

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson Eugene Shore at 9:00 a.m. on February 2, 1994 in Room 423-S of the Capitol.

All members were present except: Representative Vickrey - Excused

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

Conferees appearing before the committee:

Chairman Shore called the meeting to order and informed committee members that written testimony in support of corporate dairy farming from Associated Milk Producers, Inc. has been distributed, attachment #1.

Chairman Shore asked committee members to consider legislation concerning the dairy marketing advisory board and milk marketing orders. The Senate Agriculture Committee failed to pass identical legislation and he feels this committee should at least have the opportunity to look at the issue. Representative Alldritt made a motion to introduce such legislation, with the balloon as considered in the Senate. Representative Lloyd seconded the motion. The motion carried.

Chairman Shore opened discussion on HB 2584.

Representative McClure offered an amendment to remove the 14 counties from the bill, which would allow counties to petition in by resolution statewide, attachment #2. Jill Wolters, Revisor of Statutes, explained that line 24 on page 1 spells out that 10% of the qualified electors are required for the petition.

Representative Bryant asked the purpose of removing the counties that have already shown an interest in this legislation. Representative McClure explained that, as written now, those 14 counties don't have an option and this amendment gives them an opportunity to allow or not allow corporate dairy farming.

Referring to the issue of local control, Representative Alldritt asked if that is better accomplished by mandating a change in the law or by creating an opportunity at the local level, as this amendment would do.

Committee discussion followed. Concerns were raised about the time limit on when a vote must occur, how much time is allowed to file a protest petition, what the expense would be for an election, why county commissioners can't, by resolution, authorize corporate dairy farming themselves, subject to a protest petition, and whether there should be clarification on what kind of election should be used, i.e., general, special, etc. Ms. Wolters clarified that a resolution must be passed or a petition filed at least 90 days before an election.

Chairman Shore said that if the 14 counties are removed from the bill, it makes sense to allow county commissioners to permit corporate dairying by resolution, subject to a protest petition. Representative Reinhardt suggested a 5% figure for the protest petition.

Representative Alldritt made a motion to allow county commissioners, by resolution, to permit corporate dairying in their county, subject to a 5% protest petition and also, to allow voters (5%) to petition that the issue be put on the ballot. Representative Reinhardt seconded the motion. Discussion followed on the potential of a two year handicap, due to the election process. It was suggested that the effective date could be changed from "publication in the statute book" to "publication in the Kansas Register" or to take out the phrase "general election" and say "election" or "special election". The motion carried.

Representative McClure made a motion on her amendment to remove the 14 counties from the bill. Representative Lloyd seconded the motion. The motion carried. Representative Powers asked to be recorded

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE, Room 423-S Statehouse, at 9:00 a.m. on February 2, 1994.

as voting "No".

Representative Reinhardt made a motion to change the effective date from publication in the statute book to publication in the Kansas Register. Representative Goodwin seconded the motion. The motion carried.

Representative Freeborn made a motion to strike the words "general election" and replace them with the word "election". Representative Rezac seconded the motion. Representative Goodwin asked that it be specified "county election" to prevent cities from acting on this. Discussion followed. First and second agreed to rephrase the motion to read "general election" will be replaced with the words "state or county wide election". The motion carried.

Discussion followed on whether a special election is included in the phrase "county wide". Ms. Wolters stated it was her opinion that it should be clarified.

Representative Gatlin made a motion to replace "state or county wide election" with "state or county wide regular or special election". Representative Rezac seconded the motion. The motion carried.

Ms. Wolters pointed out that in the local option budget on school issues, there are 30 days after publication in the newspaper for a petition to be signed. Representative Henry made a motion to allow 60 days for a protest petition in **HB 2584**. Representative Neufeld seconded the motion. The motion carried.

Representative Powers made a motion to pass **HB 2584** favorably for passage as amended. Representative Gatlin seconded the motion. Division was called. On a show of hands, the motion carried 14 to 5. Representatives Rezac and Swall asked to be recorded as voting "No".

Chairman Shore announced he is appointing a sub-committee to study **HB 2773**. Representative Lloyd will chair the committee and sub-committee members will be Representatives Rezac, Weiland and Kejr.

The meeting adjourned at 10:00am. The next meeting is scheduled for February 8, 1994.

April 2, 1993

Honorable Joan Finney
Governor
State of Kansas
State House
Topeka, KS

Dear Governor Finney:

Over 400 members of the Kansas Division of Associated Milk Producers, Inc., in Annual Meeting of the Cooperative in Minneapolis, have adopted the resolution which is enclosed.

Over 14,729 dairy farmers from all over the North Central, Midwest and Southwest, including Missouri, Iowa, Oklahoma, Arkansas and Texas join with us to ask your support of Senate Bill 336 to give to Kansas dairy farmers the right to organize a dairy operation as a corporation. This will allow small units to continue our assets for efficiency and economy. This opportunity will help us to grow - to stabilize our market - to produce dairy products with Kansas milk - and to help preserve the Kansas family farm by making it easier to transfer ownership and operation. This will help us to continue a successful business at our Hillsboro plant and to improve the Kansas economy for all its citizens.

We respectfully ask you to sign Senate Bill 336 into law. Thank you for your consideration of this matter. We need your help. Thanks.

Sincerely,

Myron Schmidt

Myron Schmidt, President

Dwight Haddock

Dwight Haddock, General Manager
Kansas Division
Associated Milk Producers, Inc.

HOUSE AGRICULTURE
2-2-94
Attachment #1

ATT 1

Session of 1994

HOUSE BILL No. 2584

By Committee on Agriculture

1-10

8 AN ACT concerning agricultural corporations; relating to dairy pro-
 9 duction facilities; amending K.S.A. 1993 Supp. 17-5903 and 17-
 10 5904 and repealing the existing sections.

11
 12 *Be it enacted by the Legislature of the State of Kansas:*

13 New Section 1. (a) The board of county commissioners ~~of a~~
 14 ~~county that is not specifically listed in subsection (a)(15) of K.S.A.~~
 15 ~~17-5904, and amendments thereto,~~ may, by resolution, or shall, upon
 16 a petition filed in accordance with subsection (b), submit to the
 17 qualified electors of the county at any state general election a prop-
 18 osition to permit a dairy production facility, as defined in K.S.A.
 19 17-5903, and amendments thereto, to be established within the
 20 county.

21 (b) A petition to submit a proposition to the qualified voters of
 22 a county pursuant to this section shall be filed with the county
 23 election officer. The petition shall be signed by qualified electors of
 24 the county equal in number to not less than 10% of the electors of
 25 the county who voted for the office of secretary of state at the last
 26 preceding general election at which such office was elected. The
 27 following shall appear on the petition:

28 "We request an election to determine whether a dairy production facility shall be
 29 allowed to be established in _____ county."

30 (c) Upon the adoption of a resolution or the submission of a valid
 31 petition calling for an election pursuant to this section, the county
 32 election officer shall cause the following proposition to be placed on
 33 the ballot at the next succeeding state general election which occurs
 34 more than 90 days after the resolution is adopted or the petition is
 35 filed with the county election officer:

36 "Shall a dairy production facility be allowed to be established in _____
 37 county?"

38 (d) If a majority of the votes cast and counted is in favor of the
 39 proposition, the county election officer shall transmit a copy of the
 40 result to the secretary of state who shall publish in the Kansas register
 41 the result of such election and that dairy production facilities are
 42 allowed to be established in such county.

43 (e) The election provided for by this section shall be conducted,

House AGRICULTURE
 2-2-94
 Attachment #2

ATT 2

1 and the votes counted and canvassed, in the manner provided by
2 law for question submitted elections of the county.

3 Sec. 2. K.S.A. 1993 Supp. 17-5903 is hereby amended to read
4 as follows: 17-5903. As used in this act:

5 (a) "Corporation" means a domestic or foreign corporation or-
6 ganized for profit or nonprofit purposes.

7 (b) "Nonprofit corporation" means a corporation organized not
8 for profit and which qualifies under section 501(c)(3) of the federal
9 internal revenue code of 1954 as amended.

10 (c) "Limited partnership" has the meaning provided by K.S.A.
11 56-1a01, and amendments thereto.

12 (d) "Limited agricultural partnership" means a limited partner-
13 ship founded for the purpose of farming and ownership of agricultural
14 land in which:

15 (1) The partners do not exceed 10 in number;

16 (2) the partners are all natural persons, persons acting in a fi-
17 duciary capacity for the benefit of natural persons or nonprofit cor-
18 porations, or general partnerships other than corporate partnerships
19 formed under the laws of the state of Kansas; and

20 (3) at least one of the general partners is a person residing on
21 the farm or actively engaged in the labor or management of the
22 farming operation. If only one partner is meeting the requirement
23 of this provision and such partner dies, the requirement of this
24 provision does not apply for the period of time that the partner's
25 estate is being administered in any district court in Kansas.

26 (e) "Corporate partnership" means a partnership, as defined in
27 K.S.A. 56-306, and amendments thereto, which has within the as-
28 sociation one or more corporations or one or more limited liability
29 companies.

30 (f) "Feedlot" means a lot, yard, corral, or other area in which
31 livestock fed for slaughter are confined. The term includes within
32 its meaning agricultural land in such acreage as is necessary for the
33 operation of the feedlot.

34 (g) "Agricultural land" means land suitable for use in farming.

35 (h) "Farming" means the cultivation of land for the production
36 of agricultural crops, the raising of poultry, the production of eggs,
37 the production of milk, the production of fruit or other horticultural
38 crops, grazing or the production of livestock. Farming does not
39 include the production of timber, forest products, nursery products
40 or sod, and farming does not include a contract to provide spraying,
41 harvesting or other farm services.

42 (i) "Fiduciary capacity" means an undertaking to act as executor,
43 administrator, guardian, conservator, trustee for a family trust, au-

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1 thorized trust or testamentary trust or receiver or trustee in bank-
2 ruptcy.

3 (j) "Family farm corporation" means a corporation:

4 (1) Founded for the purpose of farming and the ownership of
5 agricultural land in which the majority of the voting stock is held
6 by and the majority of the stockholders are persons related to each
7 other, all of whom have a common ancestor within the third degree
8 of relationship, by blood or by adoption, or the spouses or the
9 stepchildren of any such persons, or persons acting in a fiduciary
10 capacity for persons so related;

11 (2) all of its stockholders are natural persons or persons acting
12 in a fiduciary capacity for the benefit of natural persons; and

13 (3) at least one of the stockholders is a person residing on the
14 farm or actively engaged in the labor or management of the farming
15 operation. A stockholder who is an officer of any corporation referred
16 to in this subsection and who is one of the related stockholders
17 holding a majority of the voting stock shall be deemed to be actively
18 engaged in the management of the farming corporation. If only one
19 stockholder is meeting the requirement of this provision and such
20 stockholder dies, the requirement of this provision does not apply
21 for the period of time that the stockholder's estate is being admin-
22 istered in any district court in Kansas.

23 (k) "Authorized farm corporation" means a Kansas corporation,
24 other than a family farm corporation, all of the incorporators of which
25 are Kansas residents and which is founded for the purpose of farming
26 and the ownership of agricultural land in which:

27 (1) The stockholders do not exceed 15 in number;

28 (2) the stockholders are all natural persons or persons acting in
29 a fiduciary capacity for the benefit of natural persons or nonprofit
30 corporations; and

31 (3) at least 30% of the stockholders are persons residing on the
32 farm or actively engaged in the day-to-day labor or management of
33 the farming operation. If only one of the stockholders is meeting
34 the requirement of this provision and such stockholder dies, the
35 requirement of this provision does not apply for the period of time
36 that the stockholder's estate is being administered in any district
37 court in Kansas.

38 For the purposes of this definition, if more than one person re-
39 ceives stock by bequest from a deceased stockholder, all of such
40 persons, collectively, shall be deemed to be one stockholder, and a
41 husband and wife, and their estates, collectively, shall be deemed
42 to be one stockholder.

43 (l) "Trust" means a fiduciary relationship with respect to prop-

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erty, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. A trust includes a legal entity holding property as trustee, agent, escrow agent, attorney-in-fact and in any similar capacity.

(m) "Family trust" means a trust in which:

(1) A majority of the equitable interest in the trust is held by and the majority of the beneficiaries are persons related to each other, all of whom have a common ancestor within the third degree of relationship, by blood or by adoption, or the spouses or step-children of any such persons, or persons acting in a fiduciary capacity for persons so related; and

(2) all the beneficiaries are natural persons, are persons acting in a fiduciary capacity, other than as trustee for a trust, or are nonprofit corporations.

(n) "Authorized trust" means a trust other than a family trust in which:

(1) The beneficiaries do not exceed 15 in number;

(2) the beneficiaries are all natural persons, are persons acting in a fiduciary capacity, other than as trustee for a trust, or are nonprofit corporations; and

(3) the gross income thereof is not exempt from taxation under the laws of either the United States or the state of Kansas.

For the purposes of this definition, if one of the beneficiaries dies, and more than one person succeeds, by bequest, to the deceased beneficiary's interest in the trust, all of such persons, collectively, shall be deemed to be one beneficiary, and a husband and wife, and their estates, collectively, shall be deemed to be one beneficiary.

(o) "Testamentary trust" means a trust created by devising or bequeathing property in trust in a will as such terms are used in the Kansas probate code.

(p) "Poultry confinement facility" means the structures and related equipment used for housing, breeding, laying of eggs or feeding of poultry in a restricted environment. The term includes within its meaning only such agricultural land as is necessary for proper disposal of liquid and solid wastes and for isolation of the facility to reasonably protect the confined poultry from exposure to disease. As used in this subsection, "poultry" means chickens, turkeys, ducks, geese or other fowl.

(q) "Rabbit confinement facility" means the structures and related equipment used for housing, breeding, raising, feeding or processing of rabbits in a restricted environment. The term includes within its meaning only such agricultural land as is necessary for proper disposal

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1 of liquid and solid wastes and for isolation of the facility to reasonably
2 protect the confined rabbits from exposure to disease.

3 (r) "Processor" means a person, firm, corporation, limited liability
4 company or limited partnership, which alone or in conjunction with
5 others, directly or indirectly, controls the manufacturing, processing
6 or preparation for sale of pork products having a total annual whole-
7 sale value of \$10,000,000 or more. Any person, firm, corporation,
8 member or limited partner with a 10% or greater interest in another
9 person, firm, corporation, limited liability company or limited part-
10 nership involved in the manufacturing, processing or preparation for
11 sale of pork products having a total annual wholesale value of
12 \$10,000,000 or more shall also be considered a processor. The term
13 "processor" shall not include collective bargaining units or farmer-
14 owned cooperatives.

15 (s) "Swine confinement facility" means the land, structures and
16 related equipment owned or leased by a corporation and used for
17 housing, breeding, farrowing or feeding of swine in an enclosed
18 environment. The term includes within its meaning only such ag-
19 ricultural land as is necessary for proper disposal of liquid and solid
20 wastes in environmentally sound amounts for crop production and
21 to avoid nitrate buildup and for isolation of the facility to reasonably
22 protect the confined animals from exposure to disease.

23 (t) "Limited liability company" has the meaning provided by
24 K.S.A. 1993 Supp. 17-7602, and amendments thereto.

25 (u) "Limited liability agricultural company" means a limited li-
26 ability company founded for the purpose of farming and ownership
27 of agricultural land in which:

28 (1) The members do not exceed 10 in number;

29 (2) the members are all natural persons, persons acting in a
30 fiduciary capacity for the benefit of natural persons or nonprofit
31 corporations, or general partnerships other than corporate partner-
32 ships formed under the laws of the state of Kansas; and

33 (3) at least one of the members is a person residing on the farm
34 or actively engaged in the labor or management of the farming
35 operation. If only one member is meeting the requirement of this
36 provision and such member dies, the requirement of this provision
37 does not apply for the period of time that the member's estate is
38 being administered in any district court in Kansas.

39 (v) "Dairy production facility" means the land, structures and
40 related equipment used for housing, breeding, raising, feeding or
41 milking dairy cows. The term includes within its meaning only such
42 agricultural land as is necessary for proper disposal of liquid and
43 solid wastes and for isolation of the facility to reasonably protect

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1 *the confined cows from exposure to disease.*

2 Sec. 3. K.S.A. 1993 Supp. 17-5904 is hereby amended to read
3 as follows: 17-5904. (a) No corporation, trust, limited liability com-
4 pany, limited partnership or corporate partnership, other than a
5 family farm corporation, authorized farm corporation, limited liability
6 agricultural company, limited agricultural partnership, family trust,
7 authorized trust or testamentary trust shall, either directly or in-
8 directly, own, acquire or otherwise obtain or lease any agricultural
9 land in this state. The restrictions provided in this section do not
10 apply to the following:

11 (1) A bona fide encumbrance taken for purposes of security.

12 (2) Agricultural land when acquired as a gift, either by grant or
13 devise, by a bona fide educational, religious or charitable nonprofit
14 corporation.

15 (3) Agricultural land acquired by a corporation or a limited lia-
16 bility company in such acreage as is necessary for the operation of
17 a nonfarming business. Such land may not be used for farming except
18 under lease to one or more natural persons, a family farm corpo-
19 ration, authorized farm corporation, family trust, authorized trust or
20 testamentary trust. The corporation shall not engage, either directly
21 or indirectly, in the farming operation and shall not receive any
22 financial benefit, other than rent, from the farming operation.

23 (4) Agricultural land acquired by a corporation or a limited lia-
24 bility company by process of law in the collection of debts, or pur-
25 suant to a contract for deed executed prior to the effective date of
26 this act, or by any procedure for the enforcement of a lien or claim
27 thereon, whether created by mortgage or otherwise, if such cor-
28 poration divests itself of any such agricultural land within 10 years
29 after such process of law, contract or procedure, except that pro-
30 visions of K.S.A. 9-1102, and amendments thereto, shall apply to
31 any bank which acquires agricultural land.

32 (5) A municipal corporation.

33 (6) Agricultural land which is acquired by a trust company or
34 bank in a fiduciary capacity or as a trustee for a nonprofit corporation.

35 (7) Agricultural land owned or leased or held under a lease pur-
36 chase agreement as described in K.S.A. 12-1741, and amendments
37 thereto, by a corporation, corporate partnership, limited corporate
38 partnership or trust on the effective date of this act if: (A) Any such
39 entity owned or leased such agricultural land prior to July 1, 1965,
40 provided such entity shall not own or lease any greater acreage of
41 agricultural land than it owned or leased prior to the effective date
42 of this act unless it is in compliance with the provisions of this act;
43 (B) any such entity was in compliance with the provisions of K.S.A.

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1 17-5901 prior to its repeal by this act, provided such entity shall
 2 not own or lease any greater acreage of agricultural land than it
 3 owned or leased prior to the effective date of this act unless it is
 4 in compliance with the provisions of this act, and absence of evidence
 5 in the records of the county where such land is located of a judicial
 6 determination that such entity violated the provisions of K.S.A. 17-
 7 5901 shall constitute proof that the provisions of this act do not apply
 8 to such agricultural land, and that such entity was in compliance
 9 with the provisions of K.S.A. 17-5901 prior to its repeal; or (C) any
 10 such entity was not in compliance with the provisions of K.S.A. 17-
 11 5901 prior to its repeal by this act, but is in compliance with the
 12 provisions of this act by July 1, 1991.

13 (8) Agricultural land held or leased by a corporation or a limited
 14 liability company for use as a feedlot, a poultry confinement facility
 15 or rabbit confinement facility.

16 (9) Agricultural land held or leased by a corporation for the pur-
 17 pose of the production of timber, forest products, nursery products
 18 or sod.

19 (10) Agricultural land used for bona fide educational research or
 20 scientific or experimental farming.

21 (11) Agricultural land used for the commercial production and
 22 conditioning of seed for sale or resale as seed or for the growing of
 23 alfalfa by an alfalfa processing entity if such land is located within
 24 30 miles of such entity's plant site.

25 (12) Agricultural land owned or leased by a corporate partnership
 26 or limited corporate partnership in which the partners associated
 27 therein are either natural persons, family farm corporations, au-
 28 thorized farm corporations, limited liability agricultural companies,
 29 family trusts, authorized trusts or testamentary trusts.

30 (13) Any corporation, either domestic or foreign, or any limited
 31 liability company, organized for coal mining purposes which engages
 32 in farming on any tract of land owned by it which has been strip
 33 mined for coal.

34 (14) Agricultural land owned or leased by a limited partnership
 35 prior to the effective date of this act.

36 (15) Agricultural land ~~located in Clark, Finney, Ford, Grant,~~
 37 ~~Gray, Hamilton, Haskell, Hodgeman, Kearny, Meade, Norton, Sew-~~
 38 ~~ard, Stanton or Stevens county in Kansas or in a county that has~~
 39 ~~voted favorably pursuant to section 1 allow dairy production facilities~~
 40 ~~in such county and~~ held or leased by a corporation or a limited
 41 liability company for use as a dairy production facility.

42 (b) Except as provided for in K.S.A. 17-5905, and amendments
 43 thereto, production contracts entered into by a corporation, trust,

in any county which has voted
 favorably pursuant to Section 1

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1 limited liability company, limited partnership or corporate partner-
2 ship and a person engaged in farming for the production of agri-
3 cultural products shall not be construed to mean the ownership,
4 acquisition, obtainment or lease, either directly or indirectly, of any
5 agricultural land in this state.

6 (c) Any corporation, trust, limited liability company, limited part-
7 nership or corporate partnership, other than a family farm corpo-
8 ration, authorized farm corporation, family trust, authorized trust or
9 testamentary trust, violating the provisions of this section shall be
10 subject to a civil penalty of not more than \$50,000 and shall divest
11 itself of any land acquired in violation of this section within one year
12 after judgment is entered in the action. The district courts of this
13 state may prevent and restrain violations of this section through the
14 issuance of an injunction. The attorney general or district or county
15 attorney shall institute suits on behalf of the state to enforce the
16 provisions of this section.

17 (d) Civil penalties sued for and recovered by the attorney general
18 shall be paid into the state general fund. Civil penalties sued for
19 and recovered by the county attorney or district attorney shall be
20 paid into the general fund of the county where the proceedings were
21 instigated.

22 Sec. 4. K.S.A. 1993 Supp. 17-5903 and 17-5904 are hereby re-
23 pealed.

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

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