

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Derek Schmidt at 8:30 a.m. on February 3, 2004 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Legislative Research
Lisa Montgomery, Office of the Revisor of Statutes
Robert Myers, Committee Secretary

Conferees appearing before the committee:

Chris Wilson - Kansas Building Industry Association
Greg Foley - Kansas Department of Agriculture
Doug Wareham - Kansas Grain & Feed Association; Kansas Agribusiness Retailers Association
Leslie Kaufman - Kansas Cooperative Council
Ron Pope - Kansas Trial Lawyers Association

Others attending:

See Attached List.

Chris Wilson appeared before the committee in order to request the introduction of a bill that would define the terms "direct impairment" and "substantial adverse impact on the area," with regard to the appropriation of water for beneficial use. She presented to the committee a copy of **HB 2079** for reference (Attachment 1).

Senator Lee moved to introduce the bill as requested, seconded by Senator Tyson. The motion carried.

Greg Foley appeared before the committee in order to request the introduction of a bill regarding water appropriations. Specifically, the bill would amend **SB 287** with regard to its July 1, 2004 deadline for certifications. With two-hundred of these certifications currently still incomplete, Mr. Foley stressed the need to amend the bill in order to require that action be taken on all pending cases, even after the July 2004 deadline.

Senator Huelskamp moved to introduce the bill as requested, seconded by Senator Morris. The motion carried.

Chairman Schmidt brought to the attention of the committee the need to take final action on **SB 353**. He asked the committee for any thoughts, concerns, or issues regarding the bill, but none were noted.

Senator Morris moved to report the bill favorably for passage, seconded by Senator Downey. The motion carried.

Chairman Schmidt brought to the attention of the committee the need to take final action on **SB 352**. He asked the committee for any thoughts, concerns, or issues regarding the bill, but none were noted.

Senator Downey moved to report the bill favorably for passage, seconded by Senator Lee. The motion carried.

Chairman Schmidt opened the continued hearing on **SB 335**.

Doug Wareham appeared before the committee as a proponent of **SB 335**. He stressed the importance of propane as both a source of heat and power for many, especially with regard to those in rural areas. He addressed the increasing reluctance faced by those in the propane business in finding insurance providers willing to write them, due to the industry's lack of regulation over licensing, insurance, etc. He thus showed support for the bills' establishment of permitting requirements, as well as its granting of authority to the Office of the Kansas State Fire Marshall to adopt regulation over the handling and distribution of

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propane. Furthermore, he supported the finding of homeowners as liable for damage and injury in those cases of installation and/or repair of liquified petroleum gas devices without proper notification of their propane supplier. In ending, he pointed out that fertilizers, agricultural chemicals, and other agribusiness products are indeed regulated heavily in order to ensure overall safety, thus stressing his support for propane regulation as well ([Attachment 2](#)).

Doug Wareham also brought to the committee's attention the efforts being made to identify the smaller types of propane systems that would not be impacted by the bills' requirement to notify suppliers of alterations made by customers. He mentioned the example of the small systems used for gas cooking grills.

Leslie Kaufman appeared before the committee as a proponent of **SB 335**. She indicated that safety is of paramount concern for petroleum dealers in Kansas, and that she thus supports the implementation of a registry and/or licensing program in order to ensure the delivery of propane in a conscientious manner. Furthermore, she showed support for limiting the liability of those propane dealers meeting registration and/or licensing requirements, as well as in instances of accidents occurring through no fault of their own ([Attachment 3](#)).

Ron Pope appeared before the committee as an opponent of **SB 335** in its current state. His testimony revolved around the case of a Shawnee County man, Mr. Wayne Dick, whom he had personally represented in court. Mr. Dick installed a hot water heater in his home, connecting it to his propane line. Although the hot water heater lacked a "drip leg" and was later recalled, he never replaced it. Mr. Dick had been advised by an unregulated propane technician that the gas itself lacks any smell whatsoever, but that an odor is later added to it in order to allow for its detection upon a leak. The technician had further informed Mr. Dick that a propane distributor should be called upon smelling the odor, and that no appliances should be lit until the potential problem is addressed. According to Ron Pope, what the technician did not tell Mr. Dick though, was that the added odor may separate from the gas if left undisturbed for an unspecified period of time. Mr. Pope reported that the odor rises while the gas falls. Thus, upon not smelling the odor-free gas that had fallen into his basement, Mr. Dick lit his hot water heater and consequently blew up his house and severely injured both himself and his wife.

Ron Pope indicated that the sole issue of the Mr. Dick case was the exchange of inadequate information. He stressed that if a retailer or distributor is going to give information to a customer, it is necessary to give all of it (for example, that propane, although infused with an odor, may lose its smell if left undisturbed). He then pointed out to the committee that in the state of Oklahoma there are no caps placed on rewards given in cases such as that of Mr. Dick, unlike in Kansas where the cap is \$250,000. Furthermore, with regard to practices in Oklahoma, Mr. Pope pointed out that both the propane industry and the information given to consumers are indeed regulated.

Ron Pope further indicated to the committee that **SB 335** is an immunity bill, in that it would make propane retailers and/or distributors immune from liability in such cases as that of Mr. Dick, regardless of whether or not they have awareness of a problem with a propane system. He challenged this proposed immunity by declaring it unconstitutional. Specifically, he claimed that it takes away from the ability of citizens to look at the circumstances of each case in order to determine fault. As a secondary consequence of the bills' intended immunity, he stated his belief that the insurance policies of farmers, ranchers, and rural homeowners would change. In closing, he showed his agreement for the bills' enablement of regulation and licensing within the propane industry, as well as its empowerment of the Office of the Kansas State Fire Marshal to oversee it. However, he expressed his opposition to the liability portion of the bill, stating that it should be stricken ([Attachment 4](#)).

On behalf of Scott Anderson of Kansas Farmers Service Association in Hutchinson, written testimony was submitted to the committee in support of **SB 335** ([Attachment 5](#)).

On behalf of Kevin Kelly of Two Rivers Coop in Arkansas City, written testimony was submitted to the committee in support of **SB 335** ([Attachment 6](#)).

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Senator Corbin moved to approve the minutes of both the January 20 and 21 committee meetings, seconded by Senator Tyson. The motion carried.

Chairman Schmidt announced to the committee a second to-be-determined working meeting for all interested parties and committee members, regarding **SB 335**. The purpose of this meeting would be to again deal with technical difficulties with regard to the structure and language of the bill.

The next meeting is scheduled for Wednesday, February 4, 2004.