

As Amended by Senate Committee

Session of 2004

Substitute for HOUSE BILL No. 2594

By Committee on Judiciary

2-25

10 AN ACT concerning ~~agriculture, relating to duty of care of livestock pro-~~
11 ~~ducers; eminent domain; relating to acquisition of land for cer-~~
12 ~~tain purposes by a port authority or county; amending K.S.A. 12-~~
13 ~~3408 and K.S.A. 2003 Supp. 12-3402, 12-3406 and 19-101a and~~
14 ~~repealing the existing sections.~~

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 ~~—Section 1. (a) As used in this section, for livestock prepared in Kansas~~
18 ~~in accordance with K.S.A. 65-6a18 et seq., and amendments thereto. (1)~~
19 ~~“Producer” means any person engaged in the business of breeding, graz-~~
20 ~~ing, maintenance or feeding of livestock.~~

21 ~~—(2) “Livestock”, “meat food product” and “prepared” shall have the~~
22 ~~meanings ascribed thereto by K.S.A. 65-6a18 et seq., and amendments~~
23 ~~thereto.~~

24 ~~—(b) In an action arising as a result of consumption of a meat food~~
25 ~~product against a producer of livestock, there shall be a rebuttable pre-~~
26 ~~sumption that the producer of livestock met the standard of ordinary care~~
27 ~~in the production of the livestock in question, if the livestock in question~~
28 ~~was inspected and passed in accordance with the provisions of K.S.A. 65-~~
29 ~~6a18 et seq., and amendments thereto.~~

30 ~~—(c) In no event shall a producer of livestock in an action arising as a~~
31 ~~result of consumption of a meat food product be held to a standard higher~~
32 ~~than that of ordinary care if the livestock in question had been inspected~~
33 ~~and passed in accordance with the provisions of K.S.A. 65-6a18 et seq.,~~
34 ~~and amendments thereto.~~

35 ~~—Sec. 2. (a) As used in this section, for livestock prepared in Kansas~~
36 ~~in accordance with the federal meat inspection act, 21 U.S.C.A. 601 et~~
37 ~~seq.: (1) “Producer” means any person engaged in the business of breed-~~
38 ~~ing, grazing, maintenance or feeding of livestock.~~

39 ~~—(2) “Livestock” means cattle, sheep, swine, goats, horses, mules or~~
40 ~~other equines.~~

41 ~~—(3) “Meat food product” and “prepared” shall have the meanings~~
42 ~~ascribed thereto by 21 U.S.C.A. 601(j) et seq.~~

43 ~~—(b) In an action arising as a result of consumption of a meat food~~

~~1 product against a producer of livestock there shall be a rebuttable pre-~~
~~2 sump-tion that the producer of livestock met the standard of ordinary care~~
~~3 in the production of the livestock in question, if the livestock in question~~
~~4 was inspected and passed in accordance with the provisions of 21 U.S.C.A.~~
~~5 601 et seq.~~

~~6 (c) In no event shall a producer of livestock in an action arising as a~~
~~7 result of consumption of a meat food product be held to a standard higher~~
~~8 than that of ordinary care if the livestock had been inspected and passed~~
~~9 in accordance with the provisions of 21 U.S.C.A. 601 et seq.~~

~~10 Sec. 3. This act shall take effect and be in force from and after its~~
~~11 publication in the statute book.~~

12 Section 1. K.S.A. 2003 Supp. 12-3402 is hereby amended to
13 read as follows: 12-3402. (a) It is the purpose of this act to promote,
14 stimulate and develop the general welfare, economic development
15 and prosperity of the state of Kansas by fostering the growth of
16 intrastate and interstate commerce within the state; to promote the
17 advancement and retention of ports within the state; to encourage
18 and assist in the location of new business and industry in this state
19 and the expansion, relocation or retention of existing business and
20 industry when so doing will help maintain existing levels of com-
21 merce within the state or increase the movement of commodities,
22 goods and products produced, manufactured or grown within or
23 without the state through existing ports within the state or lead to
24 the development of new ports within the state; and to promote the
25 economic stability of the state by maintaining and providing em-
26 ployment opportunities, thus promoting the general welfare of the
27 citizens of this state, by authorizing port authorities to be estab-
28 lished in each city and in each county of the state.

29 A port authority shall be a public body corporate and politic
30 which if established shall be known as the “port authority” of the
31 city or of the county. Joint port authorities may be created under
32 authority of this act by cooperative agreement executed by the gov-
33 erning bodies of any city or county or cities or counties. Such joint
34 authorities formed by such cooperative agreement shall have all the
35 powers and jurisdiction enumerated in this act. Such creation shall
36 be by ordinance or resolution. Except for port authorities created
37 prior to April 1, 1981, no port authority shall be created without
38 approval of the legislature by concurrent resolution. No port au-
39 thority shall modify, amend or extend the port authority’s official plan as
40 originally adopted by the port authority to change the purpose for which
41 it was created or alter the character of the work to be undertaken, as
42 provided by K.S.A. 12-3406, and amendments thereto, without subse-
43 quent approval of the legislature by concurrent resolution. authority

1 ***shall not transact any business or exercise powers hereunder, in-***
2 ***cluding any business or actions related to such a modification, amendment***
3 ***or extension as provided in this subsection, until the passage of a con-***
4 ***current resolution by the legislature as hereinbefore provided.***

5 ***A cooperative agreement creating a joint port authority may be***
6 ***amended by the governing bodies of the cities and counties which***
7 ***comprise such port authority. Any amendment to such a cooperative***
8 ***agreement, including amendments which allow other cities located***
9 ***within counties which are parties to the original agreement to join***
10 ***in such agreement, shall not require approval by the legislature.***

11 ***No member of the authority shall serve as such who owns land,***
12 ***other than a residence, or represents in a fiduciary capacity or as***
13 ***agent any person who owns land surveyed or examined for port***
14 ***locations, except that this prohibition shall not prevent a user of a***
15 ***port facility from serving as a member of the authority.***

16 ***A port authority may sue and be sued, plead and be impleaded,***
17 ***subject to the limitations and other provisions of the Kansas tort***
18 ***claims act. The exercise by such port authority of the powers con-***
19 ***ferred upon it shall be deemed to be essential governmental func-***
20 ***tions of the creating city or county.***

21 ***(b) Any city or county creating or participating in the creation***
22 ***of a port authority, before any taxes are levied shall submit the***
23 ***question of whether an annual tax levy may be made on the assessed***
24 ***taxable tangible property of such city, county, or a combination***
25 ***thereof, and the amount thereof to the electors of such city or county***
26 ***comprising such authority. If a majority of those voting on the ques-***
27 ***tion vote in favor of such tax levy, the same may be made for such***
28 ***purpose and to pay a portion of the principal and interest on bonds***
29 ***issued under the authority of K.S.A. 12-1774, and amendments***
30 ***thereto, by cities located in the county, and otherwise such tax levy***
31 ***shall not be made. If such tax levy is approved, the authority may***
32 ***expend funds not otherwise appropriated to defray the expense of***
33 ***surveys and examinations incidental to the purposes of the port au-***
34 ***thority and may expend funds for any of the purposes as set forth***
35 ***in K.S.A. 12-3406, and amendments thereto.***

36 ***(c) Subject to making due provisions for payment and perform-***
37 ***ance of its obligations, a port authority may be dissolved by the city***
38 ***or county, or combination thereof, comprising it. If the port au-***
39 ***thority is dissolved, the properties of the port authority shall be***
40 ***transferred to the subdivision comprising it, or, if comprised by***
41 ***more than one city or county, to the city or county comprising it in***
42 ***such manner as may be agreed upon by them. Obligations of the***
43 ***authority shall not be obligations of the state of Kansas, nor of any***

1 *city or county which creates the authority, unless the obligations*
2 *are specifically approved by a majority vote of the electors of such*
3 *city or county voting on the issue. Notice of such election shall be*
4 *published in a newspaper of general circulation in the county or*
5 *counties once each week for two consecutive weeks. The first pub-*
6 *lication shall be not less than 21 days prior to such election. Such*
7 *notice shall set forth the time and place of holding the election and*
8 *the issue which the vote is to determine.*

9 *Sec. 2. K.S.A. 2003 Supp. 12-3406 is hereby amended to read*
10 *as follows: 12-3406. A port authority established by K.S.A. 12-3402,*
11 *and amendments thereto, shall clearly state the purpose for which it is*
12 *to be created and the character of the work to be undertaken as a part of*
13 *its official plan; and shall have full power and authority to:*

14 *(a) Purchase, acquire, construct, reconstruct, improve, equip,*
15 *furnish, maintain, repair, enlarge, remodel, own, sell, lease, and*
16 *operate docks, wharves, warehouses, piers, and other water-port*
17 *facilities, airport facilities, terminal facilities, land transportation*
18 *facilities, railroad facilities or industrial-use facilities within the*
19 *area of its jurisdiction, as defined by K.S.A. 12-3405, and amend-*
20 *ments thereto, consistent with the purpose of the port authority,*
21 *which purpose is hereby declared to be for a public purpose;*

22 *(b) (1) borrow money from private financial institutions, any*
23 *agency of the state of Kansas or of the United States of America or*
24 *a private person or entity approved by the port authority, and to*
25 *issue therefor such notes or other evidence of indebtedness as may*
26 *be required and to mortgage, pledge, or otherwise encumber the*
27 *assets of the authority as security therefor, or (2) issue bonds as*
28 *provided in K.S.A. 12-3415, and amendments thereto;*

29 *(c) apply for, receive, and participate in any grants from the*
30 *state of Kansas or from the United States of America;*

31 *(d) construct, straighten, deepen, and improve any canal, chan-*
32 *nel, river, stream, or other watercourse or way which may be nec-*
33 *essary or proper in the development of the facilities of such port;*

34 *(e) purchase, acquire, own, maintain, furnish, improve, repair,*
35 *enlarge, remodel, construct, reconstruct, equip, hold, sell, lease, or*
36 *operate real or personal property for the authorized purposes of the*
37 *port authority, which exercise of such authority is hereby declared*
38 *to be for a public purpose;*

39 *(f) apply to the proper authorities of the United States govern-*
40 *ment for a grant within the limits of the port authority either indi-*
41 *vidually or in conjunction with a corporate instrumentality of this*
42 *state and one or more states, or a bi-state compact or a not-for-*
43 *profit corporation authorized to do business in this state and to*

1 *establish, operate and maintain foreign trade zones pursuant to the*
2 *foreign trade-zone act, 19 U.S.C.A. 81a to 81u, inclusive, as*
3 *amended;*

4 (g) *exercise the right of eminent domain, if approved by a 2/3*
5 *vote of the governing body of the port authority, to appropriate any*
6 *land, rights, rights-of-way, franchises, easements, or other property,*
7 *necessary or proper for the construction or the efficient operation*
8 *of any facility of the port authority and included in an official plan,*
9 *pursuant to the procedure provided by law, if funds equal to the*
10 *appraised value of the property to be acquired as the result of such*
11 *proceedings shall be on hand and available for such purposes. The*
12 *port authority shall not exercise the right of eminent domain with-*
13 *out first having received approval, by resolution, of the governing*
14 *body of the city or county which created such port authority. If the*
15 *port authority was created by two or more cities or counties, the*
16 *port authority shall not exercise the right of eminent domain with-*
17 *out first having received approval, by resolution, of the governing*
18 *body of the city or county in which such property is located. If such*
19 *property is located outside the boundaries of the port authority,*
20 *such port authority shall not exercise the right of eminent domain*
21 *without first having received approval, by resolution, of the gov-*
22 *erning body of the city if such property is located within the cor-*
23 *porate limits of a city or from the board of county commissioners if*
24 *such property is located within the unincorporated area of a county.*
25 *A port authority shall not have the right of eminent domain to ac-*
26 *quire a site for an industrial-use facility. A port authority shall not*
27 *have the right of eminent domain to acquire any land or site in Cowley*
28 *county for which at least one of the purposes is a recreational-use purpose.*
29 *If a port authority exercises the right of eminent domain to acquire any*
30 *land or site in Cowley county, such land or site shall be used only for the*
31 *public purpose stated in the port authority's original official plan and*
32 *there shall be no private development on any such land or site for a period*
33 *of 30 years after the acquisition of any such land or site. A port authority*
34 *shall not exercise the right of eminent domain to acquire any land or site*
35 *prior to a showing that all required state and federal permits to use or*
36 *develop any such land or site in the manner specified in the port au-*
37 *thority's official plan have been obtained.*

38 *Nothing contained in K.S.A. 12-3401 to 12-3433, inclusive, and*
39 *amendments thereto, shall authorize a port authority to take or dis-*
40 *turb property or facilities belonging to any public corporation, pub-*
41 *lic utility, or common carrier, which property or facilities are nec-*
42 *essary and convenient in the operation of such public corporation,*
43 *public utility, or common carrier, unless provision is made for the*

1 *restoration, relocating, or duplication of such property or facilities,*
2 *or upon the election of such public corporation, public utility, or*
3 *common carrier for the payment of compensation, if any, at the sole*
4 *cost of the port authority.*

5 *If any restoration or duplication proposed to be made hereunder*
6 *shall involve a relocation of such property or facilities, the new*
7 *facilities and location shall be of at least comparable utilitarian*
8 *value and effectiveness and such relocation shall not impair the*
9 *ability of the public utility or common carrier to compete in its*
10 *original area of operation.*

11 *If any restoration or duplication made hereunder shall involve a*
12 *relocation of such property or facilities, the port authority shall*
13 *acquire no interest or right in or to the appropriated property or*
14 *facilities, except as provided in subsection (c) of K.S.A. 12-3406,*
15 *and amendments thereto, until the relocated property or facilities*
16 *are available for use and until marketable title thereto has been*
17 *transferred to the public utility or common carrier.*

18 *Provisions for restoration, relocation, or duplication shall be de-*
19 *scribed in detail in the plan specified in K.S.A. 12-3407, and amend-*
20 *ments thereto;*

21 *(h) maintain such funds as it deems necessary;*

22 *(i) direct its agents or employees, when properly identified in*
23 *writing, and after at least five days' written notice, to enter upon*
24 *lands within the confines of its jurisdiction in order to make surveys*
25 *and examinations preliminary to location and construction of works*
26 *for the purposes of the port authority, without liability of the port*
27 *authority or its agents or employees except for actual damage done;*

28 *(j) sell, lease or convey real and personal property not needed*
29 *for the operation of the port authority and grant easements of*
30 *rights-of-way over property of the port authority; and*

31 *(k) promote, advertise, and publicize the port and its facilities;*
32 *provide traffic information and rate information to shippers and*
33 *shipping interests.*

34 *Sec. 3. K.S.A. 12-3408 is hereby amended to read as follows:*
35 *12-3408. The board of directors shall, from time to time after the*
36 *adoption of an official plan, have the power to modify, amend or*
37 *extend the same, provided that upon the making of any such mod-*
38 *ification, amendment or extension thereof, the board of directors*
39 *shall cause notice to be given and shall conduct a hearing, all as*
40 *provided in K.S.A. 12-3407, and amendments thereto, except that the*
41 *board of directors shall not have the power to modify, amend or extend*
42 *the same to change or alter the character of the work to be undertaken*
43 *by the port authority which would allow the use of any land or site ac-*

1 *quired through the exercise of eminent domain to be used for a recrea-*
2 *tional-use purpose, nor to allow private development upon such acquired*
3 *land or site for a period of 30 years from the date of acquisition of such*
4 *land or site. **The board shall not adopt any modification, amendment,***
5 ***or extension until the notice has been given and the hearing held as***
6 ***therein provided.***

7 ***New Sec. 4. Cowley county may not exercise the right of emi-***
8 ***nent domain to appropriate any land or site for which at least one***
9 ***of the purposes is a recreational-use purpose or if such county ex-***
10 ***ercises the right of eminent domain to appropriate land or site, there***
11 ***shall be no private development on such land or site for a period of***
12 ***30 years after such appropriation of land. Cowley county may not***
13 ***exercise the right of eminent domain to appropriate any land or site***
14 ***prior to a showing that all required state and federal permits to use***
15 ***or develop such land or site in the manner specified by the county***
16 ***have been obtained.***

17 ***Sec. 5. K.S.A. 2003 Supp. 19-101a is hereby amended to read***
18 ***as follows: 19-101a. (a) The board of county commissioners may***
19 ***transact all county business and perform all powers of local legis-***
20 ***lation and administration it deems appropriate, subject only to the***
21 ***following limitations, restrictions or prohibitions:***

22 ***(1) Counties shall be subject to all acts of the legislature which***
23 ***apply uniformly to all counties.***

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

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

26 ***(4) Counties shall be subject to acts of the legislature prescrib-***
27 ***ing limits of indebtedness.***

28 ***(5) In the exercise of powers of local legislation and administra-***
29 ***tion authorized under provisions of this section, the home rule***
30 ***power conferred on cities to determine their local affairs and gov-***
31 ***ernment shall not be superseded or impaired without the consent of***
32 ***the governing body of each city within a county which may be***
33 ***affected.***

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

37 ***(7) Counties shall be subject to all acts of the legislature con-***
38 ***cerning elections, election commissioners and officers and their du-***
39 ***ties as such officers and the election of county officers.***

40 ***(8) Counties shall be subject to the limitations and prohibitions***
41 ***imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments***
42 ***thereto, prescribing limitations upon the levy of retailers' sales taxes***
43 ***by counties.***

1 ***(9) Counties may not exempt from or effect changes in statutes***
2 ***made nonuniform in application solely by reason of authorizing***
3 ***exceptions for counties having adopted a charter for county***
4 ***government.***

5 ***(10) No county may levy ad valorem taxes under the authority***
6 ***of this section upon real property located within any redevelopment***
7 ***project area established under the authority of K.S.A. 12-1772, and***
8 ***amendments thereto, unless the resolution authorizing the same spe-***
9 ***cifically authorized a portion of the proceeds of such levy to be used***
10 ***to pay the principal of and interest upon bonds issued by a city***
11 ***under the authority of K.S.A. 12-1774, and amendments thereto.***

12 ***(11) Counties shall have no power under this section to exempt***
13 ***from any statute authorizing or requiring the levy of taxes and pro-***
14 ***viding substitute and additional provisions on the same subject, un-***
15 ***less the resolution authorizing the same specifically provides for a***
16 ***portion of the proceeds of such levy to be used to pay a portion of***
17 ***the principal and interest on bonds issued by cities under the au-***
18 ***thority of K.S.A. 12-1774, and amendments thereto.***

19 ***(12) Counties may not exempt from or effect changes in the pro-***
20 ***visions of K.S.A. 19-4601 through 19-4625, and amendments***
21 ***thereto.***

22 ***(13) Except as otherwise specifically authorized by K.S.A. 12-***
23 ***1,101 through 12-1,109, and amendments thereto, counties may not***
24 ***levy and collect taxes on incomes from whatever source derived.***

25 ***(14) Counties may not exempt from or effect changes in K.S.A.***
26 ***19-430, and amendments thereto.***

27 ***(15) Counties may not exempt from or effect changes in K.S.A.***
28 ***19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments***
29 ***thereto.***

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

32 ***(B) This provision shall expire on June 30, 2005.***

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

35 ***(B) This provision shall expire on June 30, 2005.***

36 ***(18) Counties may not exempt from or effect changes in K.S.A.***
37 ***19-15,139, 19-15,140 and 19-15,141, and amendments thereto.***

38 ***(19) Counties may not exempt from or effect changes in the pro-***
39 ***visions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c***
40 ***and 12-1226, and amendments thereto, or the provisions of K.S.A.***
41 ***12-1260 through 12-1270 and 12-1276, and amendments thereto.***

42 ***(20) Counties may not exempt from or effect changes in the pro-***
43 ***visions of K.S.A. 19-211, and amendments thereto.***

1 **(21) Counties may not exempt from or effect changes in the pro-**
2 **visions of K.S.A. 19-4001 through 19-4015, and amendments**
3 **thereto.**

4 **(22) Counties may not regulate the production or drilling of any**
5 **oil or gas well in any manner which would result in the duplication**
6 **of regulation by the state corporation commission and the Kansas**
7 **department of health and environment pursuant to chapter 55 and**
8 **chapter 65 of the Kansas Statutes Annotated and any rules and reg-**
9 **ulations adopted pursuant thereto. Counties may not require any**
10 **license or permit for the drilling or production of oil and gas wells.**
11 **Counties may not impose any fee or charge for the drilling or pro-**
12 **duction of any oil or gas well.**

13 **(23) Counties may not exempt from or effect changes in K.S.A.**
14 **79-41a04, and amendments thereto.**

15 **(24) Counties may not exempt from or effect changes in K.S.A.**
16 **79-1611, and amendments thereto.**

17 **(25) Counties may not exempt from or effect changes in K.S.A.**
18 **79-1494, and amendments thereto.**

19 **(26) Counties may not exempt from or effect changes in subsec-**
20 **tion (b) of K.S.A. 19-202, and amendments thereto.**

21 **(27) Counties may not exempt from or effect changes in subsec-**
22 **tion (b) of K.S.A. 19-204, and amendments thereto.**

23 **(28) Counties may not levy or impose an excise, severance or**
24 **any other tax in the nature of an excise tax upon the physical sev-**
25 **erance and production of any mineral or other material from the**
26 **earth or water.**

27 **(29) Counties may not exempt from or effect changes in K.S.A.**
28 **79-2017 or 79-2101, and amendments thereto.**

29 **(30) Counties may not exempt from or effect changes in K.S.A.**
30 **2-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-**
31 **171d, 65-1,178 through 65-1,199 or K.S.A. 2003 Supp. 17-5909, and**
32 **amendments thereto.**

33 **(31) Counties may not exempt from or effect changes in K.S.A.**
34 **2003 Supp. 80-121, and amendments thereto.**

35 **(32) Counties may not exempt from or effect changes in K.S.A.**
36 **19-228, and amendments thereto.**

37 **(33) Counties may not exempt from or effect changes in section 4, and**
38 **amendments thereto.**

39 **(b) Counties shall apply the powers of local legislation granted**
40 **in subsection (a) by resolution of the board of county commission-**
41 **ers. If no statutory authority exists for such local legislation other**
42 **than that set forth in subsection (a) and the local legislation pro-**
43 **posed under the authority of such subsection is not contrary to any**

1 *act of the legislature, such local legislation shall become effective*
2 *upon passage of a resolution of the board and publication in the*
3 *official county newspaper. If the legislation proposed by the board*
4 *under authority of subsection (a) is contrary to an act of the legis-*
5 *lature which is applicable to the particular county but not uni-*
6 *formly applicable to all counties, such legislation shall become ef-*
7 *fective by passage of a charter resolution in the manner provided*
8 *in K.S.A. 19-101b, and amendments thereto.*

9 *(c) Any resolution adopted by a county which conflicts with the*
10 *restrictions in subsection (a) is null and void.*

11 *Sec. 6. K.S.A. 12-3408 and K.S.A. 2003 Supp. 12-3402, 12-3406*
12 *and 19-101a are hereby repealed.*

13 *Sec. 7. This act shall take effect and be in force from and after*
14 *its publication in the Kansas register.*