

Approved 2-20-92
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Ross Doyen at
Chairperson

8:02 a.m. on February 18, 1992 in room 423-S of the Capitol.

All members were present except: All members were present.

Committee staff present:

Pat Mah, Legislative Research Department
Don Hayward, Revisor of Statutes
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:

Al LeDoux, Committee of Kansas Farm Organizations
Chris Wilson, Kansas Fertilizer and Chemical Association
Howard Tice, Kansas Association of Wheat Growers
Vic Studer, The Kansas Rural Center, Inc.
Scott Andrews, Sierra Club
Jim Kaup, League of Kansas Municipalities

The Chairman continued the hearings on SB 543 - concerning the Kansas pesticide law; relating to the uniform application thereof. He called on Al LeDoux.

Mr. LeDoux said his organizations unanimously supported SB 543 (Attachment 1).

Chris Wilson spoke in support of SB 543. She said this proposal would clarify that pesticide regulations are to be uniform throughout the state (Attachment 2).

Howard Tice speaking for the Kansas Association of Wheat Growers and the Kansas Environmental Education and Protection Council testified in support of SB 543 (Attachment 3).

Vic Studer testified in opposition to SB 543. She said the state would benefit by encouraging citizens at local levels to deal directly with pesticide management (Attachment 4).

Scott Andrews urged the Committee to oppose SB 543, and the further erosion of the democratic process which it represents (Attachment 5).

Jim Kaup asked for careful consideration of the consequences for home rule which might result from passage of SB 543 (Attachment 6).

Written testimony from Wyatt Carlton supporting SB 543 was distributed (Attachment 7).

Senator Frahm moved that the minutes of the meeting of February 11 and 12 1992, be adopted. The motion was seconded by Senator Sallee. The motion carried.

The meeting was adjourned at 8:58 a.m., and the next meeting will be February 19, 1992.

1991 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date February 18, 1992

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GUEST LIST

NAME

REPRESENTING

Chris Wilson	Ks Grain & Feed Ass'n
Sam Wells	Ks Co-op Council
Kristy Weiter	Ks Natural Resource Council
Bill Scott	KSBA
R. Biesenthal	Pott. Co. Noxious Weed
Dennis Peterson	Riley Co. Weed Dept.
Dee Lambley	KSBA
Grace May	Ka Garden Clubs & Hort. Society
Al [unclear]	CKFO
Vic Stuer	Ks Rural Center
Terry Shistar	Ks. Sierra Club
Greg Krissch	KSBA
Howard W. Tice	KAWG
Joe Licher	Ks Co-op Council
Russell A. FREY	Ks Vet Med Assoc
Vernon McKinzie	Ks. Termite & P.L. Assn.
Jim COLEMAN	HEART OF AMERICA GOLF COURSE
Dean Garwood	Ks Termite & Pest Control Assn
Jim Johnson	PLEAMM
Gina Bowman-Morrill	FARMLAND INDUSTRIES, Inc.
Evan Swartz	SN Co Weeds
Scott [unclear]	Sierra Club
Jim Kamp	League of KS Municipalities

1991 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date February 18, 1992

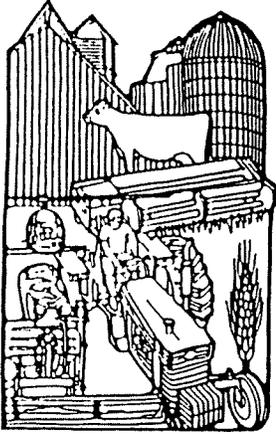
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GUEST LIST

NAME

REPRESENTING

Margaret Fast	Ks Water Office
STEVE KEARNEY	PETE McEILL & ASSOC.'S
John Peterson	Beech Aircraft
Tom Thunell	Ks Fert & Chem Assn
Jim Lusk	KPL GAS SERVICE



Committee of Kansas Farm Organizations

STATEMENT OF POSITION OF THE COMMITTEE OF KANSAS FARM ORGANIZATIONS

Al LeDoux
Legislative Agent
Route 1
Holton, KS 66436
(913) 364-3219

RE: S.B. 543

SENATE ENERGY AND NATURAL RESOURCES

February 11, 1992

Committee of Kansas
Farm Organization Members

Associated Milk Producers, Inc.
Kansas Agri-Women Association

Kansas Association of Soil
Conservation Districts

Kansas Association of
Wheat Growers

Kansas Cooperative Council

Kansas Corn Growers Association

Kansas Electric Cooperatives

Kansas Ethanol Association

Kansas Farm Bureau

Kansas Fertilizer and
Chemical Association

Kansas Grain and Feed
Dealers Association

Kansas Livestock Association

Kansas Meat Processors
Association

Kansas Pork Producers Council

Kansas Rural Water
Districts Association

Kansas Seed Industry Association

Kansas Soybean Association

Kansas State Grange

Kansas Veterinary Medical
Association

Kansas Water Resources Association

Kansas Water Well Association

Mid America Dairymen, Inc.

Western Retail Implement and
Hardware Association

Kansas Grain Sorghum Producers

Kansas Association of Nurserymen

Mr. Chairman, Members of the Committee: My name is Al LeDoux and I am speaking to you this morning on behalf of the Committee of Kansas Farm Organizations. As you well know, our group is made up of twenty-five (25) Ag and Ag related organizations operating here in Kansas.

CKFO has elected to unanimously support Senate Bill 543. In addition, many of our members have chosen to address this subject individually because of their strong belief in its purpose.

When arguing Senate Bill 543, our committee came to the conclusion that the citizens of our state would best benefit from uniform regulations concerning the use and management of pesticides. Senate Bill 543 addresses this concern effectively. We therefore would ask for your favorable consideration and passage of Senate Bill 543.

Respectfully submitted,

Al LeDoux

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Attachment 1

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STATEMENT OF
KANSAS GRAIN AND FEED ASSOCIATION
AND
KANSAS FERTILIZER AND CHEMICAL ASSOCIATION
TO THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
SENATOR ROSS DOYEN, CHAIRPERSON
REGARDING S.B. 543
FEBRUARY 11, 1992

Mr. Chairman and Members of the Committee, I am Chris Wilson, Director of Public Affairs for the Kansas Grain and Feed Association (KGFA) and the Kansas Fertilizer and Chemical Association (KFCA). The two associations have distinct memberships and association programs and activities, but share staff. KFCA's 600 member firms provide production inputs and services to producers. KGFA's 1300 member firms are involved in the transportation, warehousing, merchandising and processing of grain or provide services to the grain handling industry. Many are firms which also provide production inputs and services to producers. We appreciate the opportunity to speak in support of S.B. 543, which clarifies that pesticide regulations are to be uniform throughout the state.

Our members sell and apply pesticides, which are stringently regulated by state and federal law. As you have heard, historically FIFRA, the federal pesticide law, was assumed to govern pesticide use in conjunction with the

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state pesticide laws. EPA, which administers FIFRA, accordingly did not permit local pesticide regulations. Last summer's Supreme Court ruling found that, while it was congressional intent to preempt local regulation, FIFRA did not specifically do so.

Obviously, state and federal laws exist to provide legal uniformity throughout the country as needed and to address areas of law which have a national interest and scope. Clearly, pesticide regulation is one of those areas. The federal government, through FIFRA and EPA, has the authority for approving pesticides for use and for establishing the conditions of their use. A great deal of time, expertise and financial resources are needed for this responsibility. Thus, it is appropriate for the federal government to have that responsibility, as opposed to the states having to each replicate the time, expertise, and resources to make those determinations. States generally, in cooperation with EPA, assume responsibility for enforcement of federal pesticide law within their boundaries and specify pesticide regulations for applicator certification and pesticide use areas not otherwise covered by EPA. This system has worked very well in Kansas. Local units of government have called upon the state when they have had a pesticide law enforcement problem. The state has provided the expertise and enforcement personnel to assist local units of government. This system has worked well for the local governments.

It seems obvious to us that local pesticide ordinances would create a chaotic patchwork of regulation, resulting in often overlapping, senseless differences between local jurisdictions. Surely such a system would lead to less, rather than more, effective enforcement of regulations.

We believe that local governments should have the right to have pesticide business licensing in their jurisdictions, so that they know who is involved in pesticide application in their areas. S.B. 543 would not prohibit that type of local ordinance. We also believe that local governments should have the ability to seek justified pesticide regulations from the state, which they also currently may do.

Federal and state law and regulation of pesticides maintain a high degree of sophistication and science in regulating pesticide use. EPA requires that pesticide manufacturers conduct more than 120 separate research tests on a chemical before it is approved for use. For each of the few chemicals (about one in 20,000) that make it through this exhaustive process, manufacturers spend 8 to 10 years and \$35 to \$50 million. Local governments do not have the scientific or fiscal resources to make legitimate determinations about the health and safety benefits resulting from proper use of pesticide products.

Our members use pesticides for the purpose of crop protection, in order to help produce a safe, high quality, abundant and affordable food supply. The wise, judicious

and safe use of pesticides is of the highest priority to our members, who work with these tools on a daily basis.

Today's pesticides and pesticide use technologies provide for a high degree of efficiency, applicator safety and protection of the environment. The professionalism of our industry and safe use of pesticides depend on a solid, uniform system of pesticide regulation, which can only be achieved through the state and federal governments.

We urge your support for S.B. 543. I would be glad to respond to any questions you may have.

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ARGUMENTS FAVORING PREEMPTION OF LOCAL REGULATION

1. Expertise. Local governments are often not equipped with the scientific or technical expertise necessary for safe or effective regulation of the products registered by EPA scientists under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).
2. Local Input. Adequate means for input by local citizens already exists under the federal/state partnership established by FIFRA in 1978. Since that time, citizens and local governments have had the right, and ability, to ask the state to enact regulations at the state level which are tailored to a specific region.
3. Conflicting/Overlapping Regulation. When regulation of pesticide use is generated at the local level, there is no coordination among adjoining jurisdictions, or even among coexisting jurisdictions (i.e., a city within a county). As a result, no two ordinances will be exactly alike. Therefore, companies which typically operate across several local jurisdictions (such as lawn care companies, structural pest control companies, right-of-way maintenance companies, among others) will be forced to comply with a maze of conflicting and contradictory requirements.
4. Public Confidence. EPA requires that each pesticide submit to more than 120 separate tests (a process taking 8 to 10 years and costing 35 to 50 million dollars) before it is approved for use. Local regulation undermines these determinations about the health and safety benefits resulting from proper use of pesticide products, and erodes public confidence, leading to panic and susceptibility to unfounded, political "fear campaigns."
5. Burden on Commerce. Local regulation, which often includes product bans, point of sale requirements, and overly stringent use restrictions, is an unfair burden on both interstate and intrastate commerce.
6. Statewide Coordination. Local regulation does not take into account the environmental needs of larger regions. If a need for regulation is shown to exist, it will not exist in a vacuum. The best solutions come from a comprehensive, coordinated effort -- one which is best accomplished at the state, not local, level.
7. Cost. The cost of local regulation -- which usually includes certification and licensing programs, training, posting and notification expenses, monitoring, and enforcement -- will be paid for by the local government, and ultimately borne by the local taxpayers.

FEDERAL PREEMPTION OF PESTICIDE USE REGULATION

The U.S. Supreme Court recently held in Wisconsin Public Intervenor v. Mortier that the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) does not preempt local regulation of pesticide use. As a result, more than 83,000 local jurisdictions are free to enact many types of use regulations. Currently, pesticide user groups, regulators and some environmentalists are being forced to decide whether state or local governmental units can most effectively, and responsibly, enact pesticide use regulations.

Many people mistakenly believe that "preemption of local regulation" would deprive citizens of a voice in the decision-making process, and place pesticide use regulation solely in the hands of EPA. Such is not the case. Even if local regulation is preempted by either state or federal law, states would continue to have the right to regulate in the subject area, and local citizens would continue to be able to participate in the regulatory process at the state level.

Because such misinformation and misunderstanding still exists, this briefing paper has been prepared. The following outline summarizes the legal and public policy arguments commonly made both in opposition to and in support of local regulation.

A. PUBLIC POLICY ARGUMENTS FOR PREEMPTION OF LOCAL REGULATION

1. Lack of Expertise.

In current practice, local regulation of pesticide use has included bans on particular products (in one case banning several products not manufactured for 20 years), advance notice of application, posting of warnings, and applicator licensing and certification programs, among others. However, local governments have traditionally not employed the scientific or technical experts necessary for effective, informed decision making in the area of pesticide regulation. The resulting regulations are therefore likely to be arbitrarily written, vary widely, and governed by no discernable, scientifically-based standard.

Those supporting local regulation argue that most local regulations now being adopted merely concern advance notice and posting requirements – areas which do not require any special training or expertise. It is true that such requirements are components of most new local regulation. However, virtually all local regulations have additional components such as training and certification requirements, product bans, or even "environmental impact" preambles which pass judgement on the alleged danger, toxicity, efficacy and desirability of certain products. These types of judgments cannot be accurately made without some specialized scientific education or training.

2. Conflicting/Overlapping Regulation.

When pesticide use regulations are generated by several local governments throughout a state, there is a strong possibility that no two will be exactly alike. Without coordination among adjoining and overlapping jurisdictions (i.e., a city within a county), regulations will overlap and/or conflict with one another. For businesses and user groups which operate in more than one jurisdiction (including many farms and virtually all pest control, lawn care and right-of-way maintenance companies), compliance with differing regulations can become difficult, expensive or impossible. In addition, to the degree that an environmental need for greater regulation exists, it is unlikely that such a need is confined within the artificial, arbitrary borders of a local jurisdiction. Consequently, such concerns are better left to state governments, which can regulate regionally, or at a minimum, coordinate locally specific regulations in order to most effectively address a concern.

The counter-argument most commonly presented to this point is that local governments must exercise their "police power" to protect their citizens, by responding to local environmental concerns, regardless of the activity or inactivity in neighboring jurisdictions.

One response to that argument is that if an environmental need is shown, it will not likely be limited to one township or village. Consequently, comprehensive solutions can best be accomplished through a coordinated effort – across political subdivisions – at the state level. **In addition, preemption of local regulation does not equate to a lack of opportunity for local input.** Therefore, the proper source of regulation and place for citizen input would not be with just one local government, but rather with state regulatory officials, who have greater access to experts with scientific knowledge and an understanding of the regulations of other jurisdictions.

3. State v. Local Interest.

A primary motivator behind local pesticide use regulation is the protection of the public and environment from misuse (and in some cases use) of pesticides. However, unlike issues such as taxes for schools, sewer and utility services, and fire and police protection, the proper regulation of pesticides is not an issue of purely local concern. Particularly in larger, urban areas, the issue of pesticide use regulation is one of, at least, regional concern. While it is true that political subdivisions cannot be deprived of the right to legislate on purely local affairs germane to the purposes for which the subdivision was created, the traditional view of a state's police power places regulation of matters of state-wide concern, such as pesticide use regulation, in the hands of state government.

Advocates of local regulation argue that it is only through local regulation can local concerns be addressed or solved. Simply put, this is incorrect for two reasons. First,

FIFRA not only gives states primacy in the areas of applicator training and certification, (by authorizing matching federal funds for such educational programs), but also gives states the authority to regulate the sale and use of pesticides. Clearly, such regulations and local input could be made at the state level. Indeed, many have suggested that state regulation would enhance state rights, rather than limit state rights, as some have suggested. Secondly, state statutes could be tailored to address only a specific local area. One benefit of having citizen input at the state level is that regulations, once enacted, would benefit citizens of the entire state, not just an isolated locality.

The experience of working with federal and state governments would suggest to some that improvements may be needed. However, those who support preemption of local regulation have responded that the answer to ineffective regulation is not to add another layer of regulation, but to fix existing regulations.

4. Cost

There is no question that any type of local regulation costs local citizens money. At a minimum, municipal staff will be needed for administration of notification registries, advance notice and posting programs, and applicator certification and licensing programs. Tests will need to be developed and administered. Significantly, compliance monitoring and enforcement efforts must be undertaken to make the regulations work, and inspectors will have to be hired.

These additional expenses will have to be paid for in one of three ways – (1) additional taxes; (2) from cuts in existing programs; or (3) by assessment of user fees. Even if special user fees are assessed in an attempt to offset these costs, the additional costs to pest control companies will ultimately be passed on to consumers of pest control services, which include hospitals, restaurants and nursing homes as well as typical homeowners.

B. LEGAL ARGUMENTS FOR PREEMPTION OF LOCAL REGULATION

1. Political Subdivisions. Being Subordinate Governmental Instrumentalities. Possess Only Such Authority as is Granted by the State.

A general rule of municipal law is that political subdivisions of a state are not sovereign entities. Rather, they are subordinate governmental instrumentalities, created by the state to assist in carrying out state governmental functions. Being legislatively created, they possess only such authority as is granted to them, together with the powers reasonably incident to the authority conferred. If the "enabling" legislation which created

the local unit of government does not grant a specific right or power to the local government, that right or power is reserved to the state. Consequently, unless the enabling legislation of a subdivision includes the power to regulate pesticide use, or the power to enact environmental legislation, such regulation will be void ab initio.

2. A State May Preempt by Exercising its Police Power if State Action Evidences an Intent to Create a Comprehensive Scheme to Satisfy a Statewide Concern.

The state is a sovereign unit, and the principle of preemption flows from this sovereignty. The authority to legislate on particular matters (such as pesticide regulation) is granted by the state. However, under constitutional principles (both federal and state), political subdivisions cannot be deprived of the right to legislate on purely local affairs germane to the purposes for which the subdivision was created.

For instance, a local government may impose a special tax or increase service charges for water/sewer services in order to increase revenues for a general fund. This is because water and sewer services are purely local endeavors, and the revenues generated thereby will be locally spent. Regulation of pesticide use, however, does not fall within the confines of purely local affairs germane to the creation of a subdivision and the exercise of inherent governmental functions (i.e. sewage and sanitation systems, light, water and electricity services, and police and fire protection). Instead, pesticide regulation falls under a state's general law concern; it affects statewide, public interest rather than merely local interest. As a general concern of the state acting in the character of a state, pesticide regulation prompts the exercise of a state's police power.

3. The Goal of Uniform Regulation Warrants Preemption.

In determining whether a local regulation is preempted by a state or federal law, the first question is whether the intent to preempt is explicit or implicit in the legislation. Where the intent to preempt must be implied, the issue is not whether it is the state/federal government or the locality which has an interest in the subject matter, for usually both have some interest. Rather, the issue is whose interest, the state/federal government or the local jurisdiction, is paramount.

A state or federal government's interest is paramount to a local jurisdiction when the state or federal government has acted on a subject, and in so acting, has evidenced a policy mandate that varying local laws be preempted. The principles of preemption are designed with a common end in view - to avoid conflicting regulation of conduct by various official bodies which might have some authority over the subject matter. By placing use regulations at the state level, the goal of uniformity is attained.

C. LEGAL ARGUMENTS AGAINST PREEMPTION OF LOCAL REGULATION

1. Privacy Rights Guarantee Security From Unwanted Danger

The thrust of this argument is that local citizens enjoy a right of privacy, i.e. to be secure from unwanted dangers of all types, including the dangers (both real and perceived) resulting from the use of pesticides. The corollary of this rule is that local governments are charged with the responsibility for protecting the privacy rights of its citizens, and hence are required to regulate the use of pesticides within its borders.

This argument has been rejected by at least one court (People of the State of California, ex rel Deukmejian v. County of Mendocino), in view of the state's police power. That court stated that the right of privacy neither supports nor invalidates a local ordinance. The state's general police power, exercised for the public welfare, outweighed the right and expectation of privacy enjoyed by individuals.

2. "Home Rule" Principles Allow Localities to Address Local Needs

Stated briefly, "home rule" embodies the principle that a state's police power may be invested in local government to enable local government to discharge its role as an arm or agency of the state and to meet other community needs. Consequently, depending upon the state, a local government may actually have its' state's sanction to regulate pesticides. In this case, the local government may regulate pesticide use, consistent with the public welfare, in any manner not inconsistent with or inapposite to existing state or federal law.

Because few states have the type of use regulations envisioned by most local governments, home rule acts as an open door to local regulation. However, there is one problem. When neighboring local governments begin to enact regulation in a piecemeal fashion, conflicting regulations inevitably develop. When this occurs, the legal arguments in favor of consistency and federal/state supremacy will begin to "preempt" the local regulation. The problem with this scenario, of course, is that it will play out over several years, at great expense to the litigants, with the inevitable, eventual result of state preemption of local regulation. The prudent course would therefore seem to be to begin with state preemption.

EXAMPLES OF EXCESSIVE LOCAL REGULATION

1. A Mansfield, Massachusetts ordinance requires notification of pesticide use by posting a pink sign, exactly 11" x 8 1/2", although a preexisting Massachusetts state law required posting of a 4" x 5" yellow sign with bold, black letters.
2. An ordinance proposed in Koshkonong, Wisconsin would require posting of a warning sign (containing seven separate information statements) for 48 hours prior to, and 6 months after, any application of pesticides. In addition, a "Special Waste Permit" would have to be issued by the Town Board prior to virtually all pesticide applications.
3. A Plum, Pennsylvania ordinance required homeowners to be at home during any fumigation of a home.
4. The preamble to a proposed ordinance in Denver, Colorado states that "wind" is a "unique" local condition which justifies restrictions on certain types of application of pesticides, including any application over 5 feet off of the ground.
5. The Minneapolis Environmental Commission has recommended forming citizen patrols to monitor neighbors' pesticide use. The "MEC" also urges use of "reusable plastic signs" as part of a posting and notification plan, requiring that they be in place before and during application, and even though the signs might not be free from pesticide residues after repeated exposure to multiple products from prior users.
6. A proposed ordinance in Agawan, Massachusetts would make it illegal to spray pesticides between 6 pm and 8 am., meaning that most pesticide applications to schools and day care centers would have to be made when children are present.
7. Fayetteville, Ark. banned all herbicides, significantly restricting and delaying research by weed scientists at the University of Arkansas by nearly 2 years.
8. The Stone County, Arkansas "Quorum Court" has been asked to ban all pesticide use in the county, although no health or environmental problem has been shown to exist.
9. The myriad of pre-application notification and posting requirements proposed in Missoula, Montana would have applied not only within city limits, but also "five miles outside city limits." The posting would have required signs with "frown faces" and the international circle with a slash through a family with a dog.
10. A proposal in Lake Winnebago, Missouri banned not only products which have not been registered or available for over 20 years (2,4,5,T; DDT, endrin, dieldrin, toxaphene), but also commonly used products (simazine, lindane, 2,4,D, diazanon, glyphosate and Roundup), showing how arbitrarily decisions can be made without scientific input.
11. An ordinance in Burlington, Vermont requires the posting of the "International Mr. Yuk" symbol on signs to be placed at the perimeter of all places treated with pesticides.



Kansas Association of Wheat Growers

ONE STRONG VOICE FOR WHEAT

P.O. Box 2349

Hutchinson, Ks 67504-2349

(316) 662-2367

TESTIMONY

Senate Committee on Energy and Natural Resources
Chairman, Senator Ross Doyen

SB-543

Mr. Chairmen and members of the committee, my name is Howard W. Tice, and I serve as Executive Director of the Kansas Association of Wheat Growers. I am also serving as President of the Kansas Environmental Education and Protection Council, and some of my remarks will be in that capacity. I appreciate the opportunity to testify today in support of Senate Bill 543.

I would note at the outset, that the KEEP Council is not a lobbying group, but exists as a coalition of organizations which are dedicated to compiling and disseminating science-based information on environmental issues. In our organizational meetings, the subject of pesticide regulation has been thoroughly discussed.

Our membership includes general farm organizations, commodity groups, lawn care and golf course professionals, home pest treatment groups and others who share the same concern for accurate, scientifically verifiable information on environmental issues. We, and the organizations we represent, are equally concerned that regulation of pesticides be handled by governmental agencies that have adequate knowledge and experience, sufficient funding and properly trained personnel to do the job right.

The Kansas Association of Wheat Growers passed the following resolution at our annual convention this past convention:

The U.S. Supreme Court has ruled that the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) does not contain language that prevents local political subdivisions from enacting ordinances that exceed FIFRA standards. FIFRA regulations have been researched and have sufficient background data to support their recommendations.

RESOLUTION: In order to prevent an influx of confusing and conflicting local regulations, the KAWG supports state and national legislation that preempts the authority of local political subdivisions to enact pesticide regulations which exceed the standards set by state and national law.

A similar resolution was passed at the National Association of Wheat Growers annual convention last month, and both our state and national Associations will be supporting federal legislation as well as the bill before this committee today.

When the **Supreme Court** made their ruling, this past June, that FIFRA not contain language which preempts local regulation of pesticides, a small group of people whose goal is stop the use of chemical pesticides, began a campaign to seek enactment of local ordinances across the country. There is little doubt that it was their intent to develop a series of conflicting regulations in order to make the use of pesticides extremely costly and difficult. There is also little doubt that if a large number of separate ordinances are enacted, their aims would be realized, to the detriment of the vast majority of our fellow citizens who benefit from the proper and judicious use of these compounds.

A good example of the danger of placing pesticide regulation in the hands of people who don't have the proper background is found in the ordinance enacted in **Casey, Wisconsin**, which became the **Supreme Court** test case. Under that ordinance, a sixty day waiting period is required for anyone to obtain a permit to apply a pesticide. The test of that ordinance came about when a public employee needed to spray weeds that would have grown out of control long before the sixty day period elapsed.

Farmers certainly don't have sixty days notice that weeds or insect pests will create an economic threat to their crops which will require a chemical application. Home owners don't have sixty days to spray their lawns before their healthy stand of grass, or a vegetable garden is lost to weeds or insects.

Another example is the ordinance proposed in **Lake Winnebago, Missouri**. The lack of technical knowledge is evident in the definition section, where some insecticides are identified as herbicides, and vice-versa, and some chemicals appear on both lists.

As the language contained in **SB-543** states, it is essential to the public health, safety and welfare of the people of **Kansas**, that a uniform system of pesticide regulation be in place, and that it be consistent with both state and federal law. It is absolutely necessary that pesticides, as well as other toxic materials, are regulated by agencies with adequate technical expertise to truly know what they are doing. They must also have sufficient resources to enforce their regulations. It takes both money and trained personnel to properly administer public health and safety regulations.

At a recent news conference, the **Kansas Board of Agriculture** was accused of not protecting the public. One person even went so far as to claim that the **Board** allows illegal use of pesticides. We must assume the reference was to instances where emergency use is permitted which is not covered by the label. Such use is not only perfectly legal, but must fit very strict criteria before it is allowed -- and it must be approved by the federal government as well as the state agency. However, the claim made by this vocal minority is another example of twisting facts and playing on public emotion and fear to achieve their ends. Contrary to what these activist groups say, the **Kansas Board of Agriculture** has a proven track record of protecting the public safety in these matters.

Neither farmers, homeowners, professional pest control companies or other users of beneficial pesticides need another layer of confusing, costly and frustrating regulations. We have a system that is working well, that is administered by knowledgeable, well trained professionals. That system has also made applicators more aware and more careful. **Senate Bill 543** will prevent chaos and protect the system that is protecting our people. I urge the committee to recommend this bill favorably for passage.

THE KANSAS RURAL CENTER, INC.

304 Pratt Street

WHITING, KANSAS 66552

Phone: (913) 873-3431

Testimony Before Senate Energy and Natural Resource
Opposing Senate Bill 543
February 11, 1992

Chairman Doyen and Members of the Committee,

I am Vic Studer, Executive Director of the Kansas Rural Center at Whiting. The Rural Center is a nonprofit corporation concerned with the needs of family farmers and rural communities.

SB543 reverses one of the foremost considerations of the Rural Center - that local entities be encouraged to be involved in all matters that have local consequence and impact. Due to the diversity of the state and the exceptional responsibility of many local communities to better manage and become involved in dealing with hazardous materials, the state would benefit by encouraging citizens at local levels to deal directly with pesticide management. In many cases, pesticides are managed in a much more effective manner, thus offering greater control and protection.

It is significant to question the purpose of this bill and recognize that there is more than just "good intent" involved. SB543 was written by the Kansas State Board of Agriculture for private industry interests and introduced by a representative from the Farm Bureau Insurance Company. It is curious to me why ag and insurance interests are attempting to make a special case out of those particular hazardous materials that are used in agriculture. Local fire departments, county commissions, noxious weed departments and municipalities have experience in regulating all sorts of hazardous materials. Why arbitrarily take one class of hazardous products and treat them as a separate case?

SB543 takes responsibility away from the people of this state and places it in the hands of a quasi-state agency that in the Rural Center's opinion is failing in the manner by which they are *currently* handling pesticide management. The Board of Agriculture has a history of conflicts of interest - with private industry ruling their roost. An example of which is the controversy surrounding the State Board of Ag's creation of a pesticide management area in northeast Kansas. At issue is their lack of establishment of restrictive measures that will substantially reduce atrazine in drinking water and their failure to involve affected and interested parties in the process. Further, no board should have regulatory authority when they are not subject to legislative review and are influenced by conflicts of interest on their own board.

In closing, I will just borrow current popular adage "*Think Globally and Act Locally.*"

E+NR
2-18-92

attachment 4



SIERRA CLUB

Kansas Chapter

Contact Scott Andrews 273-3217

Testimony to Senate Energy and Natural Resources

On SB 543

The Kansas Chapter of the Sierra Club opposes SB 543. This bill, written by the Board of Agriculture, the Farm Bureau and representatives of the chemical industry, is an attempt to avoid regulation. SB 543 preempts the authority of local governments to make laws and regulations on pesticides which differs from those of the Board of Agriculture. This ^{is} preemption of local authority to protect public health and safety as they see fit. The bill instead gives that authority to the Board of Agriculture -- a quasi-governmental organization with a poor record of pesticide regulation.

The Board of Agriculture is chosen by representatives from the state's farm organizations and is not responsible to the rest of the citizens of Kansas. Indeed some of the members of the Board are pesticide dealers themselves. Having this group control pesticide regulation in the state is already of conflict of interest. Adding preemption of local authority in cities, where people have no chance of representation on the Board, further erodes the legitimacy of the Board of Agriculture.

If SB 543 does pass it will be one more nail in the coffin of the Board of Agriculture. It will only serve shorten the time until the Board is dismantled and it's regulatory authority dispersed to agencies that are in some way responsible to all the citizens of Kansas.

The Kansas Chapter of the Sierra Club urges you to oppose SB 543 and the further erosion of the democratic process which it represents.

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**League
of Kansas
Municipalities**

**Municipal
Legislative
Testimony**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: Chairman Doyen and Members, Senate Committee on
Energy and Natural Resources
FROM: Jim Kaup, League General Counsel
RE: **SB 543; Preemption of Local Regulation of Pesticides**
DATE: February 11, 1992

The League of Kansas Municipalities, on behalf of its member cities, appears today in opposition to Senate Bill 543 for the reason that it is contrary to the principle of constitutional home rule and violates a 30-year tradition of joint state-local authority to regulate the use and disposal of pesticides. SB 543 proposes a broad prohibition against any local regulation of pesticides by "cities, counties and political subdivisions therein". This prohibition against any local regulation encompasses pesticide "sale or use, including, but not limited to, application of pesticides, training and certification of pesticide applicators, storage of pesticides, transportation of pesticides and disposal of pesticides...".

The League's Convention-Adopted Statement of Municipal Policy provides in relevant part:

The state legislature should avoid intervention in matters of local affairs and government and should act to encourage and promote the exercise of authority and assumption of responsibility by locally elected, locally responsible governing bodies... The League shall oppose, as a general rule, any direct or indirect attempt to limit or restrict the constitutionally granted home rule authority of cities....

The League notes the precise language approved by the Kansas voters in November 1960, in their adoption of the Kansas Home Rule Amendment, found at Article 12, Section 5 of the Kansas Constitution:

Cities are hereby empowered to determine their local affairs and government... Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government.

Proponents of SB 543 apparently believe, and the League would agree, that the subject of pesticide regulation is an area local governments in Kansas can today lawfully legislate on and otherwise regulate, with the absence of state law prohibiting such local regulation. From the League's perspective, the subject matter of pesticide regulation is no different than the many other areas of joint state-local regulation. There are numerous areas of law where both the state of Kansas and local units of government jointly regulate--local units pass laws under their home rule authority which complement or supplement state law which has been enacted on the same subject, so long as no conflict exists between local and state laws. In situations where conflict does arise, the court cases are very clear that state law controls. This tradition of joint state-local regulation is seen in areas such as traffic control, public offenses, alcoholic liquor, and many other subjects including pesticide regulation, and traces back to the very origins of the home rule constitutional amendment. The League of Kansas Municipalities has long opposed efforts to preclude cities from enacting laws on the same subject as laws passed by the Kansas legislature, except in those instances where the protection of public health, safety or welfare demands that

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subject matter be controlled exclusively by state law, thereby preempting local authority to act.

What is the rationale for preemption for local regulation here? Where has actual local regulation, or even the consideration of such local regulation, anywhere in the State of Kansas created such a problem that the state should consider preempting 627 cities and 105 counties from even considering the enactment of laws that local officials might believe to be necessary to protect the public health, safety and welfare?

The League would call to this Committee's attention the point that the mere existence of local laws regulating pesticides does not preclude or hinder in any way the ability of the state to enact and enforce its laws on this same subject. In other words, pesticide applicators must comply with state law regardless of the existence of any local laws. Where local laws are more restrictive than the laws of the state those state laws must still be complied with.

The League is not aware of any significant number of cities or counties which currently have laws specifically designed to regulate the use, application and disposal of pesticides. In truth, probably for the great majority of our membership there is satisfaction in whatever level of regulation that the state and federal governments chose to provide. Why then does the League care about SB 543? One reason, as stated earlier, is the very real and critical principle of the preservation of home rule authority. But in terms of real life situations, if locally-elected governing bodies believe that spraying chemicals near a public park or playground or in the proximity of a public water supply or school or nursing home on a gusty Kansas day would be injurious to the public health, safety and welfare, should the State of Kansas say that such local regulation is unreasonable and unlawful?

The League also notes the impact the broad language in SB 543 would have on cities across the state. The bill presumes to make invalid laws dealing with storage of pesticides--where such local regulation now occurs it is most commonly in the form of zoning regulations. Does SB 543 presume to invalidate local zoning laws which restrict the storage of chemicals such as pesticides to certain industrial or commercially zoned districts? If so, the State of Kansas is proposing an exception to local land use authority which appears to have only one analogy--local regulation of the storage of radioactive materials!

The proposed, broad prohibition of local regulation of the disposal of pesticides would also appear to preempt local government regulation of the collection of pesticides by refuse collection services, both public and private. Does this language prevent a city or county owning or operating a solid waste site from enacting regulations on the disposal of pesticides? Again, the League simply asks what is the public purpose that is so compelling as to carve out an exception such as this for those who sell and use and dispose of pesticides?

The League asks for this Committee's careful consideration of the consequences for home rule which might result from passage of SB 543. We have no opposition to heightened state law regulation of the pesticide industry, but would note again that the ability of local units of government to enact laws on this subject in no way compromises the authority of the state of Kansas to enact and enforce its own laws.

BANAMITE INSECT SERVICE

**P.O. BOX 343
LeROY, KANSAS 66857
(316) 964-2521**

February 14, 1992

Senate Committee
on Energy and Natural Resources
Topeka, Kansas

Dear Senators;

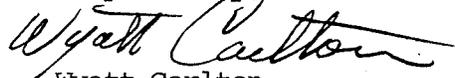
I am writing you in regard to SB 543 an Act Concerning the Kansas Pesticide Laws.

SB 543 would prevent local governments especially small towns like mine from passing ordinances which may conflict with state and federal laws and regulations.

In the past I have served on the Council and as Mayor for a total of more than twelve years and I doubt if most councils would be knowledgeable enough about the Pest Control Business to intelligently pass any ordinances concerning our business. My small company does service work in about twenty small towns so you can imagine the burden it would put on me if all twenty towns passed different Ordinances pertaining to the pest control business.

I ask that you support SB 543 so the Pest Control business can continue to protect the health and property of our state without unneeded local regulations.

Respectfully,



Wyatt Carlton
Banamite Insect Service

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2-18-92*

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