

Proponents:

Scott Heidner, Executive Director, American Council of Engineering Companies of Kansas (ACEC)

Ron Gaches, Executive Director, Kansas Society of Professional Engineers (KSPE)

George Barbee - for Kansas State Board of Technical Professionals

John Harsch - Kansas Department of Health & Environment, Livestock Waste Management Section

Opponents:

Neutral:

Chris Wilson, Executive Director, Kansas Dairy Association (written)

HB-2103 - Standards and requirements of commercial weighing and measuring devices

Conferees appearing before the Committee:

Proponents:

Ramon Gonzalez, General Manager, N. R. Hamm Quarry

Woody Moses, Managing Director, Kansas Aggregate Producers Association

Dane Barclay, Alsop Sand Co.

Opponents:

Constantine Cotsoradis, Kansas Department of Agriculture

Donn Teske, Kansas Farmers Union (written)

Others attending:

See attached list

Chairman Taddiken opened the meeting by advising the Committee that the minutes of March 2 would be available for approval before the close of the meeting.

The Chairman then invited Scott Heidner, who was representing ACEC as a proponent, to speak to **SB-265**. He explained that the proposed legislation addresses waste systems for confined feeding facilities. The legislation is a cooperative effort between ACEC and the Kansas Society of Professional Engineers (KSPE) after discussions with representatives from the Kansas Board of Technical Professions, the Natural Resources Conservation Service and the Kansas Department of Health and Environment.

ACEC believes that requiring a licensed professional engineer to do the design work for confined feeding facilities waste systems will have two immediate benefits. First, it will improve the likelihood that the work will be done correctly, insuring public safety. Second, if substandard work is performed, they will have liability insurance to cover specific instances, and there will be recourse available to insure that the engineer is performing by standards required by the Board of Technical Professions for licensed engineers in Kansas (Attachment 1).

Communications with the Kansas Livestock Association, the Kansas Farm Bureau, the Kansas Dairy Association and the Kansas Pork Association have indicated that they do not oppose this initiative and they represent the stakeholders that will be impacted.

Mr. Heidner offered to stand for questions from the Committee at the appropriate time.

Chairman Taddiken then invited Ron Gaches, representing KSPE, to speak to the Committee in support of **SB-265**.

Mr. Gaches stated that when the law was drafted, a decision was made to allow the design for construction or expansion of feeding facilities, to be made by a professional engineer or a “consultant who had adequate general commercial liability insurance coverage” addressing errors or omissions in the design plans and specifications (Attachment 2).

Since then, a number of instances have arisen where the quality of work performed by non-engineer consultants has been called into question. In some instances, the facility’s owner has had to contract with a licensed professional engineer to correct design problems.

KSPE believes that the law allowing non-engineer consultants to perform design of confined feeding facilities has created an inconsistency with the requirements of the Natural Resources Conservation Service (NRCS) as they apply to the NRCS technical and financial assistance for conservation projects. (Attachment 2-1).

Because non-engineer consultants provide services to confined feeding facilities, they argue that the PE requirement of the NRCS is not applicable to them. KSPE believes that this has created a conflict within the law. Non-engineers can obtain commercial liability insurance coverage as contractors, but they cannot obtain coverage for the practice of engineering.

KSPE believes that the passage of **SB-265** would serve to ensure that facility operators receive the highest quality professional engineering design service at the most reasonable price and thereby public waters will be protected from unnecessary contamination.

Mr. Gaches offered to stand for questions at the appropriate time.

Chairman Taddiken asked George Barbee, a public member of the Kansas State Board of Technical Professions, to testify on their behalf.

Mr. Barbee stated that KSBTP supports **SB-265** and would encourage the Committee to act favorably on the bill, as amended. The Board is of the opinion that deletion of Section (m) in K.S.A. 2004 Supp. 65-171(d) would close a loophole in the law that allows unlicensed consultants to provide design services that should, by law, be provided by professional engineers (Attachment #3)

Mr. Barbee offered to stand for questions at the appropriate time.

Chairman Taddiken invited John Harsch, to testify on behalf of KDHE Livestock Waste Management Section Director Karl Mueldener.

Mr. Harsch stated that KDHE is in support of **SB-265**. KDHE feels that deleting the present language in section (m) of the bill and requiring designs to be done by a professional engineer, is good public policy and assures that systems are well designed. (Attachment 4).

Mr. Harsch offered to stand for questions.

Chairman Taddiken informed the Committee that Chris Wilson, Kansas Dairy Association had presented written testimony to express its members’ opinion in regard to **SB-265**.

They would like assurance that the passage of this bill will not impair KSU watershed specialists in providing assistance, generally with smaller dairies.

One large dairy comments:

“If the dairy operator hires a poor consultant, then he will have to pay the price by having his submission denied, and paying a second consultant to complete the project” (Attachment #5).

The Committee asked questions of all the conferees.

Hearings on **SB-265** were closed.

Hearings on **HB-2103 - Standards and requirements of commercial weighing and measuring devices**, were opened.

Ramon Gonzales, General Manager, N. R. Hamm Quarry spoke in support of **HB-2103**.

Mr. Gonzalez then described the operation of his company. He told the Committee that Hamm operates 25 quarries supported by six portable crushing units. The units are moved upon demand. They have found this to be the most efficient way to serve small, remote markets. The controlling economic factor is the cost of transportation. Rising fuel costs and local opposition to new quarries have lead to a situation where the ability to keep the older quarries open is at a premium.

N. R. Hamm feels that approval of **HB-2103** would provide a positive tool in keeping the quarries open, because it would permit greater tolerance for the older type scales generally located there, through lowering the cost of compliance. At some point, it becomes more economical to close a quarry than mine out the remaining reserves (Attachment 6).

HB-2103 would allow Hamm to extend the service life of older quarries by extending the service life of the scales associated with them.

Mr. Gonzalez stood for questions at the appropriate time.

Woody Moses, Managing Director of KAPA, testified in support of **HB-2103**. He began his testimony by describing the trade association to the Committee (Attachment 7).

Two charts were included, showing:

- Crushed Stone Quarries in Kansas
- Sand and Gravel Operations in Kansas (Attachment 7-1)

KAPA feels it impractical to conform with Kansas Department of Weights and Measures (KDWM) and its desire to maintain uniformity according to the National Institute of Standards and Technology Handbook 44, in smaller transactions. In larger transactions, they are in full compliance (Attachment 7-2)

Adoption of HB-2103 will allow Kansas aggregate producers to continue serving small markets at a fair and reasonable price by extending the life of quarries and pits equipped with older scales. It will prevent undue price or cost increases to local units of government and will allow KDWM to allocate their resources to higher priority areas. Aggregate scales will continue to be regulated in all other aspects and be fully regulated above 50,000 lbs. (Attachment 7-2).

It is the opinion of KAPA members that adoption of this bill will not create a great disparity in uniformity with NIST standards (Attachment 7-3).

Mr. Moses offered to stand for questions.

Written testimony ins support of **HB-2103** was provided by Dane Barclay, President of Alsop Sand Co.,Inc. (Attachment 8)

Constantine Cotsoradis, Assistant Secretary(KDA) testified before the Committee in opposition to **HB-2103**.

He stated that KDA's weights and measures program has become a model program for the nation.

The Department feels that the aggregate industry is seeking special tolerance because it will suffer financially if they use accurate scales. The Department believes the industry is seeking special treatment - an exemption from the cost of doing business. It is the same cost to all businesses when they use accurate scales to weigh wheat, livestock, fertilizer or other agricultural products.

KDA had several questions which were addressed in the testimony (Attachment 9).

KDA feels that when special exemptions are provided to weights and measures programs, the programs will erode because the special measures become the norm, and there is no uniformity left.

Mr. Cotsoradis stated that accurate weights and measures are important. Consumers depend on them. Weakening the program weakens KDA's ability to protect consumers (Attachment 9-1).

KDA is not willing to provide a blanket exemption for the aggregate industry, but is willing to work with the industry to give them time to achieve compliance, when immediate compliance would create an undue hardship.

Mr. Cotsoradis stood for questions.

Donn Teske, President, Kansas Farmers Union provided written testimony in opposition to **HB-2103** (Attachment 10).

Hearings on **HB-2103** were closed.

Senator Francisco moved the minutes of March 1 be approved.

Senator Ostmeyer seconded the motion. The motion carried.

The Committee meeting adjourned at 9:30 p.m. The next meeting was scheduled for March 9, 2005.