

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairman Dan Johnson at 3:30 p.m. on March 12, 2003, in Room 423-S of the Capitol.

All members were present except: Representative Showalter - Excused

Committee staff present: Raney Gilliland, Legislative Research Department
Amy VanHouse, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Kay Scarlett, Committee Secretary

Conferees appearing before the committee:

Bill Pracht, East Kansas Agri-Energy
Glen Caldwell, East Kansas Agri-Energy
Dave Murphy, Kansas Riverkeeper for Friends of the Kaw
Howard Brown, Fort Scott Livestock Market, Inc.
Mervin Sexton, Manhattan Commission Co., Inc.
Mark Mackey, Executive Secretary, Kansas Livestock Marketing Association
Karl Muedener, Director, Bureau of Water, Kansas Department of Health and Environment
John Metzler, Kansas Water Environment Association
Charles Benjamin, Kansas Chapter of the Sierra Club (written only)
Sally Finney, Kansas Public Health Association, Inc. (written only)

Others attending: See attached list

Minutes of the March 5 and 10 meetings were distributed. Members were asked to notify the committee secretary of any corrections or additions prior to 5:00 p.m. March 14, or the minutes will be considered approved as presented.

Bill Pracht and Glen Caldwell explained how East Kansas Agri-Energy was organized by 122 regional farm producers, businesses, and individuals as a limited liability company in October 2001 to pursue the possibility of building an ethanol production plant in Garnett, Kansas. They provided an overview of their funding, feasibility studies, and other research activities. The organization now is offering units for sale to investors throughout Kansas and Missouri. EKAE will seek to raise \$14.4 million from private investors before seeking commercial financing for the remainder of the \$36 million project. The plant will take approximately 12 months to build after financing is complete and will employ about 30 people.

The proposed facility will be designed to produce an estimated 20 million gallons of fuel ethanol per year, and is expected to require 7.5 million bushels of corn and sorghum annually to meet its production level. Co-products of ethanol production, including 64,000 tons of dried distillers grains with solubles (DDGS) and 63,000 tons of marketable carbon dioxide, will be marketed each year. They stated that East Kansas Agri-Energy will provide producers the opportunity to capture added value from the commodities they grow, as well as provide an investment vehicle for the "main street" investor to participate in an activity that will provide economic development for rural Kansas. (Attachment 1)

Hearing on SB 131 - Exclusion of livestock auction barns and other livestock markets from confined feeding facility requirements.

Chairman Johnson opened the hearing on **SB 131**. Raney Gilliland explained that this bill would amend a section of law dealing with definitions relating to the regulation of sources of potential water pollution. Specifically, the bill would exempt public livestock markets from the definition of "confined feeding facility." In addition, the bill would establish a definition for the term "public livestock market." The term would include livestock markets, livestock auction markets, sale rings, stockyards, community sales, and livestock markets where federal veterinary inspection is regularly maintained. He noted that the Secretary of Health and Environment is given very broad authority to regulate the waters of the state. Copies of Kansas Statute

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47-1001 and Kansas Administrative Regulation No. 28-18-2 were distributed to assist the committee in understanding the bill.

Dave Murphy, Kansas Riverkeeper for Friends of the Kaw, appeared as a neutral conferee on **SB 131**. He believes the proposed changes would severely undermine the purpose of current Kansas and federal laws. The proponents of this bill claim that their facilities have no potential to discharge, if that is so, he believes new federal regulations should be allowed to take effect through the normal regulatory process to satisfy both the federal regulations and the needs of these livestock sale barns. **SB 131** would exempt sale barns from state regulation, but not from federal statutes, thus any sale barn that causes a discharge would be subject to a lawsuit in federal court and would have virtually no defense. ([Attachment 2](#))

Howard Brown, Fort Scott Livestock Market, Inc., testified in support of **SB 131** stating that livestock markets are not feed yards or growing yards where cattle are held and fed over a period of weeks or months. He agrees that waste management at markets is important in protecting our natural resources, but needs to be accomplished with codes or regulations that match the nature of the business. ([Attachment 3](#))

Mervin Sexton, Manhattan Commission Co., Inc., appeared in support of **SB 131** to exclude livestock markets from confined feeding facility requirements. In December 2001, he received a notice of noncompliance as his facility has a water pollution potential. He believes this bill will help in cases such as his, where there is no fault found, but is penalized for unfounded potential. ([Attachment 4](#))

Mark Mackay, Executive Secretary, Kansas Livestock Marketing Association, testified in support of **SB 131**. He said that livestock auction markets are unique in size, scope, and operation from what is typically referred to as a concentrated animal feeding operation. Livestock markets operate very intermittently, typically one to two days a week, versus a production facility that operates nearly continuously year around. He believes that continuing to regulate these two very different sectors of the livestock industry as though they were operationally the same, unfairly penalizes livestock markets. ([Attachment 5](#))

Karl Mueldener, Director, Bureau of Water, Kansas Department of Health and Environment, spoke in opposition to **SB 131**. He stated that livestock markets are a source of water pollution and related health issues which the state has addressed through the wastewater permitting program. He said that while sale barns are not necessarily feeders, the waste generated is the same. He said that while the state's statutory definition of a confined feeding facility uses the word "feeding," the issue at hand is managing the wastes generated by livestock.

He reported that federal laws and regulations covering sale barns are similar to those in Kansas. EPA defines an Animal Feeding Operation as a location where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period. He said the size of a livestock facility, in animal units, has several impacts. Generally, livestock facilities are designated state or federal, with federal permits required for those at or greater than 1000 animal units. If less than 1000 animal units, the facility may be permitted in Kansas if found to present a significant pollution source.

Mr. Mueldener reported that bacteria is the most common water pollution problem in Kansas waters and livestock wastes are well documented as a source of bacteria. Considering the characteristics of the waste from sale barns, and the overall problem in Kansas with bacteria, the Department believes the existing regulatory structure addressing water pollution from sale barns is appropriate. He and John Harsch answered committee questions. ([Attachment 6](#))

John Metzler, Kansas Water Environment Association, appeared in opposition to **SB 131**. He said that these markets, in effect, are short term confined feeding facilities which have the potential like any other confined feeding facility to contribute significant quantities of ammonia, nitrogen, phosphorus, and fecal coliform to waters of the state. He said that if these facilities are not regulated, there will be a significant threat to public health and the aquatic environment. ([Attachment 7](#))

Charles Benjamin, on behalf of the Kansas Chapter of the Sierra Club, submitted written testimony in opposition to **SB 131**, noting that their members are very concerned about the poor quality of Kansas' surface water. Stating that KDHE has addressed this source of potential pollution since the 1970s through the wastewater permit program, the Sierra Club believes this type of regulation should continue. ([Attachment 8](#))

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Sally Finney, Kansas Public Health Association, Inc., provided written testimony in opposition to **SB 131**. The Association supports continuation of the Kansas Department of Health and Environment's livestock inspection program. She states that water is basic to human life, and protecting the health of Kansans by preventing water contamination is a proven public health strategy. (Attachment 9)

The hearing on **SB 131** was closed. The Chairman asked Karl Mueldener, Director, Bureau of Water, KDHE, and Mark Mackey, Kansas Livestock Marketing Association, to work out a possible solution and report back to the committee on Wednesday, March 19.

The meeting adjourned at 5:25 p.m. The next meeting is scheduled for March 17, 2003.