

Approved: 2-8-94
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE.

The meeting was called to order by Chairperson David Corbin at 10:00 a.m. on February 4, 1994 in Room 423-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee:
Attorney General Robert Stephan
Gary Reser, Governor's Office
William Craven, Sierra Club
Vernon McKinzie, Kansas Pest Control Association
Norbert Marek
Warren Parker, Kansas Farm Bureau

Others attending: See attached list

Chairperson asked for action on the minutes of January 27, and 31, and February 1 and 2. A motion was made by Senator Frahm that the minutes be adopted. The motion was seconded by Senator Steffes. Motion carried.

Senator Karr requested that a bill be introduced with a longer term plan for the State Fair Board. Senator Karr moved the bill be introduced as a committee bill. Senator Frahm seconded the motion. The motion carried.

Chairperson Corbin opened the discussion on SB 554 - concerning agricultural corporations; relating to swine production facilities. A balloon copy of the bill was distributed (Attachment 1), the amendments answer the Committees's concern regarding the protest petition. It allows counties to reconsider the question at a future election, by use of the protest petition, and amends the number of electors necessary to sign the petition from 10% to 5%. Staff reviewed the amendments and stated the language "and limited liability companies", was clarification language. Senator Steffes moved to adopt the proposed amendments. The motion was seconded by Senator Frahm. The motion carried.

Senator Tillotson proposed amendments that provide for either party to make a written request to the Acting Secretary of the Department of Agriculture providing for resolutions of contract disputes by mediation or arbitration. Also, adds New Sec. 9. dealing with how processor can terminate or cancel a contract. A balloon copy of these amendments was distributed (Attachment 2).

Staff responded to questions concerning how current contracts on mediation and arbitration are handled.

Senator Tillotson moved that the amendments be adopted. Senator Sallee seconded the motion. The motion carried.

A member of the Committee expressed concern with family farmers being able to supply hogs with the genetics demanded by corporations.

A motion was made by Senator Morris to recommend the bill favorably as amended. Seconded by Senator Frahm. Motion carried.

Chairperson Corbin opened the hearing on SB 599 - creating the Department of Agriculture having the Governor appoint the Secretary of Agriculture. A fiscal note for SB 599 was distributed.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE, Room 423-S Statehouse, at 10:00 a.m. on February 4, 1994.

Attorney General Bob Stephan gave an overview of where the lawsuit is and what the ramification would be if the bill passed. He cautioned that a change in the structure of the Board of Agriculture might affect various other boards, and he mentioned the Workers Compensation Board. He stated he had requested the case be moved up on the docket of the 10th Circuit Court, and the request was denied. Finally if legislation is passed regarding the case, he thought it might moot the appeal.

William Craven, Kansas Natural Resource Council and Sierra Club, testified in support of the bill, because it calls for the creation of a Department of Agriculture headed by a Secretary who is appointed by the Governor and confirmed by the Senate. This would raise agriculture to a cabinet level status and they think it should be (Attachment 3). Also, he distributed written testimony from Lynn Hellebust (Attachment 4). He responded to questions regarding the law suit, and the one person, one vote rule.

Responding to Mr. Craven's remarks, a member of the Committee stated that some times a position is taken by no action, and legislative and judicial both have responsibilities.

Gary Reser testified in support of the bill. He said the Governor feels that it is imperative that government be accountable and accessible to all Kansans, and they believe this bill would accomplish that (Attachment 5).

Written testimony from Ivan Wyatt, Kansas Farmers Union (Attachment 6), and Dan Nagangast from The Kansas Rural Center (Attachment 7), supporting SB 599 was distributed.

Vernon McKinzie, Chairperson, Kansas Pest Control Association, testified in opposition to SB 599. Their organization would prefer SB 475 (Attachment 8).

Warren Parker, Kansas Farm Bureau, testified in opposition to the bill. They are opposed at this time to the Legislature approving any bill to restructure (Attachment 9).

Norbert Marek, presented testimony supporting a board appointed by the Governor, with staggering five year terms. The Board would nominate two candidates for the Governor to choose from when appointing a Secretary of Agriculture (Attachment 10).

Chairperson Corbin distributed an article from the Pro Farmer, January 29, 1994 issue (Attachment 11).

The meeting adjourned at 11:00 a.m.

The next meeting is scheduled for February 7, 1994.

Senate Ag Committee
February 4, 1994

Name

Organization /
address

Ben Reser

3720 SW KINGS FOREST RD
TOPEKA

Garry Reser

Gov's Office

Topeka

Bill Gaven

Topeka

Sierra Club

Bob Stephan

Topeka

O.G.

David Becker

Seaboard Corporation

Merriam, Kansas

Rick Hoffman

SEABOARD

KC

Jim Allen

Seaboard

Topeka

Mary Horsch

Topeka

AG's Office

Tom Bruno

Topeka

Allen Assoc.

GUEST LIST

COMMITTEE: Senate Agriculture

DATE: February 4, 1994

NAME	ADDRESS	ORGANIZATION
Jim Allen	Topeka	Seaboard
Tom Bruno	Topeka	Allen Assoc
Russ FREY	Topeka	KVMA
Norbert + Marek	Topeka	
Mary Sockwell	Topeka	Dept of Administration Division of Personnel Services
Maggie Johnson	Topeka	
George Wingerdt		Gov Office
Marty Varner	Manhattan	KAA
Dean Garwood	Topeka	Ks Pest Control Assn.
Jim Janis	Salina	Ks Pest Cont Assn.
Thomas D. Becker	K.C.	" " " "
Vernon McKinnis	Emporia	Ks. Pest Cont. Assn
Kenneth M. Wilke	Topeka	Ks Dept of Ag.
Tom Tunnell	"	KGFDA
Rich McKee	"	KLA
Walter Fisher	Manhattan	KFB
Jamie Clover Adams	Topeka	KGFA/KFCA
Jeff Brownell	Emporia	Sen. Kato's Office
Alan Steppat	Topeka	PETE McGill + Assoc.
Willynda Holmes	Liberal	
Timothy W Fowler	Liberal	West Plains Energy
Edna Carey	Liberal	Video Vendor
J.C. LONG	Topeka	Utilicorp United

Session of 1994

SENATE BILL No. 554

By Committee on Agriculture

1-20

AN ACT concerning agricultural corporations; relating to swine production facilities; amending K.S.A. 12-1749b and 79-250 and K.S.A. 1993 Supp. 17-5903, 17-5904 and 79-32,154 and repealing the existing sections; also repealing K.S.A. 17-5905 and 17-5906.

and limited liability companies

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

New Section 1. (a) The provisions of subsection (a)(15) of K.S.A. 17-5904, and amendments thereto, allowing agricultural land held or leased by a corporation or limited liability company to be used as a swine production facility shall be effective in every county unless a petition in opposition to the same, signed by qualified electors of the county equal in number to not less than 10% of the electors of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected, is filed with the county election officer of such county on or before June 1, 1994.

5%

(b) In the event a valid petition is filed, the county election officer shall submit the question of whether a swine production facility shall be allowed to be established in such county to the electors of the county at the August 2, 1994 primary election.

(c) If a majority of the votes cast and counted are in favor of allowing swine production facilities to be established in such county, the county election officer shall transmit a copy of the result to the secretary of state who shall publish in the Kansas register the result of such election and that swine production facilities are allowed to be established in such county.

(d) If a majority of the votes cast and counted are in opposition to allowing swine production facilities to be established in such county, the county election officer shall transmit a copy of the result to the secretary of state who shall publish in the Kansas register the result of such election and that swine production facilities are not allowed to be established in such county.

(e) The election provided for by this section shall be conducted, and the votes counted and canvassed, in the manner provided by law for question submitted elections of the county.

(f) If no petition as specified above is filed in the county in

*Senate Ag. Co.
2-4-94*

Attachment 1

ATT 1

1 accordance with the provisions of this section, after June 1, 1994,
2 swine production facilities shall be allowed to be established in such
3 county.

4 Sec. 2. K.S.A. 12-1749b is hereby amended to read as follows:
5 12-1749b. No revenue bonds shall be issued under authority of
6 K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto, in
7 which all or part of the proceeds of such bond issue are to be used
8 to purchase, acquire, construct, reconstruct, improve, equip, furnish,
9 repair, enlarge or remodel property for any swine ~~confinement~~
10 *production* facility on agricultural land which is owned, acquired,
11 obtained or leased by a corporation. As used in this section, "cor-
12 poration," "agricultural land" and "swine ~~confinement~~ *production*
13 facility" have the meanings respectively ascribed thereto by K.S.A.
14 17-5903, and amendments thereto.

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

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

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

22 (c) "Limited partnership" has the meaning provided by K.S.A.
23 56-1a01, and amendments thereto.

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

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

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

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

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

42 (f) "Feedlot" means a lot, yard, corral, or other area in which
43 livestock fed for slaughter are confined. The term includes within

1-2

(g) If at the August 2, 1994 primary election, a county votes in the majority to oppose allowing swine production facilities in such county, at every statewide primary election thereafter, the electors of the county may petition to resubmit the question of whether a swine production facility shall be allowed to be established in such county. The petition shall be signed by qualified electors of the county equal in number to not less than 5% of the electors of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected and shall be filed with the county election officer of such county on or before June 1 of the year of the statewide primary election. In the event a valid petition is filed the county election officer shall submit the question of whether a swine production facility shall be allowed to be established in such county to the electors of the county at the statewide primary election. The provisions of subsections (c), (d) and (e) shall apply to such election.

its meaning agricultural land in such acreage as is necessary for the operation of the feedlot.

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

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

(i) "Fiduciary capacity" means an undertaking to act as executor, administrator, guardian, conservator, trustee for a family trust, authorized trust or testamentary trust or receiver or trustee in bankruptcy.

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

(1) Founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders 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 the stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related;

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

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

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

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

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

(3) at least 30% of the stockholders are persons residing on the

1-4
1-1

2 rm or actively engaged in the day-to-day labor or management of
3 the farming operation. If only one of the stockholders is meeting
4 the requirement of this provision and such stockholder dies, the
5 requirement of this provision does not apply for the period of time
6 that the stockholder's estate is being administered in any district
7 court in Kansas.

8 For the purposes of this definition, if more than one person re-
9 ceives stock by bequest from a deceased stockholder, all of such
10 persons, collectively, shall be deemed to be one stockholder, and a
11 husband and wife, and their estates, collectively, shall be deemed
12 to be one stockholder.

13 (l) "Trust" means a fiduciary relationship with respect to prop-
14 erty, subjecting the person by whom the property is held to equitable
15 duties to deal with the property for the benefit of another person,
16 which arises as a result of a manifestation of an intention to create
17 it. A trust includes a legal entity holding property as trustee, agent,
18 escrow agent, attorney-in-fact and in any similar capacity.

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

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

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

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

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

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

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

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

42 (o) "Testamentary trust" means a trust created by devising or
43 bequeathing property in trust in a will as such terms are used in
44 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 of liquid and solid wastes and for isolation of the facility to reasonably protect the confined rabbits from exposure to disease.

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

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

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

(u) (t) "Limited liability agricultural company" means a limited liability company founded for the purpose of farming and ownership of agricultural land in which:

- (1) The members do not exceed 10 in number;
- (2) the members are all natural persons, persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit

1 corporations, or general partnerships other than corporate partner-
2 ships formed under the laws of the state of Kansas; and

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

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

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

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

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

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

1-6
39 (5) A municipal corporation.

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

42 (7) Agricultural land owned or leased or held under a lease pur-
43 chase agreement as described in K.S.A. 12-1741, and amendments

thereto, by a corporation, corporate partnership, limited corporate partnership or trust on the effective date of this act if: (A) Any such entity owned or leased such agricultural land prior to July 1, 1965, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act; (B) any such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act, and absence of evidence in the records of the county where such land is located of a judicial determination that such entity violated the provisions of K.S.A. 17-5901 shall constitute proof that the provisions of this act do not apply to such agricultural land, and that such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal; or (C) any such entity was not in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, but is in compliance with the provisions of this act by July 1, 1991.

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

(9) Agricultural land held or leased by a corporation for the purpose of the production of timber, forest products, nursery products or sod.

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

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

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

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

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

(15) *Except as provided by section 1, agricultural land held or*

leased by a corporation or a limited liability company for use as a swine production facility.

(b) Except as provided for in K.S.A. 17-5905, and amendments thereto, Production contracts entered into by a corporation, trust, limited liability company, limited partnership or corporate partnership and a person engaged in farming for the production of agricultural products shall not be construed to mean the ownership, acquisition, obtainment or lease, either directly or indirectly, of any agricultural land in this state.

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

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

Sec. 5. K.S.A. 79-250 is hereby amended to read as follows: 79-250. No city or county may grant any exemption from ad valorem taxation under section 13 of article 11 of the Constitution of the state of Kansas for all or any portion of the appraised valuation of all or any part of the buildings, improvements, tangible personal property and land of any poultry confinement facility, rabbit confinement facility or swine confinement production facility which is on agricultural land and which is owned or operated by a corporation. As used in this section, "corporation," "agricultural land," "poultry confinement facility," "rabbit confinement facility" and "swine confinement production facility" have the meanings respectively ascribed thereto by K.S.A. 17-5903, and amendments thereto.

Sec. 6. K.S.A. 1993 Supp. 79-32,154 is hereby amended to read as follows: 79-32,154. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein: (a) "Facility" shall mean any factory, mill, plant, refinery, warehouse, feedlot, building or complex of buildings located within the state, including the land on which such facility is located and all machinery,

or limited liability company
"limited liability company,"

8-1

equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility. The word "building" shall include only structures within which individuals are customarily employed or which are customarily used to house machinery, equipment or other property.

(b) "Qualified business facility" shall mean a facility which satisfies the requirements of paragraphs (1) and (2) of this subsection.

(1) Such facility is employed by the taxpayer in the operation of a revenue producing enterprise, as defined in subsection (c). Such facility shall not be considered a qualified business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons. If the taxpayer employs only a portion of such facility in the operation of a revenue producing enterprise, and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue producing enterprise, the portion employed by the taxpayer in the operation of a revenue producing enterprise shall be considered a qualified business facility, if the requirements of paragraph (2) of this subsection are satisfied.

(2) If such facility was acquired by the taxpayer from another person or persons, such facility was not employed, immediately prior to the transfer of title to such facility to the taxpayer, or to the commencement of the term of the lease of such facility to the taxpayer, by any other person or persons in the operation of a revenue producing enterprise and the taxpayer continues the operation of the same or substantially identical revenue producing enterprise, as defined in subsection (i), at such facility.

(c) "Revenue producing enterprise" shall mean: (1) The assembly, fabrication, manufacture or processing of any agricultural, mineral or manufactured product;

(2) the storage, warehousing, distribution or sale of any products of agriculture, aquaculture, mining or manufacturing;

(3) the feeding of livestock at a feedlot;

(4) the operation of laboratories or other facilities for scientific, agricultural, aquacultural, animal husbandry or industrial research, development or testing;

(5) the performance of services of any type;

(6) the feeding of aquatic plants and animals at an aquaculture operation;

(7) the administrative management of any of the foregoing activities; or

(8) any combination of any of the foregoing activities.

"Revenue producing enterprise" shall not mean a swine confine-

1 ment *production* facility as defined in K.S.A. 17-5903, and amend-
2 ments thereto.

3 (d) "Qualified business facility employee" shall mean a person
4 employed by the taxpayer in the operation of a qualified business
5 facility during the taxable year for which the credit allowed by K.S.A.
6 79-32,153, and amendments thereto, is claimed. A person shall be
7 deemed to be so engaged if such person performs duties in con-
8 nection with the operation of the qualified business facility on: (1)
9 A regular, full-time basis; (2) a part-time basis, provided such person
10 is customarily performing such duties at least 20 hours per week
11 throughout the taxable year; or (3) a seasonal basis, provided such
12 person performs such duties for substantially all of the season cus-
13 tomary for the position in which such person is employed. The
14 number of qualified business facility employees during any taxable
15 year shall be determined by dividing by 12 the sum of the number
16 of qualified business facility employees on the last business day of
17 each month of such taxable year. If the qualified business facility is
18 in operation for less than the entire taxable year, the number of
19 qualified business facility employees shall be determined by dividing
20 the sum of the number of qualified business facility employees on
21 the last business day of each full calendar month during the portion
22 of such taxable year during which the qualified business facility was
23 in operation by the number of full calendar months during such
24 period. Notwithstanding the provisions of this subsection, for the
25 purpose of computing the credit allowed by K.S.A. 79-32,153, and
26 amendments thereto, in the case of an investment in a qualified
27 business facility, which facility existed and was operated by the
28 taxpayer or related taxpayer prior to such investment, the number
29 of qualified business facility employees employed in the operation
30 of such facility shall be reduced by the average number, computed
31 as provided in this subsection, of individuals employed in the op-
32 eration of the facility during the taxable year preceding the taxable
33 year in which the qualified business facility investment was made at
34 the facility.

35 (e) "Qualified business facility investment" shall mean the value
36 of the real and tangible personal property, except inventory or prop-
37 erty held for sale to customers in the ordinary course of the taxpayer's
38 business, which constitutes the qualified business facility, or which
39 is used by the taxpayer in the operation of the qualified business
40 facility, during the taxable year for which the credit allowed by
41 K.S.A. 79-32,153, and amendments thereto, is claimed. The value
42 of such property during such taxable year shall be: (1) Its original
43 cost if owned by the taxpayer; or (2) eight times the net annual

1-10

rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The qualified business facility investment shall be determined by dividing by 12 the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the qualified business facility is in operation for less than an entire taxable year, the qualified business facility investment shall be determined by dividing the sum of the total value of such property on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment the amount of the taxpayer's qualified business facility investment in such facility shall be reduced by the average amount, computed as provided in this subsection, of the investment of the taxpayer or a related taxpayer in the facility for the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.

(f) "Commencement of commercial operations" shall be deemed to occur during the first taxable year for which the qualified business facility is first available for use by the taxpayer, or first capable of being used by the taxpayer, in the revenue producing enterprise in which the taxpayer intends to use the qualified business facility.

(g) "Qualified business facility income" shall mean the Kansas taxable income, as defined in article 32 of chapter 79 of the Kansas Statutes Annotated and amendments thereto, derived by the taxpayer from the operation of the qualified business facility. If a taxpayer has income derived from the operation of a qualified business facility as well as from other activities conducted within this state, the Kansas taxable income derived by the taxpayer from the operation of the qualified business facility shall be determined by multiplying the taxpayer's Kansas taxable income, computed in accordance with article 32 of chapter 79 of the Kansas Statutes Annotated and amendments thereto, by a fraction, the numerator of which is the property factor, as defined in paragraph (1), plus the payroll factor, as defined in paragraph (2), and the denominator of which is two.

(1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in connection with the operation of

11-1

1-12

1 the qualified business facility during the tax period, and the denom-
2 inator of which is the average value of all the taxpayer's real and
3 tangible personal property owned or rented and used in this state
4 during the tax period. The average value of all such property shall
5 be determined as provided in K.S.A. 79-3281 and 79-3282, and
6 amendments thereto.

7 (2) The payroll factor is a fraction, the numerator of which is the
8 total amount paid during the tax period by the taxpayer for com-
9 pensation to persons qualifying as qualified business facility em-
10 ployees, as determined under subsection (d), at the qualified business
11 facility, and the denominator of which is the total amount paid in
12 this state during the tax period by the taxpayer for compensation.
13 The compensation paid in this state shall be determined as provided
14 in K.S.A. 79-3283, and amendments thereto.

15 The formula set forth in this subsection (g) shall not be used for
16 any purpose other than determining the qualified business facility
17 income attributable to a qualified business facility.

18 (h) "Related taxpayer" shall mean (1) a corporation, partnership,
19 trust or association controlled by the taxpayer; (2) an individual,
20 corporation, partnership, trust or association in control of the tax-
21 payer; or (3) a corporation, partnership, trust or association controlled
22 by an individual, corporation, partnership, trust or association in
23 control of the taxpayer. For the purposes of this act, "control of a
24 corporation" shall mean ownership, directly or indirectly, of stock
25 possessing at least 80% of the total combined voting power of all
26 classes of stock entitled to vote and at least 80% of all other classes
27 of stock of the corporation; "control of a partnership or association"
28 shall mean ownership of at least 80% of the capital or profits interest
29 in such partnership or association; and "control of a trust" shall mean
30 ownership, directly or indirectly, of at least 80% of the beneficial
31 interest in the principal or income of such trust.

32 (i) "Same or substantially identical revenue producing enterprise"
33 shall mean a revenue producing enterprise in which the products
34 produced or sold, services performed or activities conducted are the
35 same in character and use, are produced, sold, performed or con-
36 ducted in the same manner and to or for the same type of customers
37 as the products, services or activities produced, sold, performed or
38 conducted in another revenue producing enterprise.

39 Sec. 7. K.S.A. 12-1749b, 17-5905, 17-5906 and 79-250 and
40 K.S.A. 1993 Supp. 17-5903, 17-5904 and 79-32,154 are hereby re-
41 pealed.

42 Sec. 8. This act shall take effect and be in force from and after
43 its publication in the Kansas register.

1-12

Session of 1994

SENATE BILL No. 554

By Committee on Agriculture

1-20

8 AN ACT concerning agricultural corporations; relating to swine pro-
9 duction facilities; amending K.S.A. 12-1749b and 79-250 and
10 K.S.A. 1993 Supp. 17-5903, 17-5904 and 79-32,154 and repealing
11 the existing sections; also repealing K.S.A. 17-5905 and 17-5906.
12

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

14 New Section 1. (a) The provisions of subsection (a)(15) of K.S.A.
15 17-5904, and amendments thereto, allowing agricultural land held
16 or leased by a corporation or limited liability company to be used
17 as a swine production facility shall be effective in every county unless
18 a petition in opposition to the same, signed by qualified electors of
19 the county equal in number to not less than 10% of the electors of
20 the county who voted for the office of secretary of state at the last
21 preceding general election at which such office was elected, is filed
22 with the county election officer of such county on or before June 1,
23 1994.

24 (b) In the event a valid petition is filed, the county election
25 officer shall submit the question of whether a swine production
26 facility shall be allowed to be established in such county to the
27 electors of the county at the August 2, 1994 primary election.

28 (c) If a majority of the votes cast and counted are in favor of
29 allowing swine production facilities to be established in such county,
30 the county election officer shall transmit a copy of the result to the
31 secretary of state who shall publish in the Kansas register the result
32 of such election and that swine production facilities are allowed to
33 be established in such county.

34 (d) If a majority of the votes cast and counted are in opposition
35 to allowing swine production facilities to be established in such
36 county, the county election officer shall transmit a copy of the result
37 to the secretary of state who shall publish in the Kansas register the
38 result of such election and that swine production facilities are not
39 allowed to be established in such county.

40 (e) The election provided for by this section shall be conducted,
41 and the votes counted and canvassed, in the manner provided by
42 law for question submitted elections of the county.

43 (f) If no petition as specified above is filed in the county in

*Senate Ag. Co.
2-4-94*

attachment 2 2-1

ATT 2

accordance with the provisions of this section, after June 1, 1994, swine production facilities shall be allowed to be established in such county.

Sec. 2. K.S.A. 12-1749b is hereby amended to read as follows: 12-1749b. No revenue bonds shall be issued under authority of K.S.A. 12-1740 to 12-1749a, inclusive, and amendments thereto, in which all or part of the proceeds of such bond issue are to be used to purchase, acquire, construct, reconstruct, improve, equip, furnish, repair, enlarge or remodel property for any swine ~~confinement~~ production facility on agricultural land which is owned, acquired, obtained or leased by a corporation. As used in this section, "corporation," "agricultural land" and "swine ~~confinement~~ production facility" have the meanings respectively ascribed thereto by K.S.A. 17-5903, and amendments thereto.

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

(a) "Corporation" means a domestic or foreign corporation organized for profit or nonprofit purposes.

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

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

(d) "Limited agricultural partnership" means a limited partnership founded for the purpose of farming and ownership of agricultural land in which:

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

(2) the partners are all natural persons, persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations, or general partnerships other than corporate partnerships formed under the laws of the state of Kansas; and

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

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

(f) "Feedlot" means a lot, yard, corral, or other area in which livestock fed for slaughter are confined. The term includes within

its meaning agricultural land in such acreage as is necessary for the operation of the feedlot.

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

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

(i) "Fiduciary capacity" means an undertaking to act as executor, administrator, guardian, conservator, trustee for a family trust, authorized trust or testamentary trust or receiver or trustee in bankruptcy.

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

(1) Founded for the purpose of farming and the ownership of agricultural land in which the majority of the voting stock is held by and the majority of the stockholders 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 the stepchildren of any such persons, or persons acting in a fiduciary capacity for persons so related;

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

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

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

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

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

(3) at least 30% of the stockholders are persons residing on the

2-4

1 or actively engaged in the day-to-day labor or management of
the farming operation. If only one of the stockholders is meeting
the requirement of this provision and such stockholder dies, the
requirement of this provision does not apply for the period of time
that the stockholder's estate is being administered in any district
court in Kansas.

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

(l) "Trust" means a fiduciary relationship with respect to prop-
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 of liquid and solid wastes and for isolation of the facility to reasonably protect the confined rabbits from exposure to disease.

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

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

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

(u) (t) "Limited liability agricultural company" means a limited liability company founded for the purpose of farming and ownership of agricultural land in which:

- (1) The members do not exceed 10 in number;
- (2) the members are all natural persons, persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit

Reinsert definition of processor

2-5

1 corporations, or general partnerships other than corporate partner-
2 ships formed under the laws of the state of Kansas; and

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

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

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

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

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

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

9.6
(5) A municipal corporation.

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

43 (7) Agricultural land owned or leased or held under a lease pur-
chase agreement as described in K.S.A. 12-1741, and amendments

thereto, by a corporation, corporate partnership, limited corporate partnership or trust on the effective date of this act if: (A) Any such entity owned or leased such agricultural land prior to July 1, 1965, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act; (B) any such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act, and absence of evidence in the records of the county where such land is located of a judicial determination that such entity violated the provisions of K.S.A. 17-5901 shall constitute proof that the provisions of this act do not apply to such agricultural land, and that such entity was in compliance with the provisions of K.S.A. 17-5901 prior to its repeal; or (C) any such entity was not in compliance with the provisions of K.S.A. 17-5901 prior to its repeal by this act, but is in compliance with the provisions of this act by July 1, 1991.

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

(9) Agricultural land held or leased by a corporation for the purpose of the production of timber, forest products, nursery products or sod.

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

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

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

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

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

(15) *Except as provided by section 1, agricultural land held or*

leased by a corporation or a limited liability company for use as a swine production facility.

(b) Except as provided for in K.S.A. 17-5905, and amendments thereto, Production contracts entered into by a corporation, trust, limited liability company, limited partnership or corporate partnership and a person engaged in farming for the production of agricultural products shall not be construed to mean the ownership, acquisition, obtainment or lease, either directly or indirectly, of any agricultural land in this state.

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

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

Sec. 5. K.S.A. 79-250 is hereby amended to read as follows: 79-250. No city or county may grant any exemption from ad valorem taxation under section 13 of article 11 of the Constitution of the state of Kansas for all or any portion of the appraised valuation of all or any part of the buildings, improvements, tangible personal property and land of any poultry confinement facility, rabbit confinement facility or swine confinement production facility which is on agricultural land and which is owned or operated by a corporation. As used in this section, "corporation," "agricultural land," "poultry confinement facility," "rabbit confinement facility" and "swine confinement production facility" have the meanings respectively ascribed thereto by K.S.A. 17-5903, and amendments thereto.

Sec. 6. K.S.A. 1993 Supp. 79-32,154 is hereby amended to read as follows: 79-32,154. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein: (a) "Facility" shall mean any factory, mill, plant, refinery, warehouse, feedlot, building or complex of buildings located within the state, including the land on which such facility is located and all machinery,

equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility. The word "building" shall include only structures within which individuals are customarily employed or which are customarily used to house machinery, equipment or other property.

(b) "Qualified business facility" shall mean a facility which satisfies the requirements of paragraphs (1) and (2) of this subsection.

(1) Such facility is employed by the taxpayer in the operation of a revenue producing enterprise, as defined in subsection (c). Such facility shall not be considered a qualified business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons. If the taxpayer employs only a portion of such facility in the operation of a revenue producing enterprise, and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue producing enterprise, the portion employed by the taxpayer in the operation of a revenue producing enterprise shall be considered a qualified business facility, if the requirements of paragraph (2) of this subsection are satisfied.

(2) If such facility was acquired by the taxpayer from another person or persons, such facility was not employed, immediately prior to the transfer of title to such facility to the taxpayer, or to the commencement of the term of the lease of such facility to the taxpayer, by any other person or persons in the operation of a revenue producing enterprise and the taxpayer continues the operation of the same or substantially identical revenue producing enterprise, as defined in subsection (i), at such facility.

(c) "Revenue producing enterprise" shall mean: (1) The assembly, fabrication, manufacture or processing of any agricultural, mineral or manufactured product;

(2) the storage, warehousing, distribution or sale of any products of agriculture, aquaculture, mining or manufacturing;

(3) the feeding of livestock at a feedlot;

(4) the operation of laboratories or other facilities for scientific, agricultural, aquacultural, animal husbandry or industrial research, development or testing;

(5) the performance of services of any type;

(6) the feeding of aquatic plants and animals at an aquaculture operation;

(7) the administrative management of any of the foregoing activities; or

(8) any combination of any of the foregoing activities.

"Revenue producing enterprise" shall not mean a swine confine-

1 ment production facility as defined in K.S.A. 17-5903, and amend-
2 ments thereto.

3 (d) "Qualified business facility employee" shall mean a person
4 employed by the taxpayer in the operation of a qualified business
5 facility during the taxable year for which the credit allowed by K.S.A.
6 79-32,153, and amendments thereto, is claimed. A person shall be
7 deemed to be so engaged if such person performs duties in con-
8 nection with the operation of the qualified business facility on: (1)
9 A regular, full-time basis; (2) a part-time basis, provided such person
10 is customarily performing such duties at least 20 hours per week
11 throughout the taxable year; or (3) a seasonal basis, provided such
12 person performs such duties for substantially all of the season cus-
13 tomary for the position in which such person is employed. The
14 number of qualified business facility employees during any taxable
15 year shall be determined by dividing by 12 the sum of the number
16 of qualified business facility employees on the last business day of
17 each month of such taxable year. If the qualified business facility is
18 in operation for less than the entire taxable year, the number of
19 qualified business facility employees shall be determined by dividing
20 the sum of the number of qualified business facility employees on
21 the last business day of each full calendar month during the portion
22 of such taxable year during which the qualified business facility was
23 in operation by the number of full calendar months during such
24 period. Notwithstanding the provisions of this subsection, for the
25 purpose of computing the credit allowed by K.S.A. 79-32,153, and
26 amendments thereto, in the case of an investment in a qualified
27 business facility, which facility existed and was operated by the
28 taxpayer or related taxpayer prior to such investment, the number
29 of qualified business facility employees employed in the operation
30 of such facility shall be reduced by the average number, computed
31 as provided in this subsection, of individuals employed in the op-
32 eration of the facility during the taxable year preceding the taxable
33 year in which the qualified business facility investment was made at
34 the facility.

2-10
35 (e) "Qualified business facility investment" shall mean the value
36 of the real and tangible personal property, except inventory or prop-
37 erty held for sale to customers in the ordinary course of the taxpayer's
38 business, which constitutes the qualified business facility, or which
is used by the taxpayer in the operation of the qualified business
facility, during the taxable year for which the credit allowed by
K.S.A. 79-32,153, and amendments thereto, is claimed. The value
of such property during such taxable year shall be: (1) Its original
cost if owned by the taxpayer; or (2) eight times the net annual

rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The qualified business facility investment shall be determined by dividing by 12 the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the qualified business facility is in operation for less than an entire taxable year, the qualified business facility investment shall be determined by dividing the sum of the total value of such property on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment the amount of the taxpayer's qualified business facility investment in such facility shall be reduced by the average amount, computed as provided in this subsection, of the investment of the taxpayer or a related taxpayer in the facility for the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.

(f) "Commencement of commercial operations" shall be deemed to occur during the first taxable year for which the qualified business facility is first available for use by the taxpayer, or first capable of being used by the taxpayer, in the revenue producing enterprise in which the taxpayer intends to use the qualified business facility.

(g) "Qualified business facility income" shall mean the Kansas taxable income, as defined in article 32 of chapter 79 of the Kansas Statutes Annotated and amendments thereto, derived by the taxpayer from the operation of the qualified business facility. If a taxpayer has income derived from the operation of a qualified business facility as well as from other activities conducted within this state, the Kansas taxable income derived by the taxpayer from the operation of the qualified business facility shall be determined by multiplying the taxpayer's Kansas taxable income, computed in accordance with article 32 of chapter 79 of the Kansas Statutes Annotated and amendments thereto, by a fraction, the numerator of which is the property factor, as defined in paragraph (1), plus the payroll factor, as defined in paragraph (2), and the denominator of which is two.

(1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in connection with the operation of

1 the qualified business facility during the tax period, and the denom-
2 inator of which is the average value of all the taxpayer's real and
3 tangible personal property owned or rented and used in this state
4 during the tax period. The average value of all such property shall
5 be determined as provided in K.S.A. 79-3281 and 79-3282, and
6 amendments thereto.

7 (2) The payroll factor is a fraction, the numerator of which is the
8 total amount paid during the tax period by the taxpayer for com-
9 pensation to persons qualifying as qualified business facility em-
10 ployees, as determined under subsection (d), at the qualified business
11 facility, and the denominator of which is the total amount paid in
12 this state during the tax period by the taxpayer for compensation.
13 The compensation paid in this state shall be determined as provided
14 in K.S.A. 79-3283, and amendments thereto.

15 The formula set forth in this subsection (g) shall not be used for
16 any purpose other than determining the qualified business facility
17 income attributable to a qualified business facility.

18 (h) "Related taxpayer" shall mean (1) a corporation, partnership,
19 trust or association controlled by the taxpayer; (2) an individual,
20 corporation, partnership, trust or association in control of the tax-
21 payer; or (3) a corporation, partnership, trust or association controlled
22 by an individual, corporation, partnership, trust or association in
23 control of the taxpayer. For the purposes of this act, "control of a
24 corporation" shall mean ownership, directly or indirectly, of stock
25 possessing at least 80% of the total combined voting power of all
26 classes of stock entitled to vote and at least 80% of all other classes
27 of stock of the corporation; "control of a partnership or association"
28 shall mean ownership of at least 80% of the capital or profits interest
29 in such partnership or association; and "control of a trust" shall mean
30 ownership, directly or indirectly, of at least 80% of the beneficial
31 interest in the principal or income of such trust.

32 (i) "Same or substantially identical revenue producing enterprise"
33 shall mean a revenue producing enterprise in which the products
34 produced or sold, services performed or activities conducted are the
35 same in character and use, are produced, sold, performed or con-
36 ducted in the same manner and to or for the same type of customers
37 as the products, services or activities produced, sold, performed or
38 conducted in another revenue producing enterprise.

41 Sec. 7. K.S.A. 12-1749b, 17-5905, 17-5906 and 79-250 and
42 K.S.A. 1993 Supp. 17-5903, 17-5904 and 79-32,154 are hereby re-
43 pealed.

42 Sec. 8. This act shall take effect and be in force from and after
43 its publication in the Kansas register.

2-12
Insert the following new sections 7 through 12;
renumber remaining sections accordingly.

New Sec. 7. As used in sections 7 through 12:

(a) "Secretary" means the acting secretary of the department of agriculture.

(b) "Processor" means that definition given in K.S.A. 17-5903, and amendments thereto.

(c) "Producer" means a person who produces or causes to be produced swine in a quantity for sale to another and is able to transfer title to another.

New Sec. 8. A contract for the sale of swine between a processor and producer must contain language providing for resolution of contract disputes by either mediation or arbitration. If there is a contract dispute, either party may make a written request to the secretary for mediation or arbitration services as specified in the contract, to facilitate resolution of the dispute.

New Sec. 9. (a) A processor shall not terminate or cancel a contract that requires a producer to make a capital investment in buildings or equipment that cost \$100,000 or more and have a useful life of five years or more until:

(1) The producer has been given written notice of the intention to terminate or cancel the contract at least 180 days before the effective date of the termination or cancellation or as provided in subsection (c); and

(2) the producer has been reimbursed for damages incurred by an investment in buildings or equipment that was made for the purpose of meeting minimum requirements of the contract.

(b) Except as provided in subsection (c), if a producer fails to comply with the provisions of a contract that requires a capital investment subject to subsection (a), a processor may not terminate or cancel that contract until:

(1) The processor has given written notice with all the reasons for the termination or cancellation at least 90 days before termination or cancellation or as provided in subsection (c); and

(2) the producer who receives the notice fails to correct the reasons stated for termination or cancellation in the notice within 60 days of receipt of the notice.

(c) The 180-day notice period under subsection (a)(1) and the 90-day notice period and 60-day notice period under subsection (b)(1) and (b)(2), are waived and the contract may be terminated or cancelled immediately if the alleged grounds for termination or cancellation are:

(1) Voluntary abandonment of the contract relationship by the producer; or

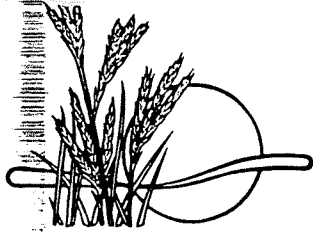
(2) conviction of the producer of an offense directly related to the business conducted under the contract.

New Sec. 10. If the processor is the subsidiary of another corporation, partnership or association, the parent corporation, partnership or association is liable to the producer for the amount of any unpaid claim or contract performance claim if the processor fails to pay or perform according to the terms of the contract.

New Sec. 11. There is an implied promise of good faith by all parties in the contract. In an action to recover damages, if the court finds that there has been a violation of this provision, damages, court costs and attorney fees may be recovered.

New Sec. 12. (a) The secretary may adopt rules and regulations to implement the provisions of this act.

(b) The department of agriculture shall provide information, investigate complaints arising from sections 7 through 12, and provide and facilitate dispute resolutions.



Kansas Natural Resource Council

P.O. Box 2635
Topeka, KS 66601-2635

Officers

President

Bill Ward, Lawrence

Vice President

Joan Vilbert, Ottawa

Secretary

Ann Fell, Winfield

Treasurer

Art Thompson, Topeka

Board of Directors

June Allen, Wichita

Ken Babcock, Hiawatha

Raymond Dean, Lawrence

Chris Gnau, Topeka

Jolene M. Grabill, Topeka

Bob Haughwaot, Wichita

Joe King, Lawrence

Miner Seymour, Moundridge

Ellie Skokan, Wichita

Myron Voth, Walton

David Wristen, Leawood

Arthur Youngman, Wichita

Ann Zimmerman, Manhattan



Printed on recycled paper

Testimony of William Craven
Legislative Coordinator,
Kansas Natural Resource Council
and
Kansas Sierra Club

Senate Agriculture Committee
S.B. 599
February 4, 1994

Thank you, Mr. Chairman, for providing an opportunity for the Kansas Natural Resource Council and the Kansas Sierra Club to testify on this important matter. Together, these two groups have about 4,000 members who are concerned about environmental issues, and in particular, about how agriculture affects the environment.

All of you know that these two groups support this bill, chiefly because it calls for the creation of a Department of Agriculture headed by a Secretary who is appointed by the governor and confirmed by the Senate. Such a step would raise agriculture to cabinet level status in our state, which is where it should be.

This bill also eliminates any possibility whatsoever of any further litigation in the case involving the former Board of Ag. Moreover, if passed, this bill would mean the dismissal of the appeal now pending in Denver, in the U.S. Court of Appeals. I am confident, and I hope you are aware, that the state's position in the appeal is considered futile. That is not just my statement, but the statement of law professors who have studied the case, some of whom have testified before this committee or the House Ag committee over the course of this litigation. The old system permitted only a few Kansans to participate in an election structure for Board members who were given vitally important regulatory authority over all Kansans.

Historically, this bill represents yet another attempt to bring the agricultural agency within the executive branch. Since about 1920, there have been more than half a dozen attempts to do this. Some attempts were legislative, others were from the executive branch. With the impetus of the federal court order, now is the time to make this

Senate Ag Co
2-4-94
attachment
3-1

long-standing concern of Republicans and Democrats--legislators and governors--a reality.

I believe it to be a legislative priority this year to bring this matter to an end. I am acutely aware of the uncertainty this litigation has meant to rural Kansans, and I share their concern. It is not the best example of government to have a court order the appointment of a receiver for an agency that supervises the largest industry in the state. I'm not apologizing for the necessity of that court order. Instead, I'm suggesting that the rural discontent with the fluidity of the current situation is a matter squarely within the ability of the legislature to resolve, and this session is the time to resolve it.

The Board of Ag elections were blocked in January of 1993. The legislature did not act during that year's legislative session. By October, a permanent injunction was issued, and the governor was appointed receiver. She appointed Phil Fishburn to serve as the de facto Secretary of Agriculture, and all the reports I have received give Mr. Fishburn passing marks. The point is not how proficient he is. The point is that the system of gubernatorial appointment of the Secretary of Agriculture works. No governor, in his or her right mind, is going to make an appointment to this position which damages Kansas' agricultural productivity or competitiveness.

That's not to say that Kansas agriculture does not face pressing issues on which there are substantial disagreements. Members of this committee are more aware than most of the truth of that statement. However, if this is a democracy, then all Kansans with points of view on agricultural issues need to be able to hold the system accountable. Under the old system, the system was accountable to those who got to vote. Agriculture in Kansas is big enough, strong enough, and vital enough to support a few arguments about agricultural policy. It is essential that those discussions occur in a democratic system in which all voices have a fair opportunity to make their case. Under our system, that means that agricultural policy is ultimately the responsibility of the governor, who heads the executive branch, and who is elected by, and accountable to, all the people.

Testimony to the Committee on Agriculture
Kansas State Senate

February 4, 1994

by

Lynn Hellebust
Chairman, Common Cause of Kansas

Mr. Chairman and members of the Senate Agriculture Committee, since I am unable to be at your meeting on February 4th I want to thank you for the opportunity to submit this statement for the record in support of S.B. No. 599.

Common Cause is a nonprofit, nonpartisan citizens' lobbying organization that works to make our government more open, accountable and accessible to ordinary men and women. We have about 2,100 members in Kansas, and our state board includes members from Dodge City to Overland Park and from Marysville to Wichita.

As you know, Common Cause of Kansas, along with the Kansas Natural Resource Council, challenged the constitutionality of the manner in which the Kansas State Board of Agriculture was elected. This bill and some others have been introduced because the trial court decided in our favor.

We support S.B. No. 599 because our position was, and is, that the Legislature should act now to replace the Kansas State Board of Agriculture and the present court-ordered receivership with a Department of Agriculture headed by a secretary, appointed by the governor and confirmed by the Senate.

We favor a secretary appointed by the governor because such appointment ensures that the secretary's policies would be consistent with those of the governor and would not be at cross purposes with those of the rest of the executive branch. In addition, this arrangement is consistent with modern ideas about governmental organization, which place executive authority in the hands of a single elected executive.

Again, thank you for the opportunity to submit this statement.

*Senate Ag. Co.
2-4-94
Attachment 4*

TO: Members of the Senate Agriculture Committee

FROM: Gary Reser *Govt*
Governor Joan Finney's Legislative Liaison

DATE: February 4, 1994

SUBJECT: Testimony on Senate Bill 599

Senator Corbin and members of the committee, thank you for the opportunity to appear today on behalf of the Governor and request favorable passage of Senate Bill 599, creating a Department of Agriculture and relating to the appointment of the Secretary of Agriculture by the Governor.

Among the major provisions of Senate Bill 599 are:

1. Establishment of the Department of Agriculture within the executive branch of Kansas government.
2. Administration of the Department of Agriculture by the Secretary of Agriculture, appointed by the Governor with the consent of the Kansas Senate.
3. Abolishment of the current State Board of Agriculture and office of the Secretary of the State Board of Agriculture as currently authorized in K.S.A. 74-503.
4. Continuation of rules, regulations, orders, and directives of the existing State Board of Agriculture or Secretary of the State Board of Agriculture until revised, amended, or nullified.

As you know, U.S. District Court Judge John Lungstrom ruled that the election process for the current Kansas State Board of Agriculture violated the one person, one vote provision of the Fourteenth Amendment and ruled that K.S.A. 74-502 and 74-503 were unconstitutional. Judge Lungstrom subsequently dissolved the position of Secretary of the Kansas State Board of Agriculture and ordered the Governor to manage the agency until the Kansas Legislature developed a vehicle that met constitutional requirements. Senate Bill 599 provides the structure and opportunity for the Kansas Legislature to create a fresh start and a clean slate for the management of the Department of Agriculture.

The Governor does not believe that it serves any constructive purpose to await the appeals on the current court case. It will only continue to raise questions among the citizens of Kansas and create gridlock in the development of effective, dynamic agricultural policy.

The scope and duties of the Kansas Department of Agriculture are not

Senate Ag Co
2-4-94
attachment 5
5-1

narrow in nature, but are comprehensive and impact all Kansans. The Department of Agriculture has the power to grant water rights; to inspect meat, eggs, and other consumer products; to control pesticide use in urban and rural areas; and to insure the accuracy of weights and measures.

The Governor feels that it is imperative that government be accountable and accessible to all Kansans. By making the Secretary of Agriculture subject to gubernatorial appointment, all citizens will have a role in the appointment. All citizens of Kansas have the opportunity to vote for the Governor of the State, who in turn is directly answerable for appointments through the election process.

The Secretary of Agriculture will report directly to the Governor, who is chosen by the electorate. Ultimate authority, responsibility, and accountability for the Department of Agriculture will reside with the elected Governor.

The gubernatorial appointment would also provide consistency and coordination in the management of the Department of Agriculture. It would correspond with the generally accepted pattern of state government organization. The appointment would also insure that the department's policies would not be at cross purposes with those of the rest of the executive branch.

The Governor/Secretary joint policy making mechanism will allow the Department to respond to public concerns aggressively, quickly, and decisively.

The Secretary must be a strong voice for agriculture and rural Kansas. The gubernatorial appointment and the direct link between the Governor and Secretary will result in policy being coordinated in a singular and focused manner.

Agriculture is crucial to the economy of Kansas, so it is logical for the Secretary to be a cabinet level position. The Secretary and his Department must respond quickly and effectively so that the best interests of agriculture are met for the benefit of all Kansans. The Secretary, directly answerable and responsible to the Governor, who in turn is answerable to the electorate, can provide the leadership, direction, and focus on agricultural issues that will maintain Kansas' role in the U.S. and world economies.

It is interesting to note that twenty-eight (28) states currently have a system in place in which the Governor is directly involved in the appointment of the Secretary of Agriculture. Six (6) of those states have no legislative oversight. The balance of the gubernatorial appointments are approved by one or both legislative houses; except New Hampshire, where it is approved by a council.

The gubernatorial appointment provided by Senate Bill 599 will put to rest the issues raised by the Kansas State Board of Agriculture law suit, provide gubernatorial direction, accountability, and coordination for Kansas farm policy, and bring Kansas in line with twenty-eight (28) other states that currently provide for gubernatorial appointment of its Secretary of Agriculture.

For all of these reasons, the Governor respectfully requests favorable committee action on Senate Bill 599.

Thank you again for allowing me to be here and visit with you today.

Statement
of
Ivan W. Wyatt, President
Kansas Farmers Union
on
Senate Bill 599
Gubernatorial appointment of a Kansas Secretary of Agriculture
before
The Senate Committee on Agriculture
on
February 4, 1994

Mr. Chairman, Members of the Committee:

I am Ivan W. Wyatt, President of the Kansas Farmers Union.

The Kansas Farmers Union delegates, at the recent state convention (January 13, 14, 15, 1994) held in McPherson, Kansas, adopted the following position on the restructuring of the former State Board of Agriculture:

"We support a Secretary of Agriculture appointed by the Governor to be confirmed by the Senate."

There were three major factors in the adoption of this position one was the belief that the production, processing and marketing of agriculture production continues to be a major part of the Kansas economy. Second, that these three segments, in unison, can be an important factor in restoring prosperity to hundreds of rural

⊗

Senate Ag. Co
2-4-94
Attachment 6
6-1

communities. And, third if all these factors can be brought into area of closer cooperation with other Departments of State Government, such as Commerce, but not limited to just Commerce, the chance of moving forward to success would be enhanced.

There was no support for the consolidation of the two Departments.

In agriculture, there is a time to plant and a time to sow. Likewise, it would appear to prudent people, it is time to move on in the establishment of a "State Board of Agriculture" and move on to the business of tending to the affairs of Kansas agriculture and the rural communities of the state. If we wish to maintain any semblance of a rural community and economy throughout the state we can not set production agriculture off by itself. It is the belief of the members of the Kansas Farmers Union we need to bring these sources together to build not only agriculture but the rural economies.

Besides these reasons, many members believe if we elevate agriculture to the level of a cabinet position by Gubernatorial-appointment, the position of a governor appointed secretary might be less influenced by special-interest, political contributions, than a Secretary of Agriculture or Commissioner of Agriculture elected at large or by districts, where large political contributions could be funnelled to a particular election race or races.

Mr. Chairman, Members of the Committee, Thank You. We appreciate your consideration of this issue.

⊗

THE KANSAS RURAL CENTER

P.O. BOX 133
WHITING, KS 66552
(913) 873-3431

TESTIMONY ON THE REORGANIZATION OF THE KANSAS STATE BOARD OF AGRICULTURE

The Kansas Rural Center is a private, non-profit organization that promotes the long term health of the land and its people through education, research and advocacy. The Rural Center cultivates grassroots support for public policies that encourage family farming and stewardship of soil and water. The Center is committed to economically viable, environmentally sound, and socially sustainable rural culture.

The Kansas Rural Center continues to seek change in the structure of the Kansas State Board of Agriculture. The KSBA should be renamed the Kansas State Department of Agriculture. The Secretary should be appointed by the governor as is the case with other Departments. Of the various bills before the House and Senate, HB No. 2292 would come closest to meeting the constitutional objections to the old structure, by providing the means for all Kansans to receive representation concerning KSBA activities.

The Kansas Rural Center considers the imposition of an additional 10 District elections in order to select a Board, as in HB No. 2568 and SB No. 85, to be an expensive and complicated remedy at a time when citizens are seeking to streamline government and cut expenses. The Center has the same objections to HB No. 2134.

*Senate Ag. Co
2-4-94
attachment 7*

STATEMENT TO SENATE AGRICULTURE COMMITTEE

by

Vernon McKinzie

Feb 4, 1994
SB 599

Thank you for allowing me to comment in opposition to Senate Bill 599. My name is Vernon McKinzie, from Emporia. I operate pest control businesses in Emporia, Manhattan and Parsons. I am chair of the Governmental Affairs Committee of the Kansas Pest Control Association and I appear today to present the position of the Association.

We oppose the direct appointment of the Secretary of Agriculture by the Governor because we perceive potential disruption of the entire agency as administrations change and an appointed secretary would likely change also.

Additionally, we strongly oppose the parts of SB 599 which extends complete organizational authority to the newly appointed secretary..."in the manner the secretary deems most efficient.....". Please refer to page 3, lines 21 and 22. This reorganizational power also fails to protect technically competent and experienced classified personnel who serve as division directors. (see lines 26-27 on page 3) We fear the appointment of new persons as division directors at the pleasure of an appointed secretary could be based on political favoritism, without regard for tenure, skill and technical competence and could lead to chaos in the agency.

We believe only the Secretary, assistant secretaries and attorneys should be considered unclassified and we believe all other staff should be protected as classified employees. Otherwise the agency as we know it could be purged of skilled entomologists, botanists, plant pathologists, chemists, marketing experts and other specially trained persons who serve as division directors.

We believe the references to unclassified / classified employees found in section 2, section 4;a & b, and section 9; t & w do not clearly define how division directors and their subordinates will be classified.

We believe the Secretary should be cabinet status, and see no provision in SB 599 to allow for a cabinet position.

Our concerns for qualified personnel could be somewhat alleviated if the bill contained some qualifications for the appointed secretary and any of the unclassified employees. However, we prefer Senate Bill 475 which allows for the Governor to appoint the Board of Agriculture members who in turn will select the secretary. We believe the agency will experience a minimum of disruption as a result of such a change.

I will be pleased to respond to questions. Thank You

*Senate Ag Co
2-4-94
Attachment 8*



PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON AGRICULTURE

RE: S.B. 599 - Appointment of the Secretary of Agriculture.

February 4, 1994

Topeka, Kansas

Presented by:

Warren Parker, Assistant Director

Public Affairs Division

Kansas Farm Bureau

Chairman Corbin and members of the Committee:

My name is Warren Parker. I am the Assistant Director of Public Affairs for Kansas Farm Bureau. We appreciate the opportunity to testify on S.B. 599. There are few issues which are of more importance to Kansas agriculture, the Kansas economy and the citizens of Kansas than maintaining a strong and effective Department of Agriculture.

The members of the 105 County Farm Bureau's across the state have extensively studied, debated and made recommendations concerning the future structure and mission of the Kansas Department of Agriculture.

S.B. 599 is one of several bills to be considered during the 1994 Session. While Farm, Bureau membership is not opposed to beginning discussion on the issue, we are opposed at this time to the legislature approving any bill to restructure. Our members believe

*Senate Ag Co
2-4-94
Attachment 9
9-1*

time must be allowed for the decision of the Federal District Court to be appealed.

This particular measure, S.B. 599, is specifically opposed by our members on other grounds as well. The Board of Agriculture structure is the clear choice of our membership. The Board structure has prevented in the past partisan politics from invading the Department of Agriculture. The bill before you today, which provides for a gubernatorial appointment of the Secretary of Agriculture, blatantly hands over the Department of Agriculture to partisan politics, does not allow for continuity of programs and actions, and will not serve the state of Kansas in the best possible manner.

The full Board of Agriculture policy position adopted by our members is included in this testimony. Part of that position states that if the Federal District Court decision is upheld, our members believe a broadened delegate body for the Annual Meeting of the Board of Agriculture has merit. They also believe examination of a carefully crafted procedure to elect Board members from geographic districts should be pursued. A bill which reflects an idea similar to this position has been looked at in your Committee.

We encourage continued debate, but ask that no restructuring plan be approved until the appeals process is completed. If it becomes clear that a restructure of the Department of Agriculture is necessary, you may have already discussed at least the general premise of an appropriate alternative. S.B. 599, however, is not it. Thank you for the opportunity to testify on this important issue. I would be happy to attempt to answer any questions.

KANSAS FARM BUREAU POLICY

STATE BOARD OF AGRICULTURE

AG-21

If the decision of the Federal District Court in the matter of the State Board of Agriculture is reversed, we believe the Kansas Legislature should move quickly to re-establish state jurisdiction.

We strongly believe Kansas farmers and ranchers should take a progressive and pro-active approach in shaping the destiny of this agriculture agency and the State Board of Agriculture.

We support continuation of the current duties and responsibilities of divisions within the Board of Agriculture, and we strongly disagree with any erosion of its current authority.

While reinstatement of the present system is our preference, we believe consideration of a broadened delegate body for the Annual Meeting of the State Board of Agriculture and election of the Board has merit. We also ask the Legislature to examine a carefully crafted procedure for election of members of the State Board of Agriculture from geographical district in Kansas. The elected Board should continue to select, and the Kansas Senate should continue to confirm the Secretary of the State Board of Agriculture.

were found to be in violation of the Fourteenth Amendment. Both of these cases involved organizations with substantially less power than the KSBA.⁷¹ After considering the above facts, the court stated that the KSBA did not fit within the exceptions of the one man one vote principle. Further, the state had failed to show any compelling interest for the present election method. Therefore, the court concluded the KSBA was unconstitutional. As a remedy, the court placed the State Department of Agriculture and the KSBA in receivership under the Governor until a constitutional method of selection is enacted by the Legislature.

SOLUTIONS

A recent headline in the Topeka Capital Journal noted "New Method to Select Ag Board Proves Elusive."⁷² This is not for lack of ideas to solve the problem. Currently, there are three proposed bills floating around the Legislature.⁷³ The KSBA itself has sought a solution by appealing the case. It could even be suggested that the Board could be made to fit within the exception to the one man one vote rule. There are also other methods that may be considered, such as those in other states.

House Bill No. 2292 calls for the repeal of statutes creating the KSBA. In the Board's place, the governor would appoint a Secretary of Agriculture who would assume all the duties of the KSBA and the old position of Secretary of Agriculture. The new secretary would need the consent of the Senate to be appointed. Governor Finney has gone on record in support of such a bill.⁷⁴ In addition, the Manhattan Mercury

Norbert Marek¹³
Senate Ag. Com.
Attachment 10
2-4-94

has stated its support for such a bill.⁷⁵ The Mercury said that an appointed secretary "is more likely to be beholden to no one organization. . . ." And would represent "the farmer, the consumer, the fertilizer manufacturer and the environmentalist."⁷⁶ This method of selection is also popular among the states. Around thirty states already use this method to appoint a secretary, director, or commissioner of agriculture. (see exhibit A).

Representative McKechnie has proposed the adoption of House Bill No. 2134. The bill would make the Secretary of Agriculture an elective officer just like the current Secretary of State or State Treasurer. The secretary would serve a four year term. The bill would also convert the current KSBA into an advisory board reporting to the Secretary of Agriculture. The current structure for the Board's selection would remain essentially unchanged. Representative McKechnie has stated that the bill would provide a strong advocate for the largest industry in Kansas while avoiding the pitfalls of special interest influence or an inattentive governor.⁷⁷ The bill also gives agricultural groups "a place at the table when decisions are made."⁷⁸

Criticizing this position, the Manhattan Mercury felt that an election would "politicize" the position and lead to intense competition between interest groups.⁷⁹ The election of a secretary or commissioner of agriculture from the state at large is the second most common method used to obtain an executive officer of Departments of Agriculture. Currently twelve states

use the election method. Four of these states also provide for an advisory Board of Agriculture. (see exhibit A).

Senate Bill No. 85 provides for the establishment of an elected Board of Agriculture. This proposal is similar to the current State Board of Education.⁸⁰ One member would be elected from each of ten districts for a four year term. The terms would be staggered so that five members are elected every two years. The Board would elect a secretary of agriculture for a two year term subject to Senate confirmation. The method of selecting the secretary mirrors the method used by the KSBA. This proposal would be unique among the fifty states for governing the Department of Agriculture.

The KSBA has responded to these proposals by urging the Legislature to wait pending appeal of the case.⁸¹ Whether the Board will be successful is an open question. One indication that the Board may be unsuccessful is that the appeals court has denied a request to stay the lower court decision.⁸² One factor the court weighs is deciding on a motion for stay is the likelihood that the Board would be successful on the merits.⁸³ By denying stay, the court is saying in part that the likelihood of success is low. Based on the lower courts decision, it seems unlikely that the decision would be overturned unless the appeals court carved out a new exception.

No one involved in the debate has suggested fitting the Board within the exception to the rule. The most likely reason for this is that it would involve cutting away major parts of the

Board's Department of Agriculture. All the general powers the court listed would no longer belong to the Board and would force the Legislature to do a major reshuffling of responsibility. This has not been the legislatures' goal. All the proposed bills simply change the method of selection, but retain all the current powers in the Department of Agriculture. To be constitutional, the Board would probably be given the limited powers of promotion and marketing.⁸⁴

Should these proposals be the limit of what is considered? Are they problem free? The proposed bills have received the same criticism. Bills 2292 and 2134, in particular, have supporters who see the other side as politicizing the issue. In the end, both sides admit that interest groups will continue to play a major role no matter what the process. At the same time, the goals long seen as positive, such as a non-partisan and stable leadership in the department, are ignored. None of the proposals address the special role of agriculture in the state or why agriculture should have a special role. Bill 2134 does give agriculture a voice in the form of an advisory board, but should agricultural interests have more of a say? In the past, the state worked to make available to agriculture what was needed, and the management of these issues was placed in the industries' hands. At one time, increasing the state's farm population was important. Then, educating and improving agriculture became a major goal, and still later promoting Kansas agriculture was important. Now all that has been accomplished, the major role of

the Department of Agriculture is in the area of regulation. Regulations to help farmers and control the industry play a predominant role in the farm sector. These laws may affect all Kansans, but they mainly affect farmers. At the same time, the farm sector feels more threatened by a growing urban sector that may or may not understand how their food is produced.

Quite simply, there is nothing wrong or undemocratic about giving the farm sector a special role in the process on this matter as the long history in Kansas and other states has recognized. The Board itself may be responsible for some of this. The Board continues to narrowly focus on the appeal and has asked the legislature to wait in the face of a rather clear cut decision. Senator Karr has expressed his frustration with this decision of the Board. Karr stated "we need your (the Board's) input" and asked "has the board even considered the realities of where we were at?"⁸⁵ By focusing on appeal, the Board and agriculture are allowing others to decide their future without their input.

Other states have attempted to deal with this situation. One of the simplest methods has been used in Missouri, Georgia, and Tennessee. All require that the head of the Department of Agriculture be a practical farmer. Georgia elects a Commissioner of Agriculture "who shall be a practical farmer."⁸⁶ Missouri provides for the appointment by the governor of a Director of the Department of Agriculture "who shall be a practical farmer, well versed in agricultural science. . . ."⁸⁷ Tennessee's

Commissioner of Agriculture "shall be a practical farmer, actively identified with the agricultural interests of the state."⁸⁸ The requirement of a practical farmer could easily be added to bills 2292 or 2134.

Four states have retained a Board of Agriculture in more than an advisory capacity. In Nevada, the governor appoints ten citizens to form a Board of Agriculture.⁸⁹ Three of the members are to be involved in cattle production and seven other enumerated agricultural interests are each represented by one member on the Board. Further, "not more than two members" can come from the same county.⁹⁰ The Board in turn appoints an executive director of the Department of Agriculture with the governor's approval.⁹¹

New Jersey has been mentioned as the last state to have a system like that in Kansas. But the state changed its selection method in 1948. However, that change was not dramatic. In fact, the New Jersey system is probably the closest to the method used in Kansas. In New Jersey, an annual convention is held in which delegates from various enumerated farm groups meet.⁹² The delegates choose two farmers to recommend to the governor for appointment to the Board of Agriculture. The Board consists of eight citizens serving four year terms.⁹³ Two new members are appointed every year as two members terms expire. One member must represent each of the "four leading agricultural commodities produced in the state."⁹⁴ "Only those engaged in production of farm crops or livestock products in New Jersey shall be eligible

for. . ." membership. The secretary of agriculture is appointed by the Board with the governor's approval.⁹⁵

In two of the four states, the Board of Agriculture itself serves as the agency head. Arizona has a six member Board appointed by the governor for five year terms.⁹⁶ The term of at least one member expires every year, no member can serve consecutive terms. Five of the six members each represent a designated agriculture production area. One member represents the public and can have no direct interest or connection with agriculture. The Board elects a chairman from its numbers for a two year term.⁹⁷

In Oklahoma, a five member Board is appointed by the governor.⁹⁸ Members serve five year terms such that every year a new member is appointed as an old members term expires. Each member represents a district. The members "shall be farmers who shall have at least five years practical experience during the ten years next proceeding their appointment and shall have lived on and operated a farm after reaching the age of twenty-one."⁹⁹ The Board elects a president as its executive officer.¹⁰⁰ In absence of the Board, the president carries out the Board's powers. A secretary is also elected but cannot be a board member.

Although the position these states have taken does not follow that taken by most states it is persuasive because of the importance of agriculture in these states. Furthermore, Kansas has historically never been one to follow the crowd.¹⁰¹ Kansas

already has several statutes that provide a method of nominating officers that give the governor a choice among those nominated. The most prominent is the Supreme Court Nominating Commission.¹⁰² The commission has on it lawyers representing each congressional district. The lawyers are chosen by members of the state bar in that district, by election. The commission also has nonlawyer members from each congressional district appointed by the governor. The commission submits three names for the governor to choose from to fill a vacancy. This method is similar to some of the methods mentioned to choose an executive officer of state agriculture departments.

In Kansas, due to Hellebust, questions have been raised over the constitutionality of these other boards and commissions including the Supreme Court Nominating Commission.¹⁰³ These questions could also be raised about the various methods used to pick an ag chief executive. Basically two questions can be asked. First, is it constitutional to prescribe certain qualifications be met before the governor chooses an appointee, such as they must be a practical farmer. Secondly, is it constitutional to give nominating power to other bodies.

According to of the Kansas constitution, "[t]he legislature may provide for the election or appointment of all officers and the filling of all vacancies not other wise provided for in this constitution."¹⁰⁴ The Kansas Supreme Court has held that the legislature can prescribe the terms for eligibility.¹⁰⁵ Determining qualifications is a legislative function limited only

by the constitution.¹⁰⁶ Generally if the constitution enumerates qualifications they are exclusive.¹⁰⁷

Qualifications for office must have a rational basis, such as age, integrity, training or perhaps, residence. There must be a rational nexus between any requirements and the duties of the position in question. The legislature may prescribe qualifications which reasonably relate to the needs of office-holding or to the specialized demands of an office whether that office is elective or appointive.¹⁰⁸

In Gregory v. Ashcroft,¹⁰⁹ the United States Supreme Court held that Missouri's mandatory retirement age for judges was constitutional under the fourteenth amendment. The court applied the rational basis test as no suspect group was involved nor was there any fundamental interest in serving as a judge.¹¹⁰ The court said it would not overturn a law establishing such a limit unless it was "so unrelated to the achievement of any combination of legitimate purposes that we can conclude the [people's] actions were irrational." (brackets by the court).¹¹¹ Thus if Kansas were to enact qualifications like those in Missouri, Georgia, Tennessee, Nevada, New Jersey or Arizona they would be subject to a rational basis requirement. Rational basis reasons could include the need to have someone with training and experience in agriculture and having someone who could deal with the various sectors of the farm economy.

The Kansas Supreme Court has already considered the issue of whether the legislature can give another body power to nominate officers to the governor who would then appoint one. In Marks v. Frantz¹¹² the court held that it was constitutional for the legislature to give the Kansas Optometric Association the power

to present the governor with a list of nominees. The governor could then appoint members to the Kansas State Board of Examiners in Optometry from the list. In 1975, almost twenty years after Marks the court said it was a legislative function to determine who and how officers could be appointed.¹¹³ Most states that have considered the issue have taken the Kansas viewpoint.¹¹⁴ Although, there is more controversy if the body the legislature vests power in actually appoints the officer as opposed to nominating candidates for the governor to choose among. This is less of an problem if there are proper safeguards.

A 1987 Alabama decision held that delegating the power of appointment of members of the Board of Medical Examiners to the State Medical Association was constitutional.¹¹⁵ In its decision, the court noted the need for proper safeguards in the statute authorizing the appointment process. Safeguards mentioned included statutory language that empowered "the board to adopt rules which are necessary to carry current and future legislation into effect" and subordinating the board to the legislature by subjecting the board's composition to future legislation.¹¹⁶ Another, confirmation of the constitutionality of delegating these appointive or nominating powers can be seen in the way states handle supreme court appointments. Fourteen states have some form of nominating commission, while another seven have some other form of merit selection.¹¹⁷ No significant United States Supreme Court decision was found on this subject it seems to be primarily a state law issue.

CONCLUSION

In the 1994 legislative session, there is no need to "burn Lawrence" to solve the problems of the Kansas State Board of Agriculture. Rather than start all over, an alternative solution can be found within the state's own laws that is constitutional. The models provided by other states can also be of assistance. Such a structure should continue the tradition of a stable, non-partisan Department of Agriculture that recognizes the special, long recognized role of agriculture in the state of Kansas. Some solutions could be incorporated into amendments to the proposed bills already in the Legislature. Another recommendation could be to set up a twelve member Board of Agriculture with three members from each congressional district. The governor would have the power to appoint new board members subject to several qualifications. These qualifications would include a certain number of members who are actively engaged in the production of the states most important agricultural commodities, members who are involved in general farming operations, and at least a few members who have no interest in agriculture except as a consumer. Board members would be appointed to staggered five year terms. The Board would nominate two candidates for the governor to choose from when appointing a Secretary of Agriculture for a three year term. The secretary could be renominated at the end of the term. This structure would provide consistency due to the slow rate of turn over on the Board, and the longevity and qualifications would assure a less partisan Board. In addition,

the appointment of a Secretary of Agriculture would provide the necessary leadership. This is certainly not the only answer available from among the alternatives presented. Rather, it is a starting point for those in the Agricultural sector to consider before the start of next year's legislative session. If the agriculture sector seeks to have a voice in the future of Kansas agriculture, now is the time to act. Now is the time for a new "act for the encouragement of agriculture."

Exhibit A	Elected Commis.	Appoin. Secret. Direct.	Advis. Board	Board of Agri.	Justi. Elect.	Justi. Appoi.	Nomi. Comm.
AL	*		*		*		
AK		*				*	*
AZ				*		*	*
AR		#		#	*		
CA		*	*			*	
CO		*	*			*	*
CT		*				*	@
DE		*				*	@
FL	*		*			*	@
GA	prac farmer				*		
HI		*	*			*	@
ID		*			*		
IL		*					
IN		Lt. Gov				*	*
IA	*					*	*
KS	?	?	?	?		*	*
KY	*		*		*		
LA	*				*		
ME		*				*	
MD		*	*			*	@
MA		*	*			*	@
MI		*			*		
MN		*			*		
MS	*				*		
MO		Prac Farmer				*	*
MT		*			*		
NE		*				*	*
NV		board appoin		*	*		

Exhib it A	Elected Commis.	Appoin. Secret. Direct.	Advis. Board	Board of Agri.	Justi. Elect.	Justi. Appoi.	Nomi. Comm.
NH		*	*			*	
NJ		board appoin		*		*	
NM		board regents appoin		live stock board		*	*
NY		*				*	*
NC	*		*		*		
ND	*				*		
OH		*			*		
OK				*		*	*
OR		*	*		*		
PA		*			*		
RI		*			by legsil		
SC	*				by legsil		
SD		*				*	@
TN		Prac farmer			*		
TX	*				*		
UT		*	*			*	*
VT		*				*	*
VA		*	*		by legsil		
WA		*			*		
WV	*				*		
WI		*			*		
WY		*	*			*	*

@ other form of merit selection. # Arkansas does not have a department of agriculture. The Plant Board and Poultry Commission do have powers similar to ag departments. They are appointed by the governor but the statute limits the governors choice.

Pro Farmer

January 29, 1994 • Vol. 22, No. 5

probably won't heat up until next year... almost too late to plan.

No \$25,000 emission control monitors needed on natural-gas irrigation engines. EPA officials are assuring lawmakers this week ag irrigation pumps are exempt from a proposed ruling on large stationary engines powered by natural gas. Grain sorghum growers' association raised the issue... underscores need for "eternal vigilance."

Soft red winter wheat in many eastern Corn Belt areas got planted late, was flooded, froze without snow cover... and now looks brown, says Herb Wodtke, Fayette County, Illinois.

Quit threatening China with loss of MFN status, says Sen. Max Baucus (D.-Mont.). He called Clinton's threats "The trade equivalent of dropping a nuclear bomb" and an "outdated tool."

with July beans giving up 6.5¢. Maybe these bullish fundamentals are mostly in the market now:

□ **Surprisingly low soybean oil yields.** As the crop ages, soyoil yield increases. This year, oil content appears to be heading lower the longer beans sit in storage.

The Census crush data for Dec. implies an oil yield of 10.68 lbs. per bu., down from about 10.74 lbs per bu. in November.

And that's 5% below the season-long yield projected by USDA in mid-December.

□ **Domestic demand is higher** than many analysts anticipated.

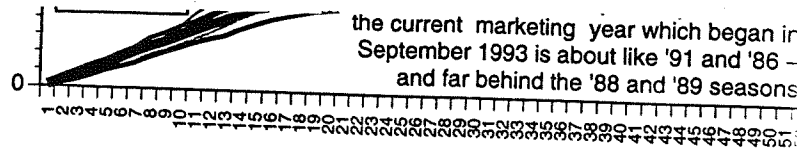
A conservative year-to-year trend in demand is usually plugged into S&D tables at the start of the year. Thus, increased domestic demand tends to "sneak up" on the market.

Today's trends to more salads, stir-fry vegetables, and the growth in fast foods are putting more soy-oil into salad bowls, woks and pressure cookers. Another cooking-with-oil idea is catching on: Anointing steak with soyoil before broiling to seal in juice and flavor.

Meal stocks remain surprisingly low, too

When soy processors are crushing more beans to keep up with oil demand, meal stocks typically outpace protein demand. That's not happening to the degree soy complex traders anticipated.

Soybean meal stocks in the Census Bureau Crush Report for Dec. were up only about 8,000 tons, much less than the 70,000-ton jump traders tell us they expected. However, bull markets must be fed every day - and they need another appetizer now.



Pro Farmers map dynamic growth in Plains states

All week we met face-to-face with hundreds of Pro Farmers across the Plains. Over 400 came to our Dodge City SuperStrategies Seminar! For us, it's one of the most exhilarating times of the year. This year we're finding a wide array of big changes at the grassroots. Samples:

□ **Migration of hog and dairy enterprises** following the move of beef feedlots into the High Plains. A converted beef packing plant at Guymon, Okla., will soon be on-line with kill capacity for 4 million hogs annually.

Increasing numbers of California and Arizona dairy operators are trading their cramped and obsolete acreages for modern new facilities in the Plains. Compelling reasons: Cheaper land. Cheaper alfalfa. Avoids California's maze of water restrictions. Plenty of room to swing a manure spreader without hearing screams from some Malibu starlet.

□ **Members are diversifying into niche markets.** Six Colorado farmers built a potato processing and packaging plant, integrating forward into value-added products. Their business plan cashed in on backhauls into the Southeast, using truckers who haul produce from those states to Colorado. Also, processing the spuds cuts the duty into Mexico from 265% to near zero.

Another member refurbished several warehouses in Denver as a

means of diversifying his management and off-season farm labor.

□ **Stepping up irrigation efficiency** is another major trend. Pivot systems with water-saving drop nozzles are replacing furrow irrigation rapidly. A few farmers with high pumping costs are taking a more drastic step: Reverting to low-cost dryland farming.

□ **Redefining politics of farming.** Kansas members note a move to get rid of restraints on "corporate farms" in their state. These farmers want more freedom to attract non-farm capital.

Brazilian showers helpful; still below Jan. average

After a wet December in key Brazilian bean regions, January's rains are 40% below normal so far in Rio Grande do Sul; 58% short in Parana. Still, traders saw the week's seasonal showers as enough to maintain their expectations of a whopper 24-million-ton crop from Brazil.

Lots of "hidden hunger" signs from short '93 crop

Consequences of a 6.344 bil. bu. corn crop are emerging in isolated but revealing ways:

■ **Lowest corn exports in years** (chart above) but record imports of feed grains. This month, we'll probably import about as much barley (from Canada, of course) as we sell overseas.

■ **Liquidation of 114,000 Wisconsin dairy cows** last year, and almost a 9% drop in milk output

*Senate Ag Co
2-4-94
attachment 11*