

Approved: Eugene H. Shore 3-29-93
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Eugene Shore at 9:05 a.m. on March 16, 1993 in Room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
Jill Wolters, Revisor of Statutes
Kay Johnson, Committee Secretary

Conferees appearing before the committee: DeVern Phillips, Board of Agriculture
Bill Craven, Sierra Club
Dale Lambley, Board of Agriculture
Michael Torrey, Kansas Fertilizer and Chemical Association
Mitchell Counce, Servi-Tech, Inc.
Dan Filbert, Kansas Association of Independent Crop Consultants
Loarn Bucl, Kansas Association of Independent Crop Consultants
Chris Wilson, Kansas Seed Industry Association, Kansas
Agricultural Aviation Association
Vernon McKinzie, Kansas Pest Control Association
Mark Taddiken, Farmer

Chairman Shore called the meeting to order and explained the minutes of March 9, 10 and 11, 1993 have been distributed to committee members. Unless corrections are received by 5:00pm on Wednesday, March 17, 1993, the minutes will be considered approved. Hearings opened on **SB 136** and **SB 335**.

SB 136: Renaming the oil inspection law the petroleum products inspection law.

Proponents:

DeVern Phillips, State Sealer, Administrator, Weights and Measures, Board of Agriculture, attachment #1, stated the existing act was written in 1935 and is outmoded in relation to the fuels and blends available today. **SB 136** permits the Board of Agriculture to establish rules and regulations for fuel quality that will parallel testing prescribed by the American Society of Testing and Materials and allows for civil penalties for violations.

Discussion followed on accidental vs. intentional violations, costs of tests and budget for fuel quality testing, the kind of violation (different from the past) and number of violations (on the increase), support from the industry to eliminate problems, current penalties vs. proposed civil penalties and cost to the consumer from faulty fuel.

Opponents: None

SB 335: Registering agricultural pest consultants.

Proponents:

Bill Craven, Legislative Coordinator, Sierra Club, attachment #2, supports this bill because it responds to the need to make accountable those who sell advice on pest problems. Mr. Craven recommended amendments to 1) include education and experience requirements for pest consultants, 2) prohibit conflicts of interest, 3) expand record keeping and 4) return the bill to the original language of "agricultural pest consultants" so urban consultants will be included in the bill.

Dale Lambley, Board of Agriculture, attachment #3, outlined the three principal sections of the bill; annual registration, maintaining records of recommendations and civil penalties for violations. His agency supports this

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE, Room 423-S Statehouse, at 9:05 a.m. on March 16, 1993.

bill as the record keeping will help sort out who advised whom to do what in pesticide mis-use investigations.

Michael Torrey, Director of Legislative and Regulatory Affairs, Kansas Fertilizer and Chemical Association (KFCA), attachment #4, explained that the KFCA has worked closely with the Kansas Association of Independent Crop Consultants (KAICC) in drafting this legislation. Since the bill passed the Senate there have been additional meetings and some additional changes will be proposed and explained by later conferees.

Mitchell Counce, General Manager, Servi-Tech, Inc., attachment #5, stated he has worked with the KAICC and will support this bill with the following minor amendments:

- 1(a) substitute "approved" for "provided"
- 1(c) Delete "all claims and"
- 2(a)(1) Delete "and address"
- 2(a)(6) Substitute "name" for "signature"
- 2(b) Delete "expiration"
- 2(c) Amend to read "Each agricultural crop consultant shall make available to the secretary, upon request, a copy of any written records of all agricultural pesticide recommendations and pesticide recommendation records of all employees who performed any service involving, or in conjunction with such recommendations concerning agricultural pesticides and any other requested information pertinent to the administration of this act or any rule and regulation adopted hereunder by the secretary or board."

Dan Filbert, Director, Kansas Association of Independent Crop Consultants, attachment #6, supports this bill as it will define agricultural crop consultants, register them and provide for civil penalties for any illegal recommendations.

Loarn Bucl, Legislative Committee Chairman, Kansas Association of Independent Crop Consultants, said the original intent of the bill was to make agricultural crop consultants accountable for their recommendations and to stop off-label, illegal recommendations. The KAICC will support the proposed amendments by Mitchell Counce.

Chris Wilson, Director of Member Services, Kansas Seed Industry Association (KSIA), attachment #7, and Kansas Agricultural Aviation Association (KAAA), attachment #8, supports this bill as it ensures the state has a registry of those being regulated, protects the consumer, protects the professionalism of the consultant industry and enhances the partnership of chemical technology to the producer.

Opponents:

Vern McKinzie, Government Affairs Committee Chairman, Kansas Pest Control Association, attachment #9, stated his concerns about this bill. Specifically, existing laws, strictly enforced, would address the problem of off-label recommendations; some language is inconsistent with the existing pesticide law; the fee structure is inadequate to administer the law; and there are no competency requirements included.

Discussion followed on the fiscal note prepared by the Board of Agriculture (which Mr. Lambley will provide to committee members).

Responding to Representative Bryant's question regarding the use of off-label rates, Mark Taddiken said most consultants will give written recommendations for label rates to protect themselves, but will verbally suggest the owner may use off-label rates effectively. Mr. Lambley said enforcement problems were mainly with products labeled for one kind of crop being used on another kind of crop.

Representative Alldritt questioned the advisability of allowing anyone (as in current law) or anyone with the \$15 registration fee (as proposed) to call themselves a crop consultant. Mr. Lambley said there have not been any problems so far and he will provide the general set of competency requirements used by the Board of Agriculture.

Representative McClure asked Mr. Lambley if he would have any problem adding specifications to the definition of a crop consultant. He replied no. Also, does the change from "pest" to "crop" consultant exclude the urban areas and can he support the proposed amendments by Mr. Counce. Mr. Lambley responded this legislation was intentionally written by agricultural consultants to address themselves and so urban consultants would be excluded and yes, he can support the proposed amendments.

Representative McClure asked Mr. Counce if he has a problem with adding standards for crop consultants. Mr. Counce said that is difficult to answer as education and experience vary with crop, climate and other factors.

Hearings concluded on **SB 136** and **SB 335**. The meeting adjourned at 10:03am. The next meeting is scheduled for March 17, 1993.

HOUSE AGRICULTURE COMMITTEE

TESTIMONY - SENATE BILL 136

Mr. Chairman, Members of the Committee. My name is DeVern H. Phillips. I am the State Sealer and Administrator of the Weights and Measures Program of the Division of Inspections. Senate Bill 136 modifies the current Oil Inspection Law, K.S.A. 55-422 et seq.

The responsibilities for enforcing the testing and inspection portions of this law were transferred from the Department of Revenue to the Kansas State Board of Agriculture in July of 1989.

This law primarily establishes the authority to test petroleum products. The existing act was written in 1935. Some of the technical data and specifications referred to in the current law are outmoded because they relate to fuels available in 1935, not the multitude of fuels and blends available to the consumer today.

There are currently 2,748 retail facilities selling refined fuels in Kansas through more than 21,990 pumps. According to the National Petroleum News, 1,600,000,000 gallons of refined fuels were sold in Kansas during 1991. The changes requested in Senate Bill 136 permits the Board of Agriculture to establish necessary rules and regulations for fuel quality. These will parallel the testing as prescribed by American Society of Testing and Materials (ASTM). Enactment of Senate Bill 136 will bring Kansas into closer compliance with neighboring States who have already adopted ASTM standards for fuel quality.

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3-16-93
ATTACHMENT #1

In the activities of the enforcement of the existing Oil Inspection Law, minimal fuel quality testing is being performed. This is due to lack of funding of fuel quality testing. An average of 22% of the gasoline samples taken in Kansas in each of the last three years have shown violations of the Kansas Consumer Protection Act (which under current law is the only enforcement tool we have to prevent misrepresentation of products). The violations have ranged from misrepresentation of product (unleaded fuel as leaded; lower octane product being sold as a higher grade) alcohol present in fuels (without notification to consumers) to 25% diesel blended with gasoline.

Adoption of Senate Bill 136 will no longer necessitate the involvement of the Attorney General's office for enforcement purposes. The changes as requested will provide for a better program and will parallel other Kansas State Board of Agriculture enforcement activities.

The activities of the staff involved in enforcement of this law are funded through a 1 cent per 50 gallon barrel of fuel sold in Kansas (.02 cents per gallon) which is collected by the Department of Revenue and is paid into State General Funds. The Kansas State Board of Agriculture utilizes 6 full-time employees in this program. The Department of Revenue utilized 11 full-time employees for enforcement activities under this law. Reduction in staffing resulted in \$135,000 in the first year (1989) savings to the State. Accuracy of refined fuel devices has risen also from

60% to 95% under our current enforcement program.

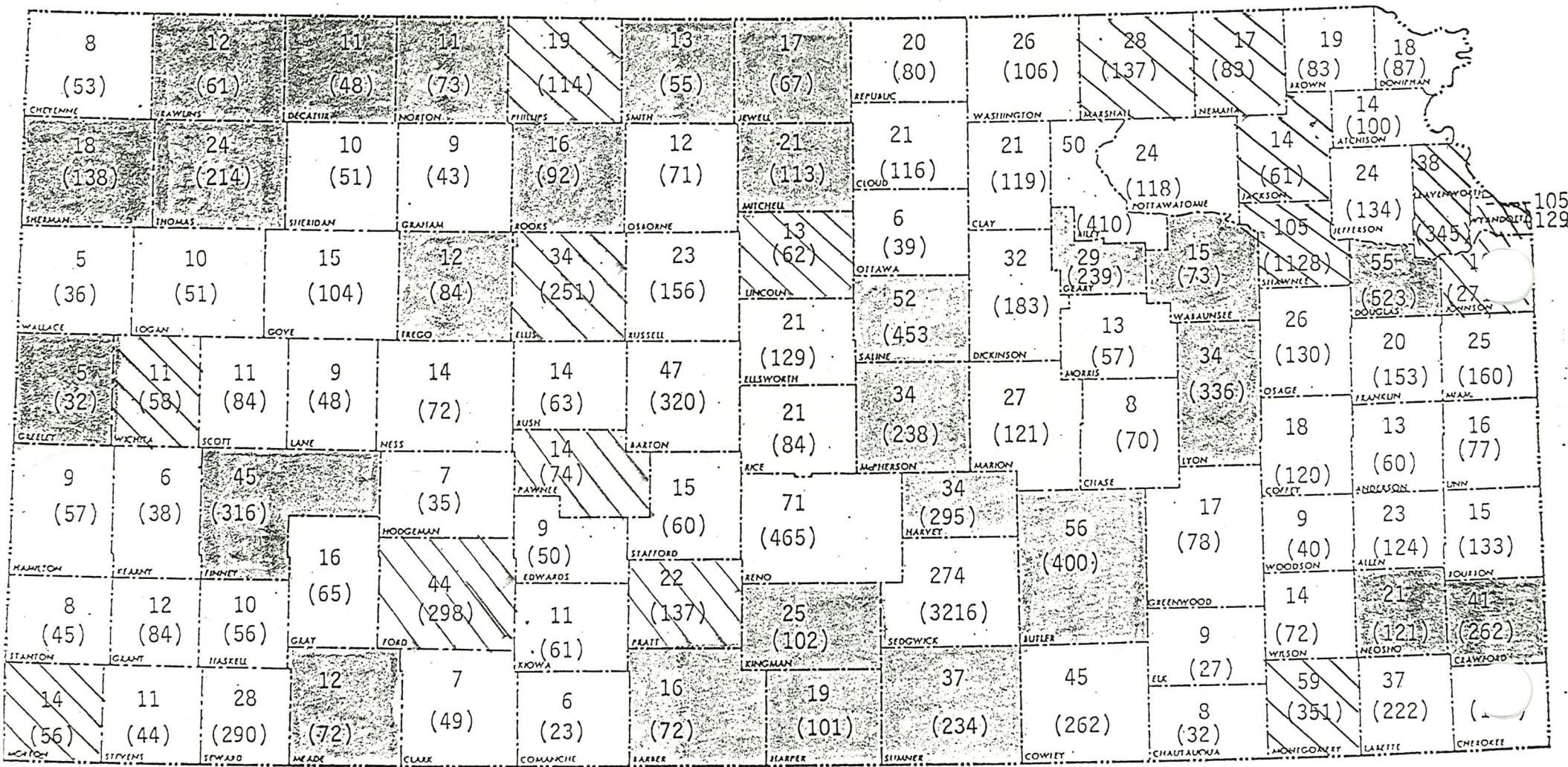
It is anticipated that the staff attorney currently assigned to the Division of Inspections will handle the penalty activities of this program. No additional administrative nor field staff is requested.

No adverse fiscal impact upon industries regulated through this act is anticipated.

No increase in revenues are requested nor are costs of enforcement expected to rise, other than normal costs of printing and distribution, which is anticipated to be less than five hundred dollars (\$500.00).

We would request the adoption of the proposed changes to the Oil Inspection Law and will entertain questions at the Committee's pleasure.

KANSAS



Number indicates stations/facilities
() indicates pumps.



GAS PUMPS AND STATIONS IN KANSAS

'92

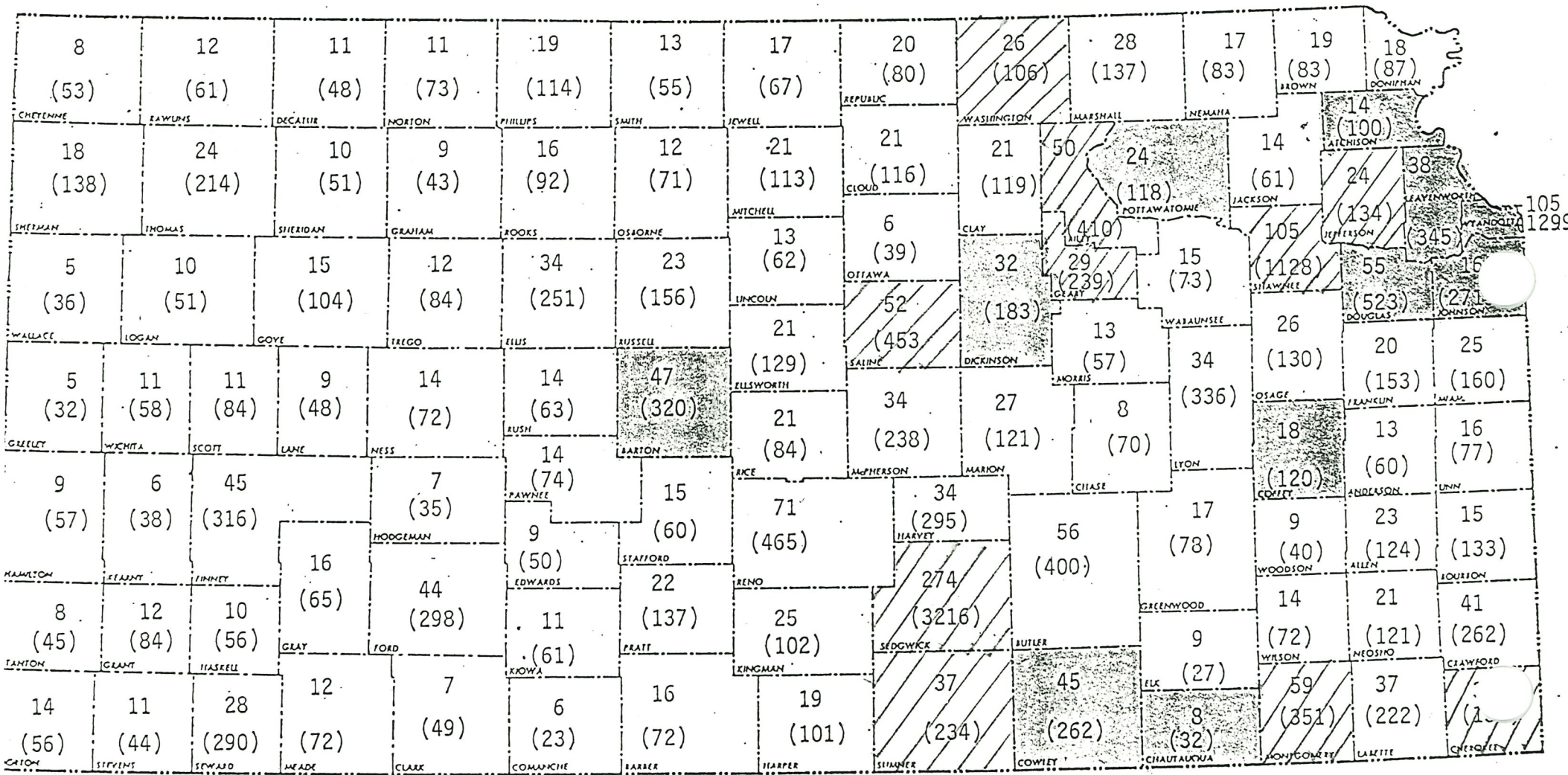
Fuel Quality Testing

(104 Tests)

27.8% Rejection



 Tested & No Violations
 Tested & Found Violations

KANSAS



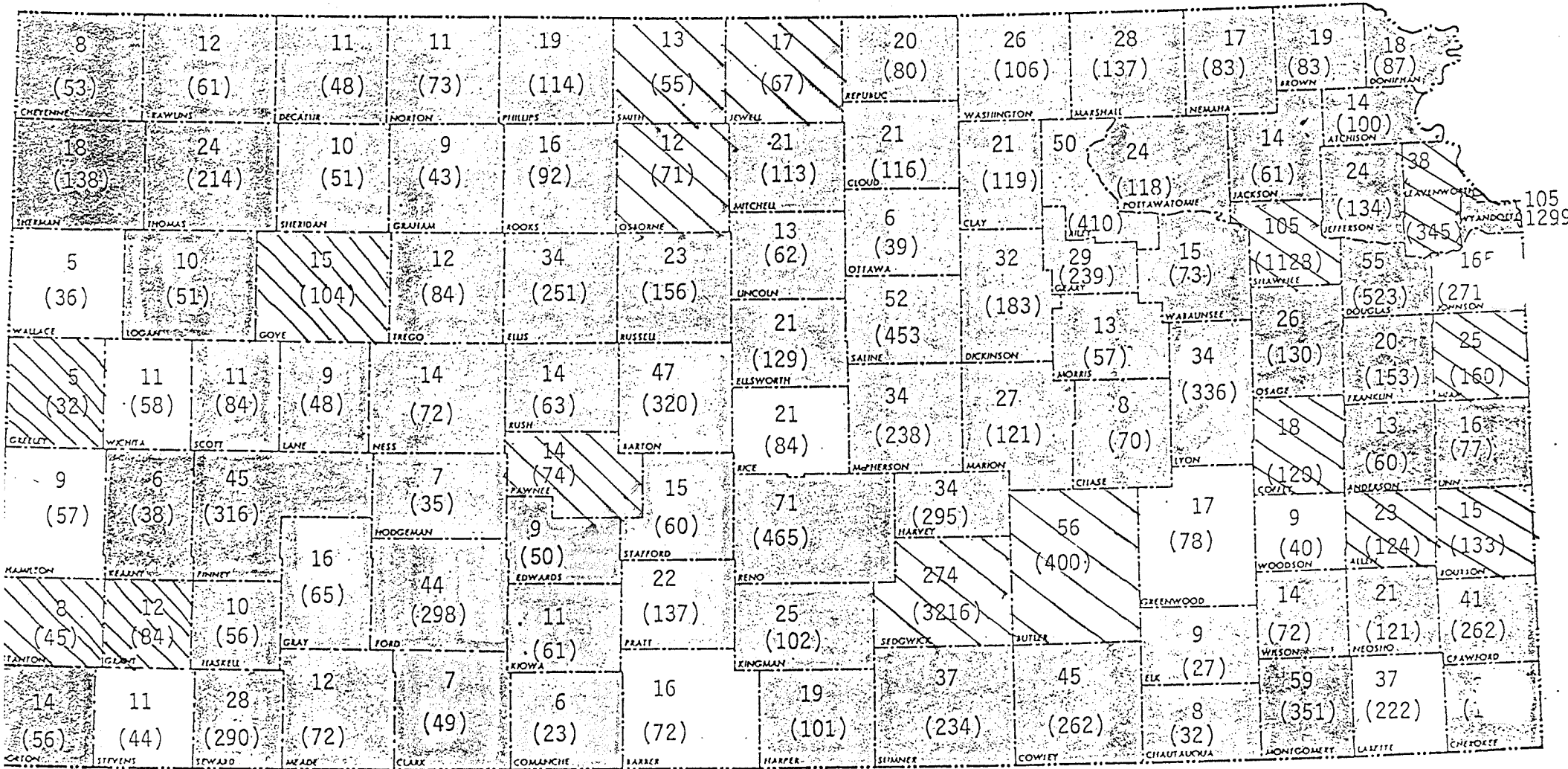
Number indicates stations/facilities
() indicates pumps.

GAS PUMPS AND STATIONS IN KANSAS

 Tested & No Violations
 Tested & Found Violations

'91
Fuel Quality Testing
(71 tests)
21% rejection

KANSAS



Number indicates stations/facilities
() indicates pumps.

GAS PUMPS AND STATIONS IN KANSAS

190

Fuel Quality Testing (186 Tests)

17.2% Rejection

☒ Tested & No Violations.

Tested & Found Violations



SIERRA CLUB

Kansas Chapter

Agricultural Pest Consultant Registration
S.B. 335

William Craven
Sierra Club Legislative Coordinator
House Agriculture Committee
March 16, 1993

This bill responds to the need to make accountable those who sell advice on pest problems. Since pest consultants can and sometimes do get their clients in trouble, they should be held accountable for their advice. The recommendations often involve broadcasting pesticides—which may be hazardous to the client and may cause environmental damage—and may be illegal. Until now, the burden of ensuring that the proposed measures are safe, effective, and legal has been borne by the grower and/or pesticide applicator. When such actions are taken on the advice of a paid consultant, it is appropriate that the consultant share the burden.

The Sierra Club also urges consideration of the following amendments:

(1) Pest consultants should have at least a bachelor's degree or extensive education and experience requirements. One of the education requirements should be study of integrated pest management. The bare minimum should be that consultants be certified commercial pesticide applicators.

(2) Because we believe that the country is moving in the direction of requiring that pesticide applications be made only on the basis of an independent consultation, we think conflicts of interest should be prohibited. For example, consultants should not be employees of pesticide manufacturers, dealers, or application businesses.

(3) The record keeping requirement is currently limited only to pesticides. While that is important, it should be expanded to include advice on other pest management measures.

(4) We also recommend that the definition make the consultant an individual, who can then be personally responsible for giving advice. That would remove the need for section 1(c), making the consultant responsible for the actions of employees.

We are pleased to support a bill that increases the professional stature of pest management consultants. Consultants who are independent of chemical companies offer the best hope of reducing agriculture's dependence on dangerous pesticides.

Thank you.

HOUSE AGRICULTURE
3-16-93
ATTACHMENT #2

TESTIMONY

SENATE BILL NO. 335

DALE LAMBLEY
KANSAS STATE BOARD OF AGRICULTURE
MARCH 16, 1993

Senate Bill No. 335 would amend the Kansas Pesticide Law to provide for registration of agricultural crop consultants. The bill undertakes three (3) principal actions. These are found in:

- * Section 1, which provides for annual registration of crop consultants;
- * Section 2, which requires that crop consultants maintain records of recommendations made; and,
- * Section 3, which establishes civil penalties for violations of the requirements.

Whenever licensing or registration is discussed, a decision must always be made relative to the entity to be covered. The choices typically are whether to register the individual, the business entity, or the different area offices of the business entity. Each is appropriate under certain circumstances. This bill provides for annual registration of individuals who are performing crop consultant services. I would tend to agree with this approach since it is the individual crop consultant who will be making the recommendations. It should be noted that scouts are often employed by crop consultants to collect field specific information. However, the actual recommendations are made by the consultants themselves utilizing scouting information. Businesses which provide the crop consultant services in Kansas include a few large companies with many employees and numerous small companies consisting of a single self employed consultant.

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ATTACHMENT # 3

Agricultural crop consultants would represent a new clientele under the Kansas Pesticide Law. Crop consultants are generally not pesticide applicators and have not been covered by the statute. The Plant Health Division has, however, had a long standing working relationship with various individuals in this industry. The division compiles data on insects, weeds and other pests for use in our regulatory protection programs as well as to alert growers of impending pest or disease outbreaks. The crop consultants are one of our primary sources of this information. They also assist us in conduct of the special pesticide registration (Section 18) program which provides for proper treatment of pest emergencies. In a number of instances, before the emergency use of a particular pesticide is allowed, fields must be scouted to determine pest infestation levels and natural control factors such as beneficial organisms must be assessed.

In general terms, the agency would view this bill favorably. We have occasions when conducting pesticide mis-use investigations where it becomes necessary to sort out who advised whom to do what. Applicators must maintain records and under new federal requirements farmers will be doing the same. The record-keeping requirements for consultants within this bill would effectively close the loop and should render assistance to our enforcement efforts.

More significantly, I think there is another observation that should be made. As we look towards the future, I believe there is little doubt that we are moving towards prescription use of

pesticides and increased needs for management of pest populations.

There is an increasing need for growers to have access to additional information concerning pest management strategies and pesticide use. This bill would be one step toward positioning the consultant industry and the state for that eventuality and represents an opportunity to utilize consultants as a resource.



KANSAS FERTILIZER AND CHEMICAL ASSOCIATION, INC.

816 S.W. Tyler St. P.O. Box 1517 A/C 913-234-0463 Topeka, Kansas 66601-1517

**STATEMENT OF THE
KANSAS FERTILIZER AND CHEMICAL ASSOCIATION
TO THE
HOUSE AGRICULTURE COMMITTEE
REP. EUGENE SHORE, CHAIRMAN
REGARDING S.B. 335
MARCH 16, 1993**

Mr. Chairman and Members of the Committee, I am Michael Torrey, Director of Legislative and Regulatory Affairs for the Kansas Fertilizer and Chemical Association. KFCA is the trade association of our state's agrichemical and fertilizer industries. Our 600 members include primarily retailers, but also distribution firms and manufacturer representatives and others which serve the industry. We appreciate the opportunity today to express our support for S.B. 335, which amends the Kansas Pesticide Law, allowing for the registration of agricultural pest consultants.

KFCA has worked closely with the Kansas Association of Independent Crop Consultants (KAICC) in drafting this legislation. Since the introduction of this bill, the KAICC has met with the KFCA legislative committee and the KFCA board of directors. As a result of these meetings, several changes were made to the original bill. Our Association supports the amended version of S.B. 335.

Essentially, this bill would require crop consultants to be registered by the State Board of Agriculture. Under current law, consultants making recommendations about input use, have no liability and are not regulated. On the contrary, retailers and

*HOUSE AGRICULTURE
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ATTACHMENT #4*

manufacturers of crop inputs have liability, are registered with the Board of Agriculture and are highly regulated. The bottom line is that this legislation would make agricultural crop consultants liable for an illegal recommendation.

I encourage your favorable consideration of S.B. 335, and stand ready to answer any questions you may have.

STATEMENT OF
SERVI-TECH, INC.
TO THE
HOUSE AGRICULTURE COMMITTEE
REPRESENTATIVE EUGENE SHORE, CHAIRMAN
REGARDING S.B. 335
MARCH 16, 1993

Mr. Chairman and Members of the Committee, my name is Mitchell Counce. I am the General Manager of Servi-Tech, Inc. The company I represent is the nation's largest crop consulting company and has been in business since 1975. We are headquartered at Dodge City, Kansas and provide services for approximately 3900 farmer/producers across Kansas, Nebraska, and Colorado. We appreciate the opportunity today to express our support for S.B. 335 allowing for the registration of crop consultants.

After finding out about this bill, for the first time on February 17, we have had numerous telephone conversations and meetings with a representative of the Kansas Association of Independent Consultants and will support S.B. 335 with minor changes as described below.

Under New Section 1. (a)

Substitute "approved" for "provided". The line will then read "...shall be on a form approved by the secretary."

Under New Section 1. (c)

Delete "all claims and". The sub-section will read "Any agricultural crop consultant is responsible for the acts of each individual employed by such consultant in making recommendations for use of pesticides."

Under New Section 2. (a) (1)

Delete "and address". The section will then read "(1) Business name of the agricultural consultant;"

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ATTACHMENT # 5

Servi-Tech Testimony
S.B. 335
March 16, 1993
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Under New Section 2. (a) (6)

Substitute "name" for "signature". The section will then read "(6) the name of the individual who provided the recommendation."

Under New Section 2. (b)

Delete "expiration" The line will read "...the date of any written statement of pesticide recommendations."

Under New Section 2. (c)

Amend to read "(c) Each agricultural crop consultant shall make available to the secretary, upon request, a copy of any written records of all agricultural pesticide recommendations and pesticide recommendation records of all employees who performed any service involving, or in conjunction with such recommendations concerning agricultural pesticides and any other requested information pertinent to the administration of this act or any rule and regulation adopted hereunder by the secretary or board."

The changes that we have proposed in S.B. 335 do not affect the original intent of the bill and will allow a better fit between the law and the crop consulting industries' business practices and business forms that are currently in use by agricultural crop consultants.

We would appreciate and encourage your favorable consideration to the proposed changes to S.B. 335 and will answer questions you may have.

Thank-you.

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Kansas Association of Independent Crop Consultants

AGRICULTURAL CROP CONSULTANT REGISTRATION #335

Testimony of Dan Filbert

Director, Kansas Association of Independent Crop Consultants

Thank you, Mr. Chairman. I am a member of the Kansas Association of Independent Crop Consultants which is comprised of consultants mainly from the western half of the state. We are fully independent of sales of products to our grower clients and are compensated only for our recommendations for the production of agricultural crops.

We have worked hard towards a bill which we feel will define agricultural crop consultants, register them under the Kansas Pesticide Law and provide for civil penalties for any illegal recommendations.

We are in support of this bill, understanding the importance of the proper use of pesticides.

Thank you.

HOUSE AGRICULTURE
3-16-93
ATTACHMENT #6



Christina Wilson
Director Member Services
4210 Wam-Teau Drive
Wamego, Kansas 66547
913-456-9705 phone & fax

**STATEMENT OF
KANSAS SEED INDUSTRY ASSOCIATION
TO THE HOUSE AGRICULTURE COMMITTEE
REP. EUGENE SHORE, CHAIRMAN
REGARDING S.B. 335
MARCH 16, 1993**

Mr. Chairman and Members of the Committee, I am Chris Wilson, Director of Member Services of the Kansas Seed Industry Association (KSIA). KSIA is the professional organization for seedsmen in Kansas, with approximately 175 member firms. KSIA appreciates the opportunity to support S.B. 335, providing for registration for crop consultants.

KSIA commends the Independent Crop Consultants Association, the State Board of Agriculture and others involved in proposing this common sense legislation. We believe it to be responsible regulation, because it does not needlessly overburden those regulated. At the same time, it ensures that the state has a registry of those being regulated, so that the regulatory agency can keep them informed and communicate directly with each consultant. This legislation will ensure that consumers of consultant services are protected. It will also help to protect the professionalism of this important segment of our industry and bring them into the regulatory "loop" with retailers and manufacturers providing agricultural chemical recommendations and products to producers.

KSIA urges you to recommend S.B. 335 favorably for passage. Thank you for the opportunity to provide our comments. We would be glad to respond to any questions.

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HOUSE AGRICULTURE
3-16-93
ATTACHMENT # 7

KANSAS AGRICULTURAL AVIATION ASSOCIATION

851 N. FIRST STREET, CIMARRON, KS 67835

316-855-2337

STATEMENT OF KAAA TO THE HOUSE AGRICULTURE COMMITTEE REP. EUGENE SHORE, CHAIRMAN CONCERNING S.B. 335 MARCH 16, 1993

Mr. Chairman and Members of the Committee, I am Chris Wilson, lobbyist for the Kansas Agricultural Aviation Association (KAAA). KAAA is the trade and professional organization of the agricultural aviation industry in our state, with over 150 members throughout the state. We appreciate the opportunity to support S.B. 335, concerning the registration of "agricultural pest consultants". Our members apply agricultural chemicals to crops and often work for producers who retain crop consultants to make recommendations for fertilizers and pesticides needed. We appreciate these professionals who serve an important role in the agricultural industry in Kansas.

We commend the Independent Crop Consultants Association for seeking this legislation, which will regulate their industry. We believe this move enhances their profession and is a benefit to the producers who utilize their services. This will help to ensure that the consultants are kept up to date on any state actions and other information available through the Board of Agriculture. This legislation is important to the other professionals, such as KAAA members, who are already licensed and registered by the Board of Agriculture, by bringing the consultants into the regulatory channels. Consultants, aerial and other applicators and manufacturers must have partnerships in bringing agricultural chemical technology to the producer. We believe this bill enhances that partnership by legally recognizing the role of the consultant.

We ask your support for S.B. 335. Thank you for the opportunity to comment. I would be glad to respond to any questions you may have.

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*HOUSE AGRICULTURE
3-16-93
ATTACHMENT #8*

KANSAS

PEST CONTROL ASSOCIATION

INC



President

Jim Jarvis
(913) 825-5143

President-Elect

Carolyn Nelson
(316) 792-4351
FAX (316) 792-4352
1-800-748-7436

Vice-President

L. Don Richardson
(316) 221-2685

Past-President

Forrest St. Aubin
(913) 383-1313
FAX (913) 383-1382

Secretary-Treasurer

Mark Hassman
(913) 827-6750

Directors

Region I:
Phil Augustine
(913) 362-4399
FAX (913) 362-5469

Region II:
Gene Cunningham
(316) 231-3060

Region III:
Brian Meitler
(913) 526-7185

At Large:
Bob Powell
(913) 232-9344
FAX (913) 232-4165

Executive Secretary

Mrs. Peg King
410 N. Jefferson
P.O. Box 1665
Junction City,
Kansas 66441-2988
(913) 238-6800
FAX (913) 238-8304

COMMENTS ON SB 335 PRESENTED TO HOUSE AGRICULTURE COMMITTEE

03-16-93

Thank you Mr. Chairman. Good morning members of the committee! I appreciate this opportunity to comment on SB 335. For the record, my name is Vernon McKinzie, I am a Board Certified Entomologist in the pest control business from Emporia. Our company operates offices in Emporia, Manhattan and Parsons. I also chair the Government Affairs committee of the Kansas Pest Control Association and appear today on behalf of the Association.

We have some concerns about this bill and the precedent it could establish.

First: We believe existing laws [KSA 2-2453 (a,b,c) & KSA 2-2469(c)], strictly enforced, would address the problem of off-label pesticide recommendations and uses which we understand are some of the reasons for requesting SB 335.

Second: Some language is inconsistent with language presently found in the existing pesticide law [KSA 2-2455, KAR 4-13-4, KAR 4-13-5]. Specifically, the name & address of the customer; the address or location of the pesticide applications; expiration dates of any statements or warranties; the name and address of the business.

Retention of business records relating to pesticide use is currently established at a three year minimum. [KSA 2-2455(e)]

Third: We understand the fiscal impact statement estimates an annual cost for administration at \$22,000.00. We further understand fewer than 200 persons will register at the \$15.00 fee. Our math indicates a \$19,000.00 short fall in the cost of administering the bill.

We fear those funds will be siphoned away from an already severely stressed enforcement budget in the Plant Health Division resulting in weakening enforcement of existing statutes and regulations.

-more-

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ATTACHMENT #9

Fourth: As the copy of the bill we have seen reads, there are no competency requirements for Agricultural Crop Consultant. It would appear anyone who can fill out the form and submit the \$15.00 fee can become an Agricultural Crop Consultant. All other licensing, registrations and certifications addressed in the present statutes and regulations require the applicant to meet specific insurance, training and/or examination requirements before the license, registration or certification is issued.

In conclusion, we support the concept of Agricultural Pest Consultant, but with a fee structure adequate to administer the law and some sort of competency requirements to make the title and position more meaningful.

Thank you.