

MINUTES OF THE HOUSE AGRICULTURE & NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Larry Powell at 9:00 a.m. on February 17, 2011, in Room 783 in the Docking State Office Building.

All members were present except:

Representative Rocky Fund - Excused  
Representative Charlotte O'Hara - Excused  
Representative Michael Peterson - Excused

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes  
Raney Gilliland, Kansas Legislative Research Department  
Michael Wales, Kansas Legislative Research Department  
Kay Scarlett, Committee Assistant

Conferees appearing before the Committee:

Senator Dennis Pyle  
David Barfield, Chief Engineer, Kansas Department of Agriculture  
Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau

Others attending:

See attached list.

**Hearing on HB 2272 – Exempting certain minor construction projects from state and federal water regulations.**

Chairman Powell opened the hearing on **HB 2272**. Sean Ostrow, Office of the Revisor of Statutes, explained that this bill would exempt from regulation under the Obstructions in Streams law of the Kansas Department of Agriculture certain minor construction projects such as the construction of farm ponds and farm road stream crossings. The drafted language is adopted from the Federal Clean Water Act.

Senator Dennis Pyle offered testimony in support of **HB 2272** exempting production agriculture from the costly, burdensome regulation and permitting process. He said these activities are exempt for production agriculture under the Federal Clean Water Act, included with his testimony. He provided copies of all relevant state statutes and regulations and a draft copy of the proposed Kansas Department of Agriculture, Division of Water Resources, Water Structure Rules and Regulations, dated November 29, 2010. He stated that the purpose for requesting this bill was to get these federal exemptions for agricultural activities exempted at the state level. (Attachment 1)

David Barfield, Chief Engineer, Kansas Department of Agriculture, appeared in opposition to **HB 2272** as it is overly complex, unclear, and inconsistent with state law. He believes there is a much simpler remedy to the problem it seeks to address. He explained that within the existing statutes and regulations, small dams are exempt from the permitting process; fundamentally, the proposed legislation seeks to expand the types of projects exempt from regulation. He noted that the federal Clean Water Act is focused on wetlands and protecting water quality, while the state law is designed to protect Kansans' safety and property from hydraulic effects of regulated activities in our streams and watercourses.

Mr. Barfield said **HB 2272** was unnecessary as the Division of Water Resources is developing an amendment to the rules and regulations, which is included with his testimony, to streamline permitting for minor stream obstructions where the contributing drainage area is sufficient to make the project jurisdictional. He said the streamlined requirements are basic and simple to complete, while providing sufficient information to allow the Division to accomplish responsibilities under the Obstructions in Streams law to protect Kansans' safety and property. (Attachment 2)

Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau, appeared as a neutral conferee on **HB 2272**. Although Kansas Farm Bureau has a general policy that supports decreasing regulatory burdens on agriculture producers and providing exemptions for normal farming activities and projects, he doesn't believe the language in **HB 2272** accomplishes what the bill's sponsor is seeking. The Kansas Department of Agriculture, Division of Water Resources, and the Kansas Water Office have no authority

## CONTINUATION SHEET

The minutes of the House Agriculture & Natural Resources Committee at 9:00 a.m. on February 17, 2011, in Room 783 of the Docking State Office Building.

in 404 permitting or providing exemptions to those permits as detailed in the bill. Although an exemption from 404 permitting is provided by federal law, KFB believes there does need to be an examination of the potential threat to public safety and private property when impoundments are constructed. (Attachment 3)

There being no other conferees, Chairman Powell closed the hearing on **HB 2272**. Chairman Powell then appointed a subcommittee to address the issues raised during the hearing to see if a compromise can be reached. He appointed Representative Dan Kerschen, Chairman; Representative Vincent Wetta; and Representative Willie Prescott to the subcommittee on **HB 2272**.

### **Discussion and action on HB 2282 – Lodging inspections and food safety fees.**

Chairman Powell opened **HB 2282** for discussion. Representative Moxley reported that he had been in contact with the Kansas Department of Agriculture and the Kansas Department of Health and Environment concerning the procedure to file a complaint against a lodging establishment in Kansas. He said both departments will be updating their web sites and the Department of Agriculture, in addition to requiring licensed establishments to post their official authorization document, will now be required to also post a larger sign notifying the public as to how to report concerns with the safety or cleanliness of the facility. (Attachment 4)

Representative Hayzlett moved to recommend **HB 2282** favorably for passage. The motion was seconded by Representative Wetta.

The revisor of statutes noted two technical amendments to **HB 2282**. On page 2, line 5, “facility” should read “establishment” to be consistent, and on page 3, line 32, the “(b)” should be removed. Representative Tyson moved to make the technical corrections. Seconded by Representative Williams, the motion passed.

Chris Wilson, Deputy Secretary, Kansas Department of Agriculture, requested an amendment to put the newly created lodging inspection fee fund in statute. (Attachment 5) Representative Brookens moved to amend **HB 2282** as requested by the Deputy Secretary. Seconded by Representative Tyson, the motion passed.

Representative Hayzlett moved to recommend **HB 2282**, as amended, favorably for passage. Seconded by Representative Brookens, the motion carried.

### **Discussion and action on HB 2231 – Updating the provisions regarding water bank flex accounts.**

Chairman Powell opened **HB 2231** for discussion.

Representative Hayzlett moved to recommend **HB 2231** favorably for passage. The motion was seconded by Representative Arpke.

Staff reminded the committee that the Kansas Department of Agriculture had requested a technical amendment on page 1, line 1, of **HB 2231**, “water bank” should be corrected to “multi-year.” They also requested clarifying language on page 2, line 31, to add “authorized by the term permit” to the end of the sentence. Representative Moxley moved to amend **HB 2231** as requested by the Department. Seconded by Representative Brookens, the motion passed.

Representative Hayzlett moved to recommend **HB 2231**, as amended, favorably for passage. The motion was seconded by Representative Arpke. The motion carried.

The meeting adjourned at 10:05 a.m. The next meeting of the House Agriculture & Natural Resources Committee is scheduled for February 18, 2011.

HOUSE AG & NATURAL RESOURCES COMMITTEE  
GUEST LIST

DATE: FEBRUARY 17, 2011

[illegible]

STATE OF KANSAS  
SENATE CHAMBER

Representing  
Atchison, Brown, Doniphan, Jackson,  
and Pottawatomie Counties

District Address:  
2979 KINGFISHER RD.  
HIAWATHA, KANSAS 66434  
(785) 742-3780

Capitol Office:  
STATE CAPITOL, ROOM 234-E  
TOPEKA, KANSAS 66612  
(785) 296-7379



**Senator Dennis Pyle**

COMMITTEE ASSIGNMENTS

MEMBER: AGRICULTURE  
ASSESSMENT & TAXATION  
UTILITIES  
JOINT COMMITTEE ON SPECIAL CLAIMS  
AGAINST THE STATE  
JOINT COMMITTEE ON STATE  
TRIBAL RELATIONS

February 17, 2011

Good Morning Chairman Powell and members of the committee.

Thank you for holding hearings on HB 2272 and for the opportunity to testify in support of the concept of exempting production agriculture from some costly and burdensome regulations.

What are the consequences of installing a culvert, low water crossing, stock pond, etc, for spraying, fencing, tilling, checking livestock or other agricultural purposes?

To those of us in agriculture it could be access to property, adding property value, or even added productivity.....On the other hand the consequences can also mean a lot of unnecessary regulatory requirements that impede and obstruct productivity and slowly but surely continue to erode private property rights. While these activities are exempt for production agriculture under the Clean Water Act Title 33 chapter 11, part 323.4 (white handout), apparently the state is not completely exempting these activities. Let me be clear, the purpose for requesting the bill is to get these same federal exemptions for agricultural activities exempted at the state level.

For your convenience I have provided a copy of the Kansas Statutes (green handout) pertaining to these activities. Also provided are the regulations which deal with these issues. Please look closely at (blue handout) K.A.R. 5-42-1 (pg 54), K.A.R. 5-42-2 (pg 56), and others. We can clearly see the burden of cost and time to producers. Please note also the additional authority under K.A.R. 5-40-6, b (pg 13).

I would also like to point out to the committee the proposed regulatory changes submitted by the Kansas Department of Agriculture, Division of Water Resources, Water Structures, Draft Rules and Regulations 11/29/2010 (yellow handout). Please note the definition of 'minor stream obstruction' on page 8, specifically "other structures with limited impact on stream flow."

Farmers, ranchers, contractors, and most others in production agriculture just want to be productive without burdensome laws and regulation. Sometimes concerns over safety or water quality dictate and necessitate intervention. However, it is my belief that certain current regulations and proposed regulations go beyond the necessary.

It is time to realize that the exemptions are needed, and that a lack of timely action on the legislature's part to implement these exemptions is hurting our agricultural producers.

Thank you for your time and consideration.

House Ag & Natural Resources  
February 17, 2011  
Attachment 1

*ichita  
Fagle  
August*

## Brownback: reduce taxes and regulation for business



Sen. Sam Brownback discusses economic road map

Sen. Sam Brownback today promised lower taxes and reduced regulation for business if he is elected governor.

He said he plans to create an "office of the repealer" to target outdated or ineffective regulations.

He also said he will create a citizen advisory panel to recommend deletion of state laws and regulations.

Brownback vowed to continue the now 10-year fight to win Boeing a contract to build the next generation of Air Force tanker planes.

He said he plans to pursue allegations that the government of Brazil is violating international trade agreements by subsidizing Brazilian planemaker Embraer.

The economic provisions are part of the first of several major policy statements Brownback will be issuing as part of his campaign "Road Map for Kansas."

- By Dion Lefler

Read more: <http://blogs.kansas.com/gov/2010/08/10/brownback-reduce-taxes-and-regulation-for-business/#ixzz1EE2gd4bL>

## TITLE 33 - NAVIGATION AND NAVIGABLE WATERS

### CHAPTER II - CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY, DEPARTMENT OF DEFENSE

#### PART 323 - PERMITS FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES

##### 323.4 - Discharges not requiring permits.

(a) General. Except as specified in paragraphs (b) and (c) of this section, any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under section 404:

(1)(i) Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, as defined in paragraph (a)(1)(iii) of this section.

(ii) To fall under this exemption, the activities specified in paragraph (a)(1)(i) of this section must be part of an established (i.e., on-going) farming, silviculture, or ranching operation and must be in accordance with definitions in 323.4(a)(1)(iii). Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities which bring an area into farming, silviculture, or ranching use are not part of an established operation.

An operation ceases to be established when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations. If an activity takes place outside the waters of the United States, or if it does not involve a discharge, it does not need a section 404 permit, whether or not it is part of an established farming, silviculture, or ranching operation.

(iii)(A) Cultivating means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or forest crops to aid and improve their growth, quality or yield.

(B) Harvesting means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.

(C)(1) Minor Drainage means: (i) The discharge of dredged or fill material incidental to connecting upland drainage facilities to waters of the United States, adequate to effect the removal of excess soil moisture from upland croplands.

(Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into waters of the United States, and as such never require a section 404 permit.); (ii) The discharge of dredged or fill material for the purpose of installing ditching or other such water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters of the United States which are in established use for such agricultural and silvicultural wetland crop production; (iii) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of CWA, and which are in established use for the production of rice, cranberries, or other wetland crop species. (The provisions of paragraphs (a)(1)(iii)(C)(1) (ii) and (iii) of this section apply to areas that are in established use exclusively for wetland crop production as well as areas in established use for conventional wetland/non-wetland crop rotation (e.g., the rotations of rice and soybeans) where such rotation results in the cyclical or intermittent temporary dewatering of such areas.) (iv) The discharges of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar

blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting or cultivating of crops on land in established use for crop production.

Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year of discovery of such blockages in order to be eligible for exemption.

(2) Minor drainage in waters of the U.S. is limited to drainage within areas that are part of an established farming or silviculture operation.

It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (e.g., wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.

(D) Plowing means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, disking, harrowing and similar physical means utilized on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. The term does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing as described above will never involve a discharge of dredged or fill material.

(E) Seeding means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(3) Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches.

Discharges associated with siphons, pumps, headgates, wingwalls, weirs, diversion structures, and such other facilities as are appurtenant and functionally related to irrigation ditches are included in this exemption.

(4) Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the U.S. The term construction site refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term also includes any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in the runoff of sediment is controlled through the use of temporary sedimentation basins.

(5) Any activity with respect to which a State has an approved program under section 208(b)(4) of the CWA which meets the requirements of sections 208(b)(4) (B) and (C).

(6) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. These BMPs which must be applied to satisfy this provision shall include those detailed BMPs described in the State's approved program description pursuant to the requirements of 40 CFR 233.22(i), and shall also include the following baseline provisions: (i) Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes) and skid trails (for logging) in waters of the U.S. shall be held to the minimum feasible number, width, and total length consistent with the purpose of specific farming, silvicultural or mining operations, and local topographic and climatic conditions; (ii) All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into waters of the U.S.; (iii) The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows; (iv) The fill shall be properly stabilized and maintained during and following construction to prevent erosion; (v) Discharges of dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself; (vi) In designing, constructing, and maintaining roads, vegetative disturbance in the waters of the U.S. shall be kept to a minimum; (vii) The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body; (viii) Borrow material shall be taken from upland sources whenever feasible; (ix) The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species as defined under the Endangered Species Act, or adversely modify or destroy the critical habitat of such species; (x) Discharges into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist; (xi) The discharge shall not be located in the proximity of a public water supply intake; (xii) The discharge shall not occur in areas of concentrated shellfish production; (xiii) The discharge shall not occur in a component of the National Wild and Scenic River System; (xiv) The discharge of material shall consist of suitable material free from toxic pollutants in toxic amounts; and (xv) All temporary fills shall be removed in their entirety and the area restored to its original elevation.

(b) If any discharge of dredged or fill material resulting from the activities listed in paragraphs (a) (1) through (6) of this section contains any toxic pollutant listed under section 307 of the CWA such discharge shall be subject to any applicable toxic effluent standard or prohibition, and shall require a section 404 permit.

(c) Any discharge of dredged or fill material into waters of the United States incidental to any of the activities identified in paragraphs (a) (1) through (6) of this section must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration. For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill material into waters of the United States in conjunction with construction of dikes, drainage ditches or other works or structures used to effect such conversion. A conversion of a section 404 wetland to a non-wetland is a change in use of an area of waters of the United States. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.

(d) Federal projects which qualify under the criteria contained in section 404(r) of the CWA are exempt from section 404 permit requirements, but may be subject to other State or Federal requirements.



**Testimony on HB 2272  
to  
House Committee on Agriculture and Natural Resources  
by  
David Barfield  
Chief Engineer  
Kansas Department of Agriculture**

**February 17, 2011**

Chairman Powell and members of the committee, I am David Barfield, Chief Engineer of the Kansas Department of Agriculture's Division of Water Resources (DWR). I appear before you today to oppose HB 2272 as it is overly complex, unclear, inconsistent with state law, and I believe there is a much simpler remedy to the problem it seeks to address.

By way of background, as Chief Engineer it is my duty to administer K.S.A. 82a-301 and following, which requires all nonfederal entities who wish to construct any dam or other water obstruction to obtain a permit from the chief engineer. In addition to dams, stream obstructions include bridges, culverts, intake or discharge structures and the like. The purpose of this authority is to ensure such works are built and maintained in a manner that is consistent with public safety and the protection of public and private property.

Within the existing statute and regulations, small dams (with less than 50 acre-feet of storage) and projects on minor drainages, ranging from 240 acres in eastern Kansas to 640 acres in western Kansas, are exempt from our permitting. Fundamentally, the proposed legislation seeks to expand the types of projects exempt from our regulation. So the questions before the committee are whether exemptions should be expanded and if so, whether this is the best approach.

Regarding the bill, HB 2272 is overly complicated and unclear, contains errors, and could increase risks to property damage and potentially public safety. For example:

- Much of its language comes from the federal Clean Water Act which is incompatible with Kansas' Obstructions in Streams law (e.g., see the definition of "minor drainage"). The federal law is focused on protecting water quality, while the state law is designed to protect Kansans' safety and property from the hydraulic effects of regulated activities in our streams and watercourses.
- It exempts discharges of dredged or fill materials related to farming, silviculture and ranching activities from authorization or permitting of the Kansas Water Office or DWR. Kansas Water Office does not have permitting authority.
- Stream obstructions for agricultural activities are not necessarily less hazardous or potentially damaging than stream obstructions for other land uses. A farm road stream crossing upstream from a county road or backing water onto someone's farmland may present the same hazards as a stream obstruction for any other purpose. It is the hydraulic properties of the stream and the stream obstruction, in addition to potential receptors in the area, which determine the hazards.

- It exempts stock ponds (what we normally call farm ponds) and temporary sedimentation basins from regulation under the Obstructions in Streams law. Where these structures are above residences and busy highways, they may present a risk to safety and property.

HB 2272 is also unnecessary. DWR is developing amendment to our rules and regulations, which are attached, to streamline permitting for minor stream obstructions where the contributing drainage area is sufficient to make the project jurisdictional. The streamlined requirements are basic and simple to complete, while providing sufficient information to allow us to accomplish DWR's responsibilities under the Obstructions in Streams law to protect Kansans' safety and property.

Thank you for the opportunity to express our concerns with the bill. I will stand for questions at the appropriate time.

**K.A.R 5-42-15. Stream obstructions; miscellaneous projects; plans for projects with minimal impact.** (a) Plans for a stream obstruction project that will have a minimal impact shall meet the application and plan requirements of this regulation, instead of those in K.A.R. 5-42-14.

(b) A stream obstruction project will be considered to have a minimal impact if it meets all of the following requirements. The project will not:

- (1) Impound water on the property of a person other than the applicant if water is impounded up to the maximum elevation of the obstruction;
- (2) accelerate water discharged from the project to a velocity that will cause erosion on the property of another;
- (3) be seriously damaged or completely destroyed during bank-full discharge events; and
- (4) impound water so that it will cause a rise in the elevation of groundwater on the property of another.

(c) To determine if the project will have a minimal impact, the applicant shall submit an application, including the information required in subsection (d), and a request for the chief engineer to determine if the project has only a minimal impact.

(d) The plans shall include all of the following information:

(1) A general location map, aerial photograph, or plan view showing all of the following information:

(A) The location of the stream;

(B) the point where the stream obstruction crosses the centerline of the stream; or for projects that do not cross the centerline of the stream, the point where the stream obstruction crosses the affected bank of the stream; specified in latitude and longitude, or in feet north and west of the southeast corner of the section;

(C) the layout of the stream obstruction including the principal dimensions;  
(D) the property lines and the names and addresses of adjoining property owners; and  
(E) section or quarter-section lines with sections properly identified, including township and range; and

(2) a typical cross section sketch showing:

(A) The top of the stream obstruction relative to the bed and each affected stream bank;  
and

(B) the principal dimensions of the project.

(e) If the chief engineer determines that the project will have a minimal impact, the chief engineer shall notify the applicant that:

(1) The project will have a minimal impact; and

(2) the application and plans that have been submitted are sufficient to review the application. The chief engineer will then review the application to determine if it meets the other requirements of article 42 of these regulations.

(f) If the chief engineer determines that the project will have more than a minimal impact, or cannot determine if the project will have a minimal impact, the chief engineer will notify the applicant that the applicant is required to submit plans meeting the requirements of K.A.R. 5-42-14. (Authorized by K.S.A. 2009 Supp. 82a-303a; implementing K.S.A. 2009 Supp. 82a-302 and 82a-303a; effective P-\_\_\_\_\_.)



## ***Kansas Farm Bureau*** **POLICY STATEMENT**

### **House Agriculture and Natural Resources Committee**

#### **Re:HB 2272 an act concerning water**

**February 17, 2011**

**Submitted by:**

**Steve M. Swaffar**

**Director of Natural Resources**

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Chairman Powell and members of the committee, thank you for the opportunity to provide testimony today on House Bill 2272. Kansas Farm Bureau (KFB) has general policy that supports decreasing regulatory burdens on agriculture producers and providing exemptions for normal farming activities and projects. The concepts expressed during the introduction of HB 2272 would certainly fit that model.

However, I don't believe the language in HB 2272 accomplishes what the bill's sponsor is seeking. The exemptions provided to Clean Water Act Section 404 permits are provided through the U.S. Corp of Engineers, not the State of Kansas. Currently, the Kansas Department of Health and Environment reviews 404 activities and provides comment to the Corp, but KDHE does not issue those permits. The Department of Agriculture, Division of Water Resources and the Kansas Water Office have no authority in 404 permitting or providing exemptions to those permits as detailed in the bill.

Additionally, we do have concerns with the intent of Section 1(c)(3), which would allow the construction of impoundments without the examination of safety aspects. Although an exemption from 404 permitting is provided by federal law, there does need to be an examination of the potential threat to public safety and private property when impoundments are constructed. This responsibility lies with the Chief Engineer of the Division of Water Resources. It appears this would no longer be required under the bill. Clearly risking life and property is not in the best interest of Kansans.

KFB believes that the issue identified during the bill's introduction having to do with stream crossings and culvert installations lies with the Kansas Stream Obstruction Act, KSA 82a-301-327 and its associated regulations. It is these statutory requirements where the bill needs to focus, if relief from those requirements is desired. As long as exempted activities do not jeopardize stream health, public safety or downstream areas due to inundation, then KFB supports providing this type of exemption to permitting or regulatory review.

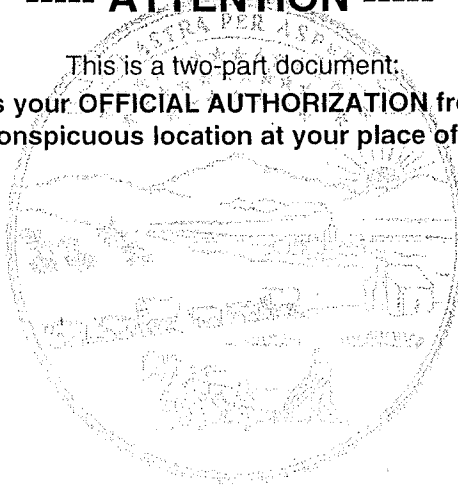
Perhaps interested parties need to discuss the regulatory structure that currently exists and craft a mutually agreeable solution. I would be happy to answer questions at the appropriate time.

----- **ATTENTION** -----

This is a two-part document:

The bottom portion of this document is your **OFFICIAL AUTHORIZATION** from the Kansas Department of Agriculture. Your license **MUST** be displayed in a conspicuous location at your place of business.

HOLIDAY INN EXPRESS  
120 N EAST ST  
JUNCTION CITY, KS 66441



CUT ALONG THE **HEAVY** LINES

Kansas Department of Agriculture, Topeka, Kansas

certifies

**HOLIDAY INN EXPRESS**  
120 N EAST ST  
JUNCTION CITY, KS 66441

Owned by: **KAHDARPAM HOTELS LLC**  
has met the requirements for

**Registration Under the Kansas Food, Drug and Cosmetic Act, KSA 65-601 et.seq.; and  
the Food Service and Lodging Act K.S.A. 36-501 et seq**  
and is hereby granted

Authority to operate as a **Lodging Establishment**

Under Business Registration Number: **101393**

Rooms: 60  
Comp. Food

**Effective and Expiration Dates:**  
**01-17-2011 12-31-2011**

**NOTICE: THIS LICENSE IS NOT TRANSFERABLE**

*Dale A. Rodman*

Dale A. Rodman  
Secretary of Agriculture

Kansas Department of Agriculture, Records Center, 109 SW 9th Street, Topeka, KS 66612, (785) 296-7430 <http://www.ksda.gov>

CUT ALONG THE **HEAVY** LINES

House Ag & Natural Resources  
February 17, 2011  
Attachment 4

This and all lodging facilities  
in the State of Kansas  
are licensed and regulated by the  
Kansas Department of Agriculture.  
Any concerns with the  
safety or cleanliness  
of this facility can be directed to:



by calling

**785-296-5600**

## HOUSE BILL No. 2282

By Committee on Agriculture and Natural Resources Budget

2-11

1 AN ACT concerning lodging inspections; relating to lodging inspection  
2 fees; amending K.S.A. 2010 Supp. 36-502, 36-518 and 74-591 and  
3 repealing the existing sections; also repealing K.S.A. 2010 Supp. 36-  
4 512.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2010 Supp. 36-502 is hereby amended to read as  
8 follows: 36-502. (a) It shall be unlawful for any person to engage in the  
9 business of conducting a lodging establishment unless such person shall  
10 have in effect a valid license therefor issued by the secretary of  
11 agriculture. Applications for such licenses shall be made on forms  
12 prescribed by the secretary, and each such application shall be  
13 accompanied by the appropriate license fee required by subsection (c) of  
14 this section. Prior to the issuance of any such license, the secretary shall  
15 inspect or cause to be inspected the lodging establishment designated in  
16 the application, to determine that it complies with the standards for  
17 lodging establishments promulgated pursuant to this act. If such lodging  
18 establishment is found to be in compliance, the secretary shall issue the  
19 license. If the application for license is denied, the secretary shall give  
20 written notice thereof to the applicant, stating also that the applicant is  
21 entitled to a hearing thereon if a written request therefor is filed with the  
22 secretary within 20 days of the date such notice is sent. Such hearing shall  
23 be held in accordance with the provisions of the Kansas administrative  
24 procedure act.

25 (b) Each license shall designate whether the licensed lodging unit is  
26 a hotel, rooming house or boarding house. Any person obtaining a license  
27 to engage in the business of conducting a rooming house or boarding  
28 house shall not have the right to use the name "hotel" in connection with  
29 such business. Every license issued hereunder shall be displayed  
30 conspicuously in the lodging establishment for which it is issued, and no  
31 such license shall be transferable to any other person or location.  
32 Whenever any such license is lost, destroyed or mutilated, a duplicate  
33 license shall be issued to any otherwise qualified licensee upon  
34 application therefor and the payment of a fee in the amount of \$3 \$5.

35 (c) The fee for a license to conduct a lodging establishment in this  
36 state for all or any part of any calendar year shall be \$30, except that the  
37 fee for any lodging establishment containing 10 sleeping rooms shall be  
38 \$35 \$40 and for every additional 10 rooms therein, an additional fee of \$5

**Comment [ew1]:** *New Section.*

*There is hereby created the lodging inspection fee fund. The secretary shall remit all license fees received by the secretary under the provisions of K.S.A. 2009 Supp. 36-502, and amendments thereto, and all license renewal fees for lodging establishments under K.S.A. 36-505, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the lodging fee fund. All expenditures from the lodging fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person designated by the secretary. This section shall be a part of and supplemental to the food service and lodging act.*

1 \$10 shall be charged. *The license fee shall not exceed \$300.* All lodging  
2 establishments which are new, newly constructed, *newly converted to use*  
3 *as a lodging facility* or have a change of ownership shall pay an  
4 application fee which may be adjusted in accordance with the type of  
5 establishment or based on other criteria as determined by the secretary,  
6 but in no event shall any application fee exceed ~~\$100~~ \$200 in addition to  
7 the license fee.

Comment [ew2]: establishment

8 (d) Any person who, on the effective date of this act, has a valid  
9 license to operate a hotel or rooming house shall be a licensee under the  
10 provisions of this act, and any such license is hereby deemed to be a  
11 license to operate a lodging establishment issued under the provisions of  
12 this act.

13 Sec. 2. K.S.A. 2010 Supp. 36-518 is hereby amended to read as  
14 follows: 36-518. (a) The secretary shall inspect or cause to be inspected  
15 every lodging establishment in this state. *Any lodging establishment in*  
16 *this state shall be inspected upon receipt of a complaint indicating that a*  
17 *lodging establishment does not comply with the applicable standards*  
18 *promulgated in the rules and regulations of the secretary.* ~~For such~~  
19 ~~inspections~~ The secretary or the secretary's lawful agent shall have the  
20 right of entry and access thereto, at any reasonable time.

21 (b) Whenever, upon inspection, it is determined that any lodging  
22 establishment does not comply with the applicable standards promulgated  
23 in the rules and regulations of the secretary, the secretary shall give  
24 written notice to the owner, proprietor or agent in charge of such  
25 establishment of the changes or alterations necessary to comply with such  
26 standards.

27 (1) The notice shall order the establishment to comply with the  
28 applicable standards within a period of time specified in the notice, which  
29 shall be not less than 10 days, except that a shorter period of time may be  
30 provided in the notice whenever the secretary believes it essential to  
31 protect the public health and safety.

32 (2) The notice also shall state that the license for such establishment  
33 shall be subject to suspension or revocation for failure to comply with the  
34 applicable standards within the time specified.

35 (3) The licensee of any establishment given a notice pursuant to this  
36 section may apply to the secretary for an extension of the time specified  
37 in the notice. The secretary shall review such application and may grant  
38 or deny such application or modify the provisions of the notice with  
39 respect to the time for compliance with any of the particulars stated in the  
40 notice.

41 (c) Upon reinspection of any lodging establishment given a notice  
42 pursuant to this section, if it is determined that such establishment does  
43 not comply with the applicable standards promulgated in the rules and  
44 regulations of the secretary, the secretary may suspend or revoke the  
45 license issued for such establishment. If the secretary suspends or revokes  
46 the license, the secretary shall send written notice to the licensee that the