

Approved: 2-20-96  
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 14, 1996 in Room 423-S of the Capitol.

All members were present.

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

### Conferees appearing before the committee:

Senator Stan Clark  
Shad Chandler  
Larry Nelson  
Jerold Hubbard  
Mike Smith  
Jim Sips  
David Walker  
Dan Nagengast, Kansas Rural Center  
Bill Craven, Kansas Natural Resource Council  
Ivan Wyatt, Kansas Farmers Union  
Rick Hoffman, Seaboard Farms, Inc.  
Mike Jensen, Pork Producers Council  
Dallas Bressler, Morton County Commissioner  
Dale Sutton, Stevens County Commissioner

Others attending: See attached list

### **SB 600 - concerning certain county elections and protest petitions; relating to the powers and duties of the Board of County Commissioners.**

Chairperson Corbin called on Staff to explained the bill. The hearing on **SB 600** was opened, and he called on Senator Clark sponsor of the bill.

Senator Clark said he was asked by citizens in Norton County to draft legislation that would guide county commissioners in rescinding their previous resolution (Attachment 1).

Shad Chandler testified in support of SB 600. If County Commissioners are to do the job they are elected to do they need to have the authority to rescind resolutions. Attached to his testimony is a memorandum from the Attorney General's Office discussing the ability of a county to reverse a prior decision allowing swine production facilities (Attachment 2).

Larry Nelson supported the proposal as he thought no one would expect any governmental entity to live forever with a resolution passed in previous years (Attachment 3).

Jerold Hubbard testified in support of **SB 600**. He did not think it was the intent of the Legislature to take the right for people to choose just because the original choice was made to allow corporate facilities. The potential impact of large corporate dairy and swine facilities is to great to be forever locked into position (Attachment 4).

Mike Smith said at the time the resolution was passed they had no swine facilities in their county. Now they have swine facilities and there is opposition and the County Commissioners have been petitioned to allow the citizens the opportunity to vote (Attachment 5).

James D. Sipes, area farmer and stockman from Morton County, and also representing High Plains Concerned Citizens Coalition composed of farmers, stockmen and townspeople from different counties in the

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE Room 423-S-Statehouse, at 10:00 a.m. on February 14, 1996.

Southwest corner of Kansas, requested the passage of **SB 600**. The people in that part of the state want to voice their opinions and govern themselves (Attachment 6).

David Walker supported the bill so that the local people may once again be in control of their affairs. The people need to continue to have a vote in their future (Attachment 7).

Dan Nagemgast testified if citizens have no redress of issues at the local level it might result in distrust of local governments. He suggested commissioners be taken entirely out of the picture, by requesting proponents of corporate livestock facilities to submit a petition signed by 5% of the electors requesting an election on the issue to be held before permitting such a facility to be established. Another suggestion was to revisit the decision a year after the resolution is passed (Attachment 8).

Bill Craven said he viewed the bill as clarifying local responsibilities and clarifying issues which were overlooked when corporate farming operations were authorized in 1994. He suggested an amendment which would allow a referendum election in counties (Attachment 9).

Ivan Wyatt stated if we believe in government by the people for the people **SB 600** should be passed (Attachment 10).

The hearing for the proponents was closed, and the hearing for the opponents was opened.

Rick Hoffman pointed out some of the key issues that were in the debate two years ago when corporate swine legislation was passed. The present law gave each county the right to choose for itself, and included a provision for a protest petition. If the law was allowed to change back and forth it would represent bad public policy and send a signal to potential investors to simply not choose to invest in Kansas (Attachment 11).

Mike Jensen opposed the bill and outlined four reasons why his council opposed it. He suggested the 1994 law should have more time (Attachment 12).

Dallas Bressler, Morton County Commissioner, and Dale Sutton, Stevens County Commissioner opposed the bill. It was requested and Chairperson Corbon ask that the Commissioners submit written testimony.

Mr. Hoffman and the County Commissioner responded to several questions. Written testimony was distributed from Leonia Tallant, Johnson, Kansas (Attachment 13), and from Dorothy Milburn, Elkhart, Kansas (Attachment 14). The hearing for the opponents of **SB 600** was closed. The meeting adjourned at 11:02.

The next meeting is scheduled for February 15, 1996.

# SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-14-96

NAME	REPRESENTING
RICK HOFFMAN	SEABOARD FARMS
Hank Ernst	Kansas Farmer
Jerald Hubbard	Morton County Committee for Responsible Government
Mark Campbell	Seaboard Farms
David Becker	Seaboard Corporation
Joe Lieber	KS Coop Council
Bill Haven	Sierra
Kerri Elbert	KS Dairy Association
Don Ryan	Ryan County
Mike Smith	Stanton City
Jim Liden	High Plains Concerned Citizens Coalition
David Walker	David Walker
DAN NAEENGAST	KS. RURAL CENTER
Ivan W. Wyatt	KS Farmers Union
Mo Jansen	KS Pork Council
Jim Allen	Seaboard
BILL FULLER	Kansas Farm Bureau
Dallas Decker	Morton County
Imogene Bruesler	Morton Co.

# SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-14-96

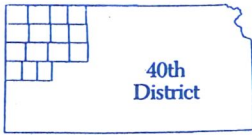
NAME	REPRESENTING
Kerri Ebert	KS Dairy Assn.
G. Sweeney	KDA
Allie DeWitt	KDA
NOBLE MORRELL	DPS
Allen Humphrey	OPS
Mark Barcellona	KDOCH
Sherry Schoonover	Ind. Ag.
Rich Bewals	KTEC
Kevin Can	"
Greg Tugman	KDOA
James Clover Adams	KS Grain & Feed Ass'n
Marty Vanier	KS Ag Alliance
Rich McKee	KLA
Chris Wilson	KVMA
Derenda J. Mitchell	the Governor
Joe Lieber	KS Co-op Council
Amy Praeger	Senate Majority Leader
Ellen Schuman	Farmers
David Schuman	Farmer

# SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 2-14-96

NAME	REPRESENTING
Claudine Davidson	Morton Co
<del>James [unclear]</del>	<del>W. St. Sv. Hs Co. Appraiser</del>
Ethel Evans	Grant Co.
DAVE SUTTON	STEVENS Co. Comm.
W K Rhodes	Jefferson Co Comm.
Marty Vanier	KS Ag Alliance
Russ Frey	Riley Co Comm.

STAN CLARK  
STATE SENATOR



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

VICE CHAIR: ELECTIONS  
MEMBER: AGRICULTURE  
ASSESSMENT AND TAXATION  
FINANCIAL INSTITUTIONS  
AND INSURANCE

TESTIMONY - SENATE BILL 600  
SENATE AGRICULTURE COMMITTEE  
FEBRUARY 14, 1996

Mr. Chairman and members of the Committee. I appreciate the opportunity to appear before you in support of SB 600.

In 1994, this Legislature passed SB 554 which permitted counties the choice of allowing swine facilities to be owned by traditional for-profit corporations. When this legislation passed, several counties followed the proper statutory procedure with the County Commissioners adopting a resolution and publishing a notice for two consecutive weeks in the newspaper; no petition was presented in opposition to the Commissioners' action so the swine facilities were allowed to be constructed in the county.

In some counties, there are citizens and County Commissioners who would like to repeal this resolution and would like statutory authority to proceed to accomplish this. My proposal allows the County Commission to rescind their resolution with a provision for a protest petition by supporters of corporate swine facilities to place the issue on the ballot. This is in keeping with the procedure adopted by the 1994 Legislature in allowing those who disagreed with County Commissioners' action to pass and file a protest petition.

If swine facilities owned by corporations exist when the County Commissioners rescind their resolution, these facilities can continue their operations. If expansion has been approved by state and local authorities, these facilities can be constructed and operated under their permits. At the effective date of the resolution, no additional permits for expansion of existing facilities or construction of new facilities will be allowed.

I was asked by citizens in Norton County to draft legislation that would guide County Commissioners in rescinding their previous resolution. Currently there are no corporate swine facilities in Norton County, though there is talk of the possible establishment of one facility.

Thank you for this opportunity to testify and I will be happy to answer any questions.

TESTIMONY OF  
SHAD B. CHANDLER  
before the  
SENATE COMMITTEE ON AGRICULTURE  
February 14, 1996

My name is Shad Chandler, I am a lifelong resident of Alma Kansas. I am now the President of the Alma State Bank, in Alma, Kansas. Our bank, and our community are totally dependent on agriculture, and the health of the local economy. I am here to testify in favor of S.B.600 on behalf of a large group of citizens in Norton County. I firmly believe the citizens of each county in the state of Kansas should be given the choice of allowing corporate hog farms as was the purpose of the original legislation (KSA 17-5908).

The problem with the current legislation is that there is no statutory authority allowing the county commissioners to rescind their resolution on corporate hog farming. I have a copy of a letter from Robert E. North, Staff Attorney with the Kansas Department of Administration. In this letter, he states "it is my opinion that once a county has passed a resolution permitting a swine production facility it may not reverse that decision at a later date"... "by not providing a statutory procedure for discontinuing the permit of such facilities, a very good argument can be made that once the election has been made to permit such use, it can not be reversed."

The case in Norton County, as with other counties in the state, was that no one acted on the original publication; which then allowed corporate hog farming to be permitted in the county. The reason that the people did not act on the first resolution which was originally passed, is because of poor communication. Many people of the county do not even subscribe to the Norton Daily Telegram which contained the legal publication pertaining to corporate hog farming. When it became public knowledge that a corporation was courting Norton County as a possible facility location, it started an outcry of opposition. An

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extreme amount of public pressure was put on the county commissioners, who then rescinded their original resolution. A protest petition drive was subsequently started and received with overwhelming support. It now appears that the citizens of the county will be given the opportunity to vote on the issue, as they should have in the first place. Does this mean that the commissioners of Norton County have made the county the possible target of a liability lawsuit? Does this mean that the county commissioners should not be allowed to rescind this resolution? If it is obvious that the majority of the citizens want to opt out of corporate hog farming, should not the county commissioners be allowed to rescind this resolution? In my opinion, if the county commissioners are going to do the job that they were elected to do, they have no choice but to rescind this resolution. This legislation is desperately needed to provide the commissioners with a statutory procedure, in order to rescind this resolution.

Respectfully,



Shad B. Chandler





BILL CRAVES  
Governor

DEPARTMENT OF ADMINISTRATION  
LEGAL SECTION  
107 Landon State Office Building  
900 SW Jackson  
Topeka, Kansas 66612-1214  
(913) 296-6000  
FAX (913) 296-0043

SHEILA FRAHM  
Lt. Governor/Secretary

### MEMORANDUM

TO: Steve Kelly, Business Development Division, Dept. of Commerce & Housing

FROM: Robert E. <sup>REN</sup>North, Staff Attorney

DATE: December 21, 1995

RE: Swine Production Facilities

You have requested a memorandum discussing the ability of a county to reverse a prior decision allowing swine production facilities. More specifically, whether a county that has passed an appropriate resolution permitting swine production facilities can resolve at a later date to discontinue those facilities. While the answer is somewhat ambiguous, it is my opinion that once a county has passed a resolution permitting a swine production facility it may not reverse that decision at a later date.

K.S.A. 17-5908 provides the procedure by which the board of county commissioners, or in certain instances, a petition from the qualified voters of a county, may request an election to determine whether a corporate swine facility shall be allowed to be established in the county. (See also K.S.A. 17-5904.) Critical to the analysis that the procedures set forth in 17-5908 provide only for the approval of such a permit and do not provide a corresponding procedure to allow a county to discontinue a facility once it has been approved. I discussed this matter with the Revisor of Statutes staff person who drafted the statute in 1994 and was advised that discussions regarding this issue took place at the time the legislation was enacted. Apparently, the Legislature did not want to become involved with the potential liability of a swine producer having built or commenced construction of an expensive facility only to have their ability to operate reversed by the whims of the county commission or voters of that county. By not providing a statutory procedure for discontinuing the permit of such facilities, a very good argument can be made that once the election has been made to permit such use, it can not be reversed.

It must be kept in mind, however, that K.S.A. 17-5908 is subject to amendment and the Legislature could at a later date provide statutory guidelines allowing a county to discontinue or deny its existing permit for a swine production facility. It is anticipated that in the event the statute is so amended, that a grandfather clause for other appropriate equitable relief would be allowed to

Steve Kelly  
December 21, 1995  
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those who have invested in such a facility. However, there is no absolute guarantee that a grandfather clause or similar relief would be provided.

An argument can also be made that since the statute does not preclude the county commission or qualified voters from reversing an initial decision permitting this use that such a right exists and counties retain the ability to discontinue the permit. This argument appears much weaker than the argument providing that the permit cannot be withdrawn or discontinued. Obviously, a corporate investor involved in constructing a swine production facility requires a reasonable degree of certainty that they will be allowed to proceed with the facility. Hopefully, as a practical matter, the county commission and/or qualified voters of a county containing a swine production facility will properly consider the numerous jobs and other economic improvements occasioned by the facility and not take such negative action. In any event, the most logical position appears to be that once a decision to allow a facility is made, it can not be reversed.

I hope this is relatively responsive to your inquiry. If you have any questions regarding this matter, please let me know.

REN:bm

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TESTIMONY OF  
Larry Nelson  
before the  
SENATE COMMITTEE ON AGRICULTURE

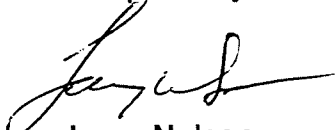
Honorable Senators:

Thank you for allowing me to express my views concerning SB600. My name is Larry Nelson, Alma, KS and I am appearing in support of SB600. I have been employed since 1972 by New Age Industrial Corp., Norton, KS. New Age is the largest private employer in the county with over 100 employees and manufactures food service equipment 97%, general and swine equipment 3%. I have worked with supplying confinement hog operations with equipment for 23 years. The views I express are not only my own, but shared by many people in Norton County.

In 1994, the Norton County Commissioners approved Corporate Dairy and Hog farming as permitted by KSA 17-5907 and 5908. Since the time of passage, it has become apparent to many citizens of Norton county that Corporate farming is not wanted. Our displeasure was presented to the Norton County Commissioners who courageously rescinded, then re-passed the resolution. This allows us 60 days to present a protest petition to put the resolution to a vote of the people. This bill would protect our rights by allowing local government to make changes to local government as it deems necessary without legal threats.

It seems ludicrous to me that anyone would expect any governmental entity to live forever with a resolution passed in previous years. The people of Norton county should be able to vote in or out resolutions it deems necessary for the well being the county. Corporate Hog Farming is one such resolution that a majority of Norton County residents want rescinded.

Respectfully,



Larry Nelson

Senate Ag Co  
2-14-96  
Attachment 3

It was the original position of the Kansas State Legislature to provide the individual counties the RIGHT of CHOICE whenever it came to Corporate dairies or Corporate swine facilities. I do not believe it was the intent of the Kansas State Legislature to take this RIGHT to choose away just because an original choice was made. The potential impact of large Corporate Dairy and Swine facilities is too great to be forever locked into one position or the other.

I believe this position of CHOICE concerning specific items which vary from county to county is backed up by the HOME RULE AMENDMENTS 19-101 and 19-101a; but because this RIGHT is not specifically stated, it has created a "gray" area which seems to have opened the doors for counties to be sued by these mega Corporations if this RIGHT to choose is enacted by counties which have decided that they would like the RIGHT to control the DENSITY of these allowed facilities.

Almost everything has a saturation point irregardless of whether it was originally beneficial or not. Just because a little medicine makes one feel better does not automatically mean that a lot of it will make one feel a lot better.

I believe that specific regulations concerning such Corporate facilities, such as DENSITY, was not discussed or implemented simply because it was too difficult to set a precedence which would hold true through out the entire state. Kansas is quite a diverse state.

Therefore, I believe that it was just assumed that each county would retain the ability to choose and to rescind any previous decision concerning Corporate Dairies or Swine facilities if the continued production of such facilities posed a threat or hardship upon the county residents or natural resources.

I believe that is why each county was given the RIGHT to choose individually from the very beginning whenever it came to Corporate Dairies or Swine facilities. No one could know, tell, or accurately project the exact impact that these Corporate facilities would have upon the individual counties.

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Attachment 4*

And, it maybe that some counties which originally decided to rescind the Corporate dairy and swine facilities would eventually like to try some. This would definitely come closer to happening if these counties who changed their minds knew they still retained the RIGHT to choose and rescind this position without the threat of reprisal if the density of such facilities got to the point that they posed a real threat to their local residents or natural resources.

Also, just because some counties chose to accept Corporate dairies and swine facilities did not mean that they guaranteed them any land. And, if they were fortunate enough to find some land to by, this did not guarantee them that they would get any more.

It is important to separate out the differences between mega corporations and individuals.

Although individuals have retained the right or opportunity to buy land and operate within all counties, they have NEVER been guaranteed the ability to buy this land even if they had the opportunity to do so. They are often restricted by their finances and or other liabilities.

BUT.....LARGE corporations are not often restricted by their finances or personal liabilities. So, if they are given unrestricted opportunities to purchase land, it is easy for them to take advantage of these opportunities and dramaticly out compete local farmers or individual buyer for this market. Therefore, it is sometimes necessary to place some restrictions upon these LARGE corporations by denying them the opportunity to buy land or other marketable products.

February 14, 1996

SENATE BILL 600 - TESTIMONY  
SENATE AGRICULTURE COMMITTEE

Mr. Chairman and Members of the Committee:

I am Mike Smith, a commercial pilot and aerial applicator, with my business located in Johnson, Kansas. In 1994, after the legislature passed Senate Bill 554, our Stanton County Commissioners made a resolution allowing corporate swine facilities to be located in Stanton County. Our county followed the proper procedures with the commissioners adopting a resolution and publishing a notice for two consecutive weeks in the county newspaper, in the spring of 1994. No opposition was presented against the commissioners action at this time. The corporate swine facilities were then allowed to be constructed in our county.

We took Thomas Jefferson's advice to George Washington, "Delay is preferable to error." At the time of the resolution, there were no confined feeding facilities of this nature in the area. Our judgement was soon found in error, but the window of opportunity was closed.

Initial contacts with our county commissioners resulted in the same advice, wait and see. We waited, we saw and we petitioned to our county commissioners for the opportunity to vote. The issue had divided the community and all agreed that majority should rule. Our commissioners stated an election was impossible, fearing litigation for the county.

We then asked for rescision of their resolution which allowed the corporate swine facilities. The county attorney was instructed by the commissioners to investigate ways and means to accomplish rescision. After his investigation, he reported to the commissioners and the people that there was no infallible avenue for a resolution reversal.

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attachment 5 5.1*

Our commissioners asked the people to appeal to the legislature for a legal and clear mode of reversal. We strongly encourage you to support Senate Bill 600 allowing us this opportunity. Aristotle believed that "if liberty and equality . . . are found in democracy, they will be best attained when all persons alike share in the government . . .".

Thank you for this opportunity to testify and I will be happy to answer any questions you may have.

Mike Smith

# ***High Plains Concerned Citizens Coalition***

***(farmers, stockmen, and townspeople)***

***P.O. BOX 538***

***JOHNSON, KANSAS 67855***

***Fax (316) 492-6221 Fax (316) 493-4700***

February 12, 1996

Honorable Senators:

As a coalition of citizens from different counties in the Southwest corner of Kansas, we request that you pass Senate Bill 600. Government is of the people, by the people, and for the people. Without the ability to rescind decisions that with time have proven unwise for the greater good of the state, community, or individuals, we become slaves or victims of past decisions and become unable to govern ourselves.

Usually one would consider it inconceivable that a business or type of business could put a choke hold on entire regions, counties, individuals and businesses through threat of lawsuit. However, in counties with small population (2443 in Stanton County and 3480 in Morton County) and limited county budgets (such as \$5.9 million for Stanton County and \$7.7 million for Morton County) we are fiscally unable to sustain any legal defense of our county elected officials or their decisions. Especially, when the cost of the lawsuit, not to mention the settlement if we would lose, could easily use the entire annual county budget.

Fear of lawsuit has kept citizens from signing petitions, county commissioners from officially taking any action, whether rescision or enforcing existing regulations or making desperately needed new ones. In Stevens County the population was large enough to pay for zoning costs. A corporate hog farm has threatened the county, county commissioners, zoning board and citizens with a lawsuit about their decision to zone. A county commissioner of Stevens County hopes that rescision legislation will become effective in time to render their zoning lawsuit defense unnecessary.

In Lincoln County Missouri a large corporate hog farm is suing the County for changing their decision which allowed corporate hog confinement facilities. Outside funding has been necessary by FARM AIDE to support their legal defense. Please pass this rescision legislation to stop large companies from holding Southwestern Kansas counties hostage.

Sincerely,

  
HPCCC Representative

*Senate Ag Co*  
*2-14-96*  
*attachment 6*



Testimony - Senate Bill 600  
Senate Agriculture Committee

February 14, 1996

Mr. Chairman and members of the Committee. I appreciate the opportunity to voice my support for Senate Bill 600 which will allow my County, Morton County, to rescind our county commissioners resolution allowing corporate hog farms to establish themselves in our county.

Morton County leaders in December of 1994 conducted a survey to determine what economic development, if any, was desired. The survey asked, do we recruit hog operations. These are the results:

Strongly Support	9%	Total Support	22%
Support	13%		
Unsure	19%		
Oppose	11%	Total Opposed	49%
Strongly Oppose	38%		
No Reply	10%	Other	29%

Even with this information, our county commissioners voted to allow corporate swine operations.

The appropriate reporting measures were taken by our commissioners in our local newspaper, of small circulation (around 2000), during the busiest time of the year. Those who read the legal notice didn't realize the plans of the corporate farms, the related problems, or the extent of infiltration. No opposing petition was provided to our county commissioners.

When reality sank in and the corporate swine production plans were realized, petitioning was no longer an option. Citizens became enraged and have attempted to sway the opinion of our commissioners. Meetings were held with our county commissioners. The first meeting drew 75 concerned citizens (and the police to keep the crowd in control). The outrage of concerned citizens was ignored by the commissioners. One official was overheard telling a Seaboard Farms employee, there's no real problem only 75 people showed up. Individuals worked to inform our commissioners on the issues. 230 people crowded into Elkhart City Hall November 30, 1995 to hear reports on corporate hog farming, environmental consequences and how it affects water quality and depletion.

The citizens of Morton County after education, realization, and observation presented a petition to our commissioners on January 8, 1996 asking for a rescission of their decision allowing corporate hog facilities. Forty-three percent of the registered voters signed the petition. Our county attorney, Eric Witcher, stated that the statutes are silent on this issue. No action would be considered by the commissioners until clear legislation allowed rescission.

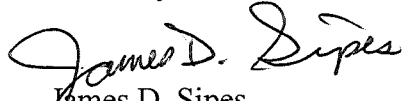
People in Morton County want to voice their opinions and govern ourselves. Rampant fear of

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*Attachment 6-2*

litigation by large hog corporations have concerned County Commissioners and individuals. Rumors are circulating that our county commissioners, our county, and the individuals which signed the petition are subject to lawsuit if we act alone to rescind. Please supply us with the legislation that will allow us to govern ourselves.

Sincerely,

  
James D. Sipes  
Area Farmer and Seedsman

TESTIMONY--Senate Bill 600

SENATE AGRICULTURE COMMITTEE  
February 14, 1996

Mr. Chairman and members of the Committee. I very much appreciate the opportunity to express to you my support for Senate Bill 600. My name is David Walker, and I live and farm in Stanton County, KS.

In 1994, when the Legislature passed SB 554, our County Commissioners published the required notices in the local newspaper regarding the option to allow corporate swine facilities to conduct for-profit business. To my knowledge, none opposed this idea. At that time, I felt that it really would make no or little difference as far as the business entity structure, so long as the new businesses were tuned to the community and its' wants and needs in conjunction with its' own need of making a profit.

I still believe that ideal is possible; however, it now appears that those large, profit-minded companies may not consider the local community's abilities and desires when building or expanding. In simple terms, if we were all on a ship and said we were willing to take on more passengers, everything would be fine as long as the number of new passengers didn't jeopardize the ship.

After visiting with our County Commisioners and our County Attorney, my understanding is that if we now try to effectively control the expansion of an industry that could potentially sink our ship, then the county could potentially be sued. Therefore, I ask for your support of Senate Bill 600, in order that local people may once again be in control of their affairs without fear of reprisal, and in order that people may continue to have a vote in their future.

Once again, thank you for the opportunity to testify. I will be glad to respond to questions.

*Senate Ag Co  
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Attachment 7 7-1*

# The Kansas Rural Center

Dan Nagengast, Executive Director

P.O. Box 133

Whiting, KS 66552

(913) 873-3431

(913) 841-1959

## Testimony concerning Senate Bill No. 600, February 14, 1996

The Kansas Rural Center (KRC) 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 Rural Center has observed with great interest the activity surrounding county commissioner resolutions permitting corporate dairy and swine facilities since the implementation of K.S.A. 17-5907 and 17-5908 last year. It is our impression that many citizens were unaware of the changes their counties were facing when resolutions allowing these livestock facilities were passed by county commissioners.

Now they know. To say that there shall be no redress for citizens to reconsider this issue at the local level indicates distrust of local government, and frankly means turmoil for years to come. Current law does not address rescission at all, leaving it a gray area. Even the elected officials who passed the resolution can be replaced though their decisions in this area possibly cannot be reconsidered.

This proposed change in this Bill could be made even better by taking the commissioners entirely out of the picture, and requiring proponents of corporate livestock facilities to submit a petition signed by 5% of the electors requesting an election on the issue to be held before permitting such a facility to be established.

A second useful change might be to allow commissioner resolutions in this area to be revisited up to a year after the resolution.

We think that Kansans should be trusted to make decisions about the future development of their counties.

Thank you.

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2-14-96  
Attachment 8*



# SIERRA CLUB

## Kansas Chapter

Testimony of Bill Craven  
Kansas Natural Resource Council and  
Kansas Sierra Club  
February 14, 1996  
S.B. 600

Thank you for the opportunity to testify. This bill is an attempt to resolve an unpleasant and very volatile situation in western Kansas. The Sierra Club has been working with grassroots groups in western Kansas and this informal coalition has considerable concern about the scope of the developing mega-swine operations. In fact, it is now evident that even those who supported the legislation which legalized these operations are now having second thoughts about what is happening in western Kansas.

However, and this is important, this bill is not about the environmental or social issues pertaining to what Kansas law calls corporate swine or dairy facilities. This bill is about local control. And this bill, most fundamentally, is about democracy.

S.B. 600 does the following things:

- (1) It enables county commissioners to rescind resolutions authorizing corporate dairy and corporate swine operations. This is important because even though some of us are convinced that county commissions already have that authority, the opposite view has been expressed by county commissioners and their legal advisers. Thus, this provision clarifies that issue. It does not say that county commissioners are obligated to rescind.
- (2) Any such resolution rescinding a pre-existing resolution is subject to the same protest petition and election procedures that was available when the first resolution (authorizing corporate hog or dairy operations) was adopted. To me, that is eminently fair.
- (3) Existing facilities are grandfathered in, and expansion of existing facilities is authorized pursuant to applicable state law and county commission approval. This provision does not change existing law as to expansion and only sets forth the fact that existing facilities will not be affected.

I view this bill as clarifying local responsibilities and clarifying issues which were overlooked or ignored when corporate farming operations were authorized in 1994. As the committee should know, what is happening in western and southwestern Kansas is truly agonizing to a good many citizens. This legislation would once and for all provide a framework for finally resolving these issues. No matter who wins or loses any future elections, there can be no complaints that people with any point of view whatsoever weren't given an opportunity to air those points of view in county elections.

Finally, I would urge the committee to end this issue once and for all by supporting an amendment which would allow a referendum election in the counties. This is extremely important to address the situation in a small group of counties where democracy is not respected. Even when overwhelming majorities of citizens signed petitions requesting rescission, the county commissioners have not responded. It is not likely they will do so even if this bill passes in its current form. I don't want to propose any numbers, but I would suggest that they be set fairly high. For example, the committee might want to consider allowing a referendum in a county when 30 or 35 percent of the registered voters sign a protest petition. In the interest of fairness and maintaining the reciprocity of the pending bill, these elections should be allowed both when a county passes or rescinds a resolution dealing with corporate dairy or swine operations. My sense is that with this amendment, the legislature can resolve the issues of democracy and elections posed by corporate agriculture, and I think that would be a step welcomed across the state.

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# Statement

Ivan W. Wyatt, Pres.  
Kansas Farmers Union

SB-600<sup>or</sup> (People's Right to Vote)

Before

The Senate Agricultural Committee

February 14, 1996

Mr. Chairman, Members of the Committee:

My statement will be brief but it could be even shorter by simply saying, "let the People vote."

That is the message we are hearing everywhere now. Get the government back to the people let them decide the issue of rights including protecting their property rights.

In 1994 the Kansas legislature decided we don't need to be bothered with the people, we will simply let the County Commissioners make those decisions for the people. After all it was many of the legislators were claiming the people, especially in western Kansas "deserve the right" to have thousands of hogs using up the areas limited resource of pure groundwater to flush away hog manure, water that the people thought they had been conserving for future generations. Many who voted for that legislation apparently thought the people's right to breathe clean fresh air was not of a priority in their minds, compared to the bottom line of some absentee corporation, so why let the people vote.

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of the 2 - units of government that decided the people of their area didn't deserve the right to vote.

Apparently, those units of government and the state Legislature were wrong. Only 2 counties of those 23 where the people demanded a vote the vote was very narrow, with one county margin was less than a handful.

In all the other counties where there were elections the margins against these corporations were approximately 2 to 1 against, the "people" spoke loud and clear despite "institutional" campaigns to the other point of view.

During the corporate hog debates we heard numerous times how efficient the massive corporate hog operations would be, while ignoring the local taxpayer costs of infrastructure investment and maintenance, coupled with the threat of local environmental degradation, including added educational and social costs to those taxpayers.

However now we see ~~now~~ these massive corporate "state-of-the-art, high quality, uniform porker" units financial reports for  $\frac{3}{4}$  of 1995 registering \$71 million dollar loss, accumulating \$471 million dollar indebtedness. These figures are now becoming a great concern to those local units of government what will happen to their peoples tax burden if there is a default in the corporate property tax payment. Could those units of government access low interest loans.

In Kansas the people were promised there would be no special treatment for corporations coming into their communities. That promise lasted very little longer than a new years resolution, and no doubt there will be more forthcoming. The people also have concerns how lax the regulatory rules are being enforced.

These are concerns the people now have. They are concerned about preserving their future and today's property rights.

If we truly believe in government by the people for the people SB-608 should be passed.

Give the people the opportunity to use their vote to undo what "special interest corporations" has wrought upon them. — Let the people vote — they "deserve that right." to protect their property, rights to protect their homes.

Thank you



Testimony to the Senate Committee on Agriculture  
from Rick Hoffman, Seaboard Farms, Inc. - Chief Executive Officer

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Two years ago, we were discussing the merits of allowing corporations to engage in hog production in Kansas. After more than a decade, we thought the debate was over when the legislature passed a bill which allowed counties to opt out of state laws prohibiting corporate farming. As I recall, following are several of the key issues in the debate:

**Economic Development**

Kansas hog production had been declining for many years. In 1993, Kansas was responsible for less than 2.4% of total U.S. hog production.

New development in hog production would benefit rural Kansas, especially Southwest Kansas, by adding significantly to the property tax base and by providing new jobs. Even more significant was the potential benefit to Kansas grain farmers. By adding value through animal production, farmers receive higher prices for their grain, and more money stays in our State.

**The Old Law Didn't Make Sense**

For years, hog farmers, like all farmers, have become bigger and more specialized. The perceived threat to the traditional, highly diversified family farm engaged in cattle and hog production, raising chickens, and growing crops was not coming solely or primarily from corporations; it was coming from the economics of supply and demand, which favors low-cost, efficient production. It wasn't "corporate farming"; it was bigger, more efficient farming. The largest hog producers in the United States, and for that matter, in the world, were "family farmers." Not in the traditional sense, but they could qualify as family farmers under Kansas Statutes. Thousands of hog farmers, in Kansas and nationwide, have become bigger and more efficient producers.

Contracting was already occurring throughout the industry, even in Kansas via cooperatives.

Corporate hog farming was already legal in Colorado, Oklahoma, Texas, and many other states.

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## **The New Law Gave Counties the Choice**

Each county of the state could choose for itself. Since there was little hog production in Southwest Kansas, and a significant need for economic development there, many of the counties quickly opted out of the State law.

## **Status of Our Project**

Today, hog production in Kansas is on the rise. By this spring, Seaboard will have more than 50,000 sows in production of more than 1 million pigs per year - - almost one-third of the total production of hogs in the State.

Our facilities are designed to exceed state environmental and setback requirements. A 440,000-ton feedmill is under construction in Hugoton. We are ready to commence construction of a new management office to house 70 people. When completed, Seaboard will have spent more than \$120 million on fixed assets and created 530 Kansas jobs with a payroll approaching \$12 million per year. Annual property tax payments will amount to more than \$2 million.

Seaboard Farms has used more than 7 million bushels of truck-delivered corn and milo at our feedmill in Optima, Oklahoma. A vast majority comes from Kansas producers (we estimate 80%). At full production, Seaboard Farms will purchase approximately 20 million bushels of feed grain each year. In 1995, Kansas vendors received \$40 million for construction of facilities and non-feed grain purchases.

Seaboard utilizes a production technique, whereby many buildings and multiple sites are utilized to improve the overall health of our animals and minimize the concentration of animal waste and odor. Many of these sites are yet to be determined.

The construction of our facilities in Kansas is expected to continue at least until the spring of 1997.

**TYPE OF FACILITY**

	<u>Genetic Sow Units (5,200 sows)</u>	<u>Commercial Sow Units (48,000 sows)</u>	<u>Commercial Nurseries (1 million pigs)</u>	<u>Commercial Finishing Units 210 Buildings</u>	<u>Feedmill (440,000 tons)</u>	<u>Office and Truck Maintenance</u>
<b>Date of Completion:</b>	Complete	spring 1996	fall 1996	spring 1997	summer 1996	fall 1996

As an integrated producer, our feedmill, offices, truck maintenance, and various production facilities are being constructed contemplating the farrow-to-finish production of 1 million hogs in Kansas. The feedmill in Hugoton was sized accordingly. It was located at a site to minimize feed delivery cost to the various production buildings. Our sow units are designed to produce 1 million feeder pigs. All of the production sites are located to minimize the distance and cost of hauling pigs around. Any change now that would endanger our ability to complete this project as it was designed could have a significant adverse financial impact on our Company's operations.

We relied on the changes that were made to the Kansas law concerning corporate farming to size and construct our facilities.

The current law provides a specific procedure for counties to opt out of the restriction on corporate farming, including a provision for a protest petition and possible referendum. These procedures were followed in Southwest Kansas. Allowing the law to change back and forth represents bad public policy and sends a signal to potential investors who simply will choose not to invest in Kansas.

With our corporate headquarters in Merriam, Kansas; enormous investment and operations already located in Southwest Kansas; and significant employment in this State, we wish to go on record to oppose SB 600.

## Senate Bill 600

presented by

Mike Jensen

on behalf of the

Kansas Pork Producers Council

Mr Chairman and members of the committee, I am here to present testimony in opposition to SB 600. Our members have been actively involved in support of a business climate in Kansas that will allow our industry to prosper. SB 600 would effectively halt these same business opportunities. Following are some key points I wish to expand on:

\* This current "county option" is less than two years in implementation.

\* The mere possibility of a county reversing a previous decision will stop new or expanded construction.

\* Current Kansas producers, not just "corporate" producers will be impacted.

\* There is not evidence to support any negative ramifications of the 1994 law on the Kansas swine industry, economy or environment.

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# **STANTON COUNTY NATURAL RESOURCE COMMITTEE**

***Farmers, Stockmen, and Townspeople***

***P.O. BOX 362***

***JOHNSON, KANSAS 67855***

February 12, 1996

Salutations Senators;

We represent a group of over 400 concerned citizens (numbering over 16% of our population of 2443 persons) which have requested action deemed impossible by our county commissioners due to inadequate legislation. We the members of the Stanton County Natural Resources Committee encourage support of Senate Bill 600, which would allow our County Commission to rescind as requested.

The legal notice announcing our county commissions decision to allow corporate swine facilities in Stanton County was published in our local paper, of small circulation, for two issues during a very busy and critical time in our county. Few people noticed the announcement and those that did, did not recognize the full impact of this resolution on our county and its natural resources. Many felt that our area would be unattractive to the corporate facilities due to our limited water supply and unwillingness to use land for, and effluent from, these facilities.

Within two years, over 2 million hogs have been moved into this region overwhelming an unprepared and outdated regulatory system, and astonishing many local citizens, commissioners, and congressmen. Many problems have developed causing much turmoil. Any attempts to discuss problems, curb future problems or arrive at solutions have been met with fear of corporate litigation. This has nearly paralyzed the local populace including our commissioners. Only the brave, stupid or those with the largest liability insurance dare speak out. Our county can only afford \$1 million liability policy on each of our commissioners. They feel, and the county attorney concurs, that rescision without supporting legislation will prompt a devastating flurry of lawsuits.

An assembly of area county attorneys has researched avenues of rescision and has found no acceptable solution. Therefore, the Stanton County Commissioners have refused to rescind their previous resolution allowing corporate hog farming without a safety net containing definite legislative instructions. Our Commissioners have requested the help of their constituents to press for appropriate legislation. Please help us to help them and ourselves.

Thank you,

*Leona Tallent*

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attachment 13*

Morton County Committee for Responsible Government  
P.O. Box 464  
Elkhart, KS 67950  
(316) 697-4772

February 13, 1996

Honorable Senators:

In the next few days you will be asked to review and promote a resolution (Senate Bill No. 600) to give the counties in the State of Kansas the right to rescind the Swine Corporation Bill No. 544. Our committee would encourage you to give this bill much consideration and support.

Swine Corporations were allowed into Morton County without a vote of the people. A legal notice was put in the small town newspaper (with a low subscription number) and it went unnoticed. No public hearings or town meetings were held to inform the people about the impact of the legal notice. So basically three commissioners (who were being wined and dined by Seaboard Industries) made the decision to let the swine corporations in the county.

In a questionnaire sent in 1995 to patrons by the Morton County Commissioners and the Economic Development Committee in Morton County: 49% opposed and 22% favored having swine corporations in the county.

On January 8, 1996, a group of twenty individuals presented a petition with 829 signatures (47% of registered voters or as many as voted in the last election) to the commissioners asking for the right to vote on rescinding having swine corporations in Morton County.

It was explained to us that if a vote was allowed and the results were found that Morton County wants to rescind the Hog issue, then Seaboard would sue Morton County. Some people at the meeting wanted to go forward and allow Seaboard to pursue their lawsuit. They felt as if we should not knuckle under to a special interest group by allowing the threat of a lawsuit to dictate the way our county is run. By allowing this to happen now we face the threat that every time Seaboard is not allowed to have their way in our county they will wave their lawyers and threats and we will turn tail and run. The justification for this can be seen in Stevens County now. They (Stevens County) felt as if Zoning would protect them. **THEY WERE WRONG!** Every time the Zoning Board tries to

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Morton County Committee for Responsible Government  
P.O. Box 464  
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deny a permit to build, Seaboard starts to make noises about lawsuits. Seaboard will build sites even though the gases released into the air from their facilities could cause serious health problems for people living near them. They are willing to displace people from their homes for progress and economic development.

Our commissioners told us there was no basis in the law, produced in Topeka, to allow us to vote without the threat of a lawsuit. Before a vote could be allowed, the legislators in Topeka needed to change the law.

In 1801, Thomas Jefferson said in his Inaugural Address *"All, too, will bear in mind the sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable."* We believe the right to vote on an issue regardless of what it is, is reasonable. The majority of the people wanting the right to vote is even more reasonable.

Even Governor Bill Graves in his recent communication to the people of Kansas states: *"It's time to check in with the voters to find out in what direction they think Kansas should continue. They deserve the choice, because when people are allowed to have their say, everyone comes out a winner."*

We ask for your study and support of this bill (Senate Bill no. 600). We don't have what Seaboard has....smooth talking lobbyists and a lot of money. We just ask for the right of the counties to vote on rescinding the Bill No. 544 and have a government *"for the people, of the people, and by the People."*

Morton County Committee for Responsible Government

*Dorothy Milburn*