

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairperson Carolyn McGinn at 8:30 a.m. on February 16, 2006, in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Lisa Montgomery, Revisor of Statutes Office
Judy Holliday, Committee Secretary

Conferees appearing before the committee:

Harold Hacker, Retired Veteran
Mike Hayden, Secretary, Kansas Wildlife & Parks
Steve Swaffer, Director, Natural Resources, Kansas Farm Bureau
Brent Haden, Assistant Counsel, Kansas Livestock Association
M.S. Mitchell, Legislative Chair, Kansas Building Association Industry (written only)
Constantine Cotsoradis, Secretary, Kansas Department of Agriculture
Jim Koelliker, Professor of Biological & Agricultural Engineering, Kansas State University,
Kansas Society of Professional Engineers
Tracy Streeter, Director, Kansas Water Office

Others attending:

See attached list.

Mr. Harold Hacker, retired veteran, testified in favor of **SB 395, Hunting and fishing licenses for disabled veterans** (Attachment 1). Mr. Hacker stated that Kansas and some other states offer free hunting and fishing licenses and state park permits to national guardsmen and reservists as a benefit for serving their country, and he felt that this benefit should also be afforded to disabled veterans. He stated that this bill would encourage disabled veterans to take advantage of their hunting and fishing rights in Kansas and to do something outdoors to make them feel better about themselves.

Senator Taddiken asked how many disabled veterans there are in Kansas, and Mr. Hacker responded that he did not know. Mr. Hacker told the Committee that he had a hunting and fishing license from Oklahoma that was issued by the Department of Veteran's Affairs and asked if Kansas could do something like that.

Mike Hayden, Secretary of Kansas Wildlife & Parks Department, testified in opposition to **SB 395** (Attachment 2). Secretary Hayden testified that the Department supports those in the military as well as disabled veterans. He stated that the bill contains no provisions for funding to replace both state and federal revenues lost by providing these free licenses, and that the costs associated with this entitlement should be covered by an appropriation from the general fund, not by fees on park users, hunters and anglers. Secretary Hayden told the Committee the Department felt that the bill was overly broad in defining who qualifies for the licensing with regard to the amount of disability and residency.

Chairperson declared the hearing on **SB 395** closed, and opened the hearing on **SB 524, Concerning dam safety**. Raney Gilliland, Director, Legislative Research, provided a brief explanation of the bill to the Committee. Following his explanation, Senator Teichman asked if a dam held no water, would it still need an inspection, and Mr. Gilliland stated that it depended on the development downstream from the dam.

Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau, testified as a proponent to **SB 524** (Attachment 3). Mr. Swaffar referenced provisions of the bill which provided that the dam owner not be held liable for post-construction development, and that buildings existing within the inundation zone of a watershed dam prior to construction should not cause the upgrading of the dam from its original classification. Mr. Swaffar stated that the issue of dam safety and related costs of upgrading, inspections and landowner liability needs to be addressed, and that while the bill is a good starting point, it does not provide adequate protection for landowners.

CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee at 8:30 a.m. on February 16, 2006, in Room 423-S of the Capitol.

Brent Haden, Assistant Counsel, Kansas Livestock Association, testified in support of **SB 524** (Attachment 4). Mr. Haden stated that the Kansas Livestock Association (KLA) has concerns about the increasing cost to the dam owners of dam inspections and repairs caused by third-party downstream development, and that dam owners should not be subject to inspection and repair requirements when the only lives endangered by the dam in question are those of the dam owner, operator or their immediate families.

Chairperson McGinn called the Committee's attention to the written testimony submitted by M.S. Mitchell of the Kansas Building Industry Association. In the testimony (Attachment 5), the Association supports **SB 524**, with some clarification needed regarding the opinion upon which exceptions are based and if decisions can be appealed. The testimony further states that decisions can only be made if a dam breach analysis determines properties downstream from the dam are at risk.

Constantine Cotsoradis, Assistant Secretary, Kansas Department of Agriculture, testified in opposition to **SB 524** (Attachment 6). Mr. Cotsoradis stated the bill makes changes to the Obstructions in Streams Act that are contrary to the mission of the Department and could lead to loss of life, particularly to families living below the dam. He stated that eliminating inspection requirements, eliminating responsibility for safe and proper maintenance by the dam owner, and removing the chief engineer's authority to regulate dams and structures may alleviate the dam owner's costs, but at a cost to public safety. High risk dams require more inspections.

James Koelliker, P.E. & Ph.D., Biological and Agricultural Engineering, Kansas State University, testified in opposition to **SB 524** (Attachment 7) on behalf of the Kansas Society of Professional Engineers. Mr. Koelliker stated that the bill is in direct conflict with the Code of Ethics of the National Society of Professional Engineers, which provides that an engineer be dedicated to the protection of public health, safety and welfare. He stated that for an engineer to ignore circumstances that endanger life or property, and merely notify local emergency personnel, that the hazard to the general public is not reduced, and this presents an ethical as well as political and financial conflict.

Senator Lee asked if the state paid for the inspection, did Farm Bureau have any idea of what the cost would be, and Mr. Swaffar stated that he did not, and that it would only be a partial solution to the problem. Brent Haden of KLA responded that it would not be attractive to his association.

Senator Taddiken asked if the Department of Agriculture had a proposal for the funding of these inspections. Constantine Cotsoradis replied that the cost the first year was \$275,000 the first year and \$200,000 for subsequent years. Senator Taddiken stated that was just for inspections, but what about taking care of the problems. Mr. Cotsoradis stated that some dams could cost upwards of \$500,000, but there were some funds available to help with these upgrades.

Chairperson McGinn turned the Committee's attention to **SB 540, Requiring submission of breach inundation maps for dams**. Raney Gilliland provided background information to the Committee on the bill.

Brent Haden, Assistant Counsel, Kansas Livestock Association, testified on **SB 540** (Attachment 8). Mr. Haden testified that **SB 540** was essentially a continuation of **SB 524**. He testified that the filing of a dam inundation map with the Register of Deeds may prevent future construction within the dam's inundation zone, which would in turn prevent the increases in expense to dam owners for downstream construction. Mr. Haden expressed opposition to the provision of the bill in which the chief engineer would require a breach inundation map retroactively and the associated expense from the owner of an existing dam.

Constantine Cotsoradis, Secretary, Kansas Department of Agriculture, testified in support of **SB 540** (Attachment 9). Mr. Cotsoradis explained that the inundation maps are a tool for dam owners, landowners and local governing bodies to use to plan better development below dams with regard to dam hazard classification.

Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau, testified in support of **SB 540** (Attachment 10). Mr. Swaffar gave qualified support to the bill, but the requirement for the maps by the chief engineer should only be for high hazard dams. He also stated that the Legislature should make the funds available statewide rather than for specific dam repair.

CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee at 8:30 a.m. on February 16, 2006, in Room 423-S of the Capitol.

James Koelliker, P.E. and Ph.D., Biological and Agricultural Engineering, Kansas State University, testified in support of **SB 540** (Attachment 11). Mr. Koelliker stated the bill is a step in the right direction for getting information to the public on potential concern for new dams. The bill should include more descriptive language on the property affected, including private property.

Tracy Streeter, Director of the Kansas Water Office (KWO), testified in support of **SB 540** (Attachment 12). Mr. Streeter told the Committee the Legislature last year appropriated \$750,000 to the State Conservation Commission to assist with construction, maintenance or operation of a dam. The Kansas Water Authority directed the Kansas Water Office to develop a policy for dam safety and rehabilitation to complement the funds appropriated for this effort. The KWO believes development of breach inundation maps is essential in development below dams, in zoning negotiations, easements restricting development, or in informing landowners of land located in breach zones.

Chris Wilson, Kansas Building Industry Association, stated KBIA is a proponent of **SB 540** (See Attachment 5), but that breach maps should not be required until a methodology has been established.

Brent Haden, KLA, testified as neutral on **SB 540** because the bill does not address the money required by **SB 524**. Senator Lee asked Mr. Haden if **SB 540** requires maps for dams with development below, who has the liability, and Mr. Haden answered that the dam owner has the liability. Senator Lee then asked if negotiations are required for easements, who initiates it, is it a county? Mr. Haden replied that it can be a county or a water district. He said now if water districts propose to build a dam they have to secure easements from landowners on land that may be inundated, but they may initiate eminent domain. Senator Lee asked if eminent domain was for the easement or to take the land, and Mr. Haden said in many cases they can acquire the land, take the easement out and then sell it back.

Chairperson McGinn asked for approval of the minutes of the February 9 and February 10 Natural Resources Committee meetings. Vice Chair Ostmeyer made a motion, seconded by Senator Pyle, that the minutes be approved as presented. The motion carried.

Chairperson McGinn advised the Committee that they would work both dam bills and asked for guidance of the Committee to work one or both of the bills. She noted that Senator Lee has a bill that was referred to the Natural Resources Committee and that it may be worked.

With no further business to come before the Committee, the meeting adjourned at 9:26 a.m.