

HOUSE BILL No. 2987

By Committee on Taxation

2-24

9 AN ACT concerning taxation; authorizing counties to impose an excise
10 tax on removal and severance of aggregate; amending K.S.A. 2005
11 Supp. 12-194 and 19-101a and repealing the existing sections.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) As used in this section:

15 (1) "Aggregate" means rock and rock materials removed by an oper-
16 ator from a quarrying operation for sale at retail or wholesale or gravel
17 removed from or processed from rock removed by an operator from a
18 quarrying operation for sale at retail or wholesale;

19 (2) "gross amount" means the amount in total weight of the aggregate
20 which was removed from the soil for sale at retail or wholesale;

21 (3) "operator" means the person primarily responsible for the man-
22 agement or operation of aggregate production from a lease, production
23 unit or quarry or pit;

24 (4) "person" means any natural person, firm, corporation, partner-
25 ship, joint venture, estate, trust or other association of persons;

26 (5) "producer" means any person owning, controlling, managing or
27 leasing any aggregate pits, quarries or operations of land from which ag-
28 gregate is removed, any person who severs in any manner such aggregate,
29 and includes any person owning any direct or beneficial interest in the
30 aggregate quarry or pit whether severed by such person or another person
31 pursuant to a lease, contract or otherwise and includes a royalty owner;

32 (6) "removal" or "removed" means the physical transportation of ag-
33 gregate off the lease or production unit or from the quarry or pit where
34 severed. If manufacture or conversion of the aggregate into a refined
35 product occurs on the premises where severed, the aggregate shall be
36 deemed to be removed on the date such manufacture or conversion
37 commences;

38 (7) "severance" or "severed" means the production of aggregate
39 through extraction, digging, crushing or removal or withdrawal of aggre-
40 gate from any land; and

41 (8) "taxpayer" means any person liable for the taxes imposed by this
42 section.

43 (b) The governing body of any county may adopt a resolution impos-

1 ing an excise tax upon the removal or severance of aggregate from land,
2 quarries or pits within the county by producers for sale at retail or whole-
3 sale or for transport, storage, profit or commercial use at not to exceed
4 20 cents per ton of aggregate removed or severed subject to the provisions
5 of this section. Such resolution shall be published once each week for two
6 consecutive weeks in the official county newspaper. If within 30 days of
7 the final publication of a resolution adopted pursuant to this subsection,
8 a petition signed by a number of electors of the county equal to not less
9 than 5% of the number of qualified electors of the county shall be filed
10 in the office of the county election officer demanding that such resolution
11 be submitted to a vote of the electors, the resolution shall not take effect
12 until submitted to a referendum and approved by the electors. An election
13 if called, shall be called within 30 days and held within 45 days after the
14 filing of the petition. The board, by resolution, shall call the election and
15 fix the date. Such resolution shall be published once each week for two
16 consecutive weeks in the official county newspaper, and the election shall
17 be conducted in the same manner as are elections for officers of such
18 county. Such election may be conducted in accordance with the provi-
19 sions of the mail ballot election act.

20 (c) The tax imposed pursuant to this section shall be borne ratably
21 by all producers in proportion to the producer's respective beneficial in-
22 terest in the aggregate removed or severed.

23 (d) The tax imposed pursuant to this section shall be upon the re-
24 moving or severing of aggregate within the county, regardless of the place
25 of sale of such aggregate or to whom sold or by whom used, or the fact
26 that the delivery of such aggregate may be to points outside of the county.

27 (e) Any such county imposing an excise tax on aggregate pursuant to
28 this section is prohibited from administering or collecting such tax locally,
29 but shall utilize the services of the department of revenue. The secretary
30 of revenue shall administer, enforce and collect any excise tax imposed
31 pursuant to this section and shall adopt such rules and regulations nec-
32 essary for the efficient and effective administration, enforcement and col-
33 lection thereof. The state director of taxation shall cause such taxes to be
34 collected within the boundaries of any county which imposes an excise
35 tax pursuant to this section. All moneys collected by the director of tax-
36 ation pursuant to the provisions of this section shall be remitted to the
37 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
38 amendments thereto. Upon receipt of each such remittance, the state
39 treasurer shall deposit the entire amount in the state treasury to the credit
40 of the county aggregate production tax fund, which fund is hereby estab-
41 lished in the state treasury. Any refund due on any tax collected pursuant
42 to this section shall be paid out of the county aggregate production tax
43 refund fund and reimbursement to such fund shall be made by the di-

1 rector of taxation from collections of the tax revenue. All moneys collected
2 pursuant to this section for each county which imposes such an excise tax
3 shall be remitted at least quarterly by the state treasurer to the county
4 treasurer of such county.

5 (f) The amount of the tax payable each month under the provisions
6 of this section, shall be due and payable on or before the 20th day of the
7 second month following the end of the month in which the aggregate is
8 removed from the lease or production unit. The tax is upon the producers
9 of such aggregate in the proportion to their respective beneficial interests
10 at the time of severance, but the operator of the lease or production unit
11 may remit the tax as provided in this section. The producer or the op-
12 erator shall collect the total amount of tax due and shall remit the same
13 to the director. In no event shall a producer be relieved of responsibility
14 for the tax until such tax has been paid. The county shall have a lien on
15 all the aggregate severed in the county in the hands of the operator, any
16 producer or the first or any subsequent purchaser thereof to secure the
17 payment of the tax. In the event any taxpayer required by this section to
18 pay the tax fails to do so, the director shall proceed against such taxpayer
19 to collect the tax in the manner provided by K.S.A. 79-3235, and amend-
20 ments thereto.

21 (g) All producers of aggregate in a county which has imposed a tax
22 as provided in this section shall keep a record of the gross amount of the
23 weight of aggregate which was removed or severed and any other infor-
24 mation required by the secretary of revenue. Such producers shall file
25 such record with the director of taxation every 60 days. Such records shall
26 at all times during business hours of the day be available for and subject
27 to inspection by the director of taxation or the director's duly authorized
28 agents and employees, for a period of three years from the last day of the
29 calendar year to which the records pertain. Such records shall be pre-
30 served during the entire period during which such records are subject to
31 inspection by the director.

32 (h) If any provision of this act or the application thereof to any person
33 or circumstance is held invalid, such invalidity shall not affect other pro-
34 visions or applications of the act which can be given effect without the
35 invalid provision or application, and to this end the provisions of this act
36 are declared to be severable.

37 Sec. 2. K.S.A. 2005 Supp. 12-194 is hereby amended to read as fol-
38 lows: 12-194. No city or county shall levy or impose an excise tax or a tax
39 in the nature of an excise, other than a retailers' sales tax and a compen-
40 sating use tax, upon the sale or transfer of personal or real property, or
41 the use thereof, or the rendering of a service, but the provisions of this
42 section shall not be construed as prohibiting any city from (a) contracting
43 with a utility for a fixed charge based upon a percentage of gross receipts

1 derived from the service permitted by grant, right, privilege or franchise
2 to such utility; (b) imposing an occupation tax or license fee for the priv-
3 ilege of engaging in any business, trade, occupation or profession, or ren-
4 dering or furnishing any service, but the determination of any such license
5 fee shall not be based upon any amount the licensee has received from
6 the sale or transfer of personal or real property, or for the rendering or
7 furnishing of a service, or on the income of the licensee; ~~or~~ (c) levying
8 any occupation tax or license fee imposed by such city prior to the effec-
9 tive date of this act; *or (d) imposing an excise tax on the removal or*
10 *severance of aggregate pursuant to the provisions of section 1, and amend-*
11 *ments thereto.* No license fee described in subsection (b) of this section
12 shall be imposed upon any utility contracting with and subject to a charge,
13 described in subsection (a) of this section, by such city.

14 Sec. 3. K.S.A. 2005 Supp. 19-101a is hereby amended to read as
15 follows: 19-101a. (a) The board of county commissioners may transact all
16 county business and perform all powers of local legislation and adminis-
17 tration it deems appropriate, subject only to the following limitations,
18 restrictions or prohibitions:

19 (1) Counties shall be subject to all acts of the legislature which apply
20 uniformly to all counties.

21 (2) Counties may not consolidate or alter county boundaries.

22 (3) Counties may not affect the courts located therein.

23 (4) Counties shall be subject to acts of the legislature prescribing
24 limits of indebtedness.

25 (5) In the exercise of powers of local legislation and administration
26 authorized under provisions of this section, the home rule power con-
27 ferred on cities to determine their local affairs and government shall not
28 be superseded or impaired without the consent of the governing body of
29 each city within a county which may be affected.

30 (6) Counties may not legislate on social welfare administered under
31 state law enacted pursuant to or in conformity with public law No. 271—
32 74th congress, or amendments thereof.

33 (7) Counties shall be subject to all acts of the legislature concerning
34 elections, election commissioners and officers and their duties as such
35 officers and the election of county officers.

36 (8) Counties shall be subject to the limitations and prohibitions im-
37 posed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto,
38 prescribing limitations upon the levy of retailers' sales taxes by counties.

39 (9) Counties may not exempt from or effect changes in statutes made
40 nonuniform in application solely by reason of authorizing exceptions for
41 counties having adopted a charter for county government.

42 (10) No county may levy ad valorem taxes under the authority of this
43 section upon real property located within any redevelopment project area

1 established under the authority of K.S.A. 12-1772, and amendments
2 thereto, unless the resolution authorizing the same specifically authorized
3 a portion of the proceeds of such levy to be used to pay the principal of
4 and interest upon bonds issued by a city under the authority of K.S.A.
5 12-1774, and amendments thereto.

6 (11) Counties shall have no power under this section to exempt from
7 any statute authorizing or requiring the levy of taxes and providing sub-
8 stitute and additional provisions on the same subject, unless the resolution
9 authorizing the same specifically provides for a portion of the proceeds
10 of such levy to be used to pay a portion of the principal and interest on
11 bonds issued by cities under the authority of K.S.A. 12-1774, and amend-
12 ments thereto.

13 (12) Counties may not exempt from or effect changes in the provi-
14 sions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

15 (13) Except as otherwise specifically authorized by K.S.A. 12-1,101
16 through 12-1,109, and amendments thereto, counties may not levy and
17 collect taxes on incomes from whatever source derived.

18 (14) Counties may not exempt from or effect changes in K.S.A. 19-
19 430, and amendments thereto.

20 (15) Counties may not exempt from or effect changes in K.S.A. 19-
21 302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

22 (16) (A) Counties may not exempt from or effect changes in K.S.A.
23 13-13a26, and amendments thereto.

24 (B) This provision shall expire on June 30, 2006.

25 (17) (A) Counties may not exempt from or effect changes in K.S.A.
26 71-301a, and amendments thereto.

27 (B) This provision shall expire on June 30, 2006.

28 (18) Counties may not exempt from or effect changes in K.S.A. 19-
29 15,139, 19-15,140 and 19-15,141, and amendments thereto.

30 (19) Counties may not exempt from or effect changes in the provi-
31 sions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-
32 1226, and amendments thereto, or the provisions of K.S.A. 12-1260
33 through 12-1270 and 12-1276, and amendments thereto.

34 (20) Counties may not exempt from or effect changes in the provi-
35 sions of K.S.A. 19-211, and amendments thereto.

36 (21) Counties may not exempt from or effect changes in the provi-
37 sions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

38 (22) Counties may not regulate the production or drilling of any oil
39 or gas well in any manner which would result in the duplication of reg-
40 ulation by the state corporation commission and the Kansas department
41 of health and environment pursuant to chapter 55 and chapter 65 of the
42 Kansas Statutes Annotated, and amendments thereto, and any rules and
43 regulations adopted pursuant thereto. Counties may not require any li-

- 1 cense or permit for the drilling or production of oil and gas wells. Counties
2 may not impose any fee or charge for the drilling or production of any
3 oil or gas well.
- 4 (23) Counties may not exempt from or effect changes in K.S.A. 79-
5 41a04, and amendments thereto.
- 6 (24) Counties may not exempt from or effect changes in K.S.A. 79-
7 1611, and amendments thereto.
- 8 (25) Counties may not exempt from or effect changes in K.S.A. 79-
9 1494, and amendments thereto.
- 10 (26) Counties may not exempt from or effect changes in subsection
11 (b) of K.S.A. 19-202, and amendments thereto.
- 12 (27) Counties may not exempt from or effect changes in subsection
13 (b) of K.S.A. 19-204, and amendments thereto.
- 14 (28) Counties may not levy or impose an excise, severance or any
15 other tax in the nature of an excise tax upon the physical severance and
16 production of any mineral or other material from the earth or water,
17 *except that counties may levy or impose an excise tax on the removal or*
18 *severance of aggregate pursuant to the provisions of section 1, and amend-*
19 *ments thereto.*
- 20 (29) Counties may not exempt from or effect changes in K.S.A. 79-
21 2017 or 79-2101, and amendments thereto.
- 22 (30) Counties may not exempt from or effect changes in K.S.A. 2-
23 3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, 65-
24 1,178 through 65-1,199, and amendments thereto.
- 25 (31) Counties may not exempt from or effect changes in K.S.A. 2005
26 Supp. 80-121, and amendments thereto.
- 27 (32) Counties may not exempt from or effect changes in K.S.A. 19-
28 228, and amendments thereto.
- 29 (33) Counties may not exempt from or effect changes in the wireless
30 enhanced 911 act or in the provisions of K.S.A. 12-5301 through 12-5308,
31 and amendments thereto.
- 32 (34) Counties may not exempt from or effect changes in K.S.A. 2005
33 Supp. 26-601, and amendments thereto.
- 34 (35) (A) From and after November 15, 2005, counties may not ex-
35 empt from or effect changes in the Kansas liquor control act except as
36 provided by paragraph (B).
- 37 (B) From and after November 15, 2005, counties may adopt resolu-
38 tions which are not in conflict with the Kansas liquor control act.
- 39 (36) (A) From and after November 15, 2005, counties may not ex-
40 empt from or effect changes in the Kansas cereal malt beverage act except
41 as provided by paragraph (B).
- 42 (B) From and after November 15, 2005, counties may adopt resolu-
43 tions which are not in conflict with the Kansas cereal malt beverage act.

1 (b) Counties shall apply the powers of local legislation granted in
2 subsection (a) by resolution of the board of county commissioners. If no
3 statutory authority exists for such local legislation other than that set forth
4 in subsection (a) and the local legislation proposed under the authority
5 of such subsection is not contrary to any act of the legislature, such local
6 legislation shall become effective upon passage of a resolution of the
7 board and publication in the official county newspaper. If the legislation
8 proposed by the board under authority of subsection (a) is contrary to an
9 act of the legislature which is applicable to the particular county but not
10 uniformly applicable to all counties, such legislation shall become effec-
11 tive by passage of a charter resolution in the manner provided in K.S.A.
12 19-101b, and amendments thereto.

13 (c) Any resolution adopted by a county which conflicts with the re-
14 strictions in subsection (a) is null and void.

15 Sec. 4. K.S.A. 2005 Supp. 12-194 and 19-101a are hereby repealed.

16 Sec. 5. This act shall take effect and be in force from and after its
17 publication in the statute book.