

Approved: 2-27-98
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson David Corbin at 8:10 a.m. on February 24, 1998 in Room 254-E of the Capitol.

All members were present except: Senator Tim Huelskamp and Senator Keith Schraad

Committee staff present: Raney Gilliland, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Lila McClafin, Committee Secretary

Conferees appearing before the committee:
Senator Don Biggs
Tammy Gigstad, representing a family farm, Jefferson County
John Carter, Attorney, representing agriculture interest
Mary Fund, Kansas Rural Center
Rich McKee, Kansas Livestock Association
Mike Jensen, Kansas Pork Producers

Others attending: See attached list

Chairperson Corbin called for action on the minutes. Senator Morris with a second from Senator Goodwin moved to approve the minutes of February 20. The motion carried.

SB 594 - concerning agricultural corporations; relating to swine production facilities.

Senator Corbin opened the hearing on **SB 594**. He announced that a fiscal note had been distributed stating **SB 594** would have no fiscal impact. He called on Senator Biggs author of the bill.

Senator Biggs said the bill redefines "family farm corporation" by making at least one stockholder who owns at least 10% of the corporate stock a resident of the county where the facility is located. This person must be actively engaged in the labor or management of the farming operation (Attachment 1)

Tammy Gigstad representing her husband and herself said they operate a small swine facility in Jefferson County. She commended the committee for working on the issue, as she thought it was important to clearly define what constitutes a family farm. She believed family farms need to be on a level playing field with larger corporations (Attachment 2). Responding to a question she stated they have formed a network with 10 other farmers to sell their hogs.

John Carter supported **SB 594**. He represents several organizations of western Kansans in counties that have organized to oppose the development of large swine production facilities. He thought the intent of the Legislature in 1981 was to benefit traditional family farmers, and not to include giant corporations which happen to be family owned (Attachment 3). Mr. Carter responded to questions regarding his proposed changes in the corporate farming statutes.

Mary Fund representing the Kansas Rural Center gave testimony supporting **SB 594**. She told the committee the Kansas Rural Center had a long history of supporting public policies that protect family farming interests, the environment, and the rural communities in this state. This bill would address some of the weaknesses in the corporate farm law and the county option process as it appears it does not provide the protection and control that counties thought it did (Attachment 4). Ms. Fund responded to questions

Rich McKee opposed the bill, as it would make some very significant and broad changes to the statutes governing who can own agricultural land in Kansas. The proposed changes appear to affect all agriculture land, and not just land used for the location of a swine facility. Mr. McKee when through the bill and explained sections of the bill that they opposed (Attachment 5).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 254-E Statehouse, at 8:00 a.m. on February 24, 1998.

Mike Jensen said Kansas Pork Producers Council strongly opposed the bill, and he pointed out two major impacts. He thought the legislation was drafted to target two unnamed swine businesses, but would severely limit the ability of producers in Kansas from staying competitive (Attachment 6).

Senator Biggs said regardless of court rulings or how a bill was drafted the issue of corporate farming will not go away. If it is not addressed at this time it will need to be in the future.

Chairperson David Corbin told about an article he had read recently in the "Farm Journal" he said he would see that it was distributed to members of the committee. He said the House as had extensive meeting on this issue and will be sending some legislation over, but if they should not he has asked for SB 664 to be blessed so that the committee could still work on it at a later date.

The meeting adjourned at 8:58 a.m.

The next scheduled meeting is to be determined.

DONALD E. BIGGS

SENATOR, 3RD DISTRICT
LEAVENWORTH & JEFFERSON COUNTIES



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

RANKING MINORITY MEMBER:
ENERGY AND NATURAL RESOURCES
MEMBER:
AGRICULTURE
ARTS AND CULTURAL RESOURCES
FEDERAL AND STATE AFFAIRS
FINANCIAL INSTITUTIONS AND
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LEGISLATIVE HOTLINE
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(DURING SESSION)

February 24, 1998

**SENATE ENERGY AND NATURAL RESOURCES COMMITTEE HEARING
SB594**

TESTIMONY OF SENATOR DON BIGGS

This bill redefines "family farm corporation" so at least one of the stockholders with ownership of 10% or more of the corporate stock is a resident of the county and actively engaged in the labor or management of the farming operation.

The second part clarifies that the county option prohibition applies to all corporate hog operations from farrow to finish.

When the state's corporate farm law underwent a major revision in 1981, the definition was supposedly designed to make it easier for family farms to incorporate. It is difficult to comprehend that the nation's largest hog producer can now propose to come to Kansas under current statute as a Kansas family farm corporation and not be subject to the county option statute.

The proponents of this legislation are not using scare tactics, we are not anti agriculture or anti meat products. We are not even anti Murphy. If Murphy wants to come to Kansas, it should be under the well defined and very wise county option rule.

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Tammy Gigstad

February 24, 1998

I came this morning, fully realizing there is nothing which I can say that is profound and earthshattering about the pros and cons of corporate hog operations. I know this committee has read countless articles and heard sound arguments from both sides.

I am here however, to put a face with a voice and opinion. When asked to make a short testimony this morning, I at first thought, "Why? What difference will it make? That thought didn't last long for I know our legislature and its lawmakers need to hear from concerned citizens of our state. I have a responsibility to my family to convey my thoughts to you... I wanted your committee to see another "real" family farmer.

My husband, Craig Gigstad and myself own a farrow-to-finish hog operation in Jefferson County just north of Oskaloosa. We also farm 2000 acres along with Craig's brother.

Our swine operation is small. We have 60 sows. Our children, ages 12, 10 and 7 are very involved in most phases of our farm. We enjoy our profession and are very proud of the work ethics and values we are able to pass on to our children.

We have watched the number of swine producers dwindle from around 20 to only 3 in our county over the past 10 years. We have weathered the many ups and downs of pork production with its unsteady market. Obviously hog prices are greatly depressed. The prices in the last month are about \$17.50/cwt below what they were a year ago. This translates into \$42.50 less per hog for pork producers.

Jim Mintert, KSU agricultural economist recently spoke at an extension gathering. He painted a bleak picture for hog producers.....he doesn't see hog prices

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return to the \$40 mark until the year 2000. This directly correlates with high hog numbers. Mr. Mintert also did not foresee anyone cutting back until 1999, when they will be forced to due to the longevity of the low market.

So is the answer more? Why should we encourage corporations to come into Kansas to produce hogs we don't need?

Yes. I have read with great interest of the increasing demand for pork in Asian markets. However, we have heard that tune before. In 1997, Taiwan had a breakout of hoof and mouth disease. A terrible circumstance which should have made prices for US pork very good. We were led to believe we would take up the slack. Unfortunately, not so. Denmark moved quickly and met their demand, leaving US pork producers on the short end again. As history repeats itself, we cannot always depend on the USDA securing the exports needed to drive the prices higher.

Yes. There needs to be considerable study done in this area and I commend you all on the effort you have given this volatile issue. We need to get a clear definition of the family farm is We need to be on a level playing field with larger operations. We need to get the facts and make sound decisions so the "real" family farms, such as ours, can survive and be passed down to future generations. I appreciate the valuable time you have given me this morning. You have an important task ahead of you.

Tamara and Craig Gigstad
15272 US 59 HWY
Valley Falls, KS 66088

TESTIMONY IN SUPPORT OF SB No. 594

OFFERED BY JOHN CARTER
935 S. Kansas Ave, Topeka, Kansas
Phone: 232-0656 Fax: 232-3647

I represent several organizations of western Kansans in counties that have organized to oppose the development of large scale swine production facilities. I speak today on behalf of two of these organizations, Families Against Corporate Takeover, or FACT from Hodgeman County; and Citizens for a Better Lane County. The plight of the citizens in these two counties clearly emphasizes the need for the proposed amendments to provisions of Kansas corporate farming law.

In Hodgeman County, the citizens held a vote as authorized by K.S.A. 17-5908, and a majority of citizens voted not to allow swine production facilities within their county. Despite this legally binding vote, Murphy Farms, Inc., the largest swine producing corporation in the United States, is attempting to locate in Hodgeman County. The first tactic of the pro hog minority in Hodgeman County was to challenge the election prohibiting swine production facilities. The second tactic was to claim that Murphy Farms, Inc., qualified as a family farm under the provision of K.S.A. 17-5903(j). Lane County faces a similar threat from Murphy Farms, Inc..

An unofficial Attorney General's opinion rendered at the request of the Governor's office indicated that Murphy Farms Inc., allegedly a family owned corporation, met the technical definition of a family farm under K.S.A. 17-5903(j), and thus Murphy Farms Inc., could own or lease land anywhere in the state of Kansas free from the restrictions of Kansas corporate farm law.

In researching the lawsuit I filed against Murphy Farms, Inc., I examined the legislative history behind the family farm exception when it was enacted back in 1981. From the minutes of the hearings on this enactment, it is apparent that the intent of the legislature back in 1981 was to benefit traditional family farmers by allowing them the benefits of incorporation. It was never within the intent of the legislature that this exception might become the vehicle for the unfettered invasion of Kansas agricultural land by a corporate giant like Murphy Farms, Inc..

The intent of Kansas corporate farming law in general was to protect Kansas farmers from unfair competition by corporate entities. The intent of the family farm exception was to allow Kansas family farmers the benefits of incorporation in terms of tax advantages, the ability to pass the farm to successive generations through stock ownership, and the ability to limit liability.

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By requiring local management of the farming operation by a stockholding member of the family owning the farm, this bill would protect legitimate Kansas family farms from giant corporations which happen to be family owned.

Another argument used by hog companies to evade Kansas corporate farming law is that finishing facilities, or facilities that house and feed swine for slaughter, are not swine production facilities as defined at K.S.A. 17-5903(s), but feedlots as that term is separately defined at K.S.A. 17-5903(f). As feedlots, they are not agricultural facilities, but rather industrial facilities to which the restrictions against corporate ownership of agricultural land do not apply. A reading of K.S.A. 17-5903(s) consistent with the canons of statutory construction reveals this interpretation to be without merit. A swine production facility is defined as land and structures used for "housing, breeding, farrowing or feeding of swine."

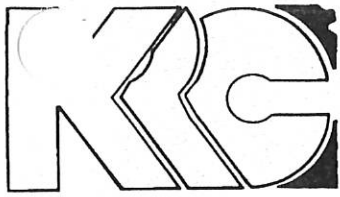
Again, however, there is an Attorney General's opinion which interprets this definition as not covering finishing farms. Although the language of K.S.A. 17-5903(s) seems clear and unambiguous, given the Attorney General's opinion, some legislative clarification of this definition seems proper.

In as much as the purpose of this bill is to clarify the family farm exception by requiring local management of the farming operation, and to clarify that the definition of swine production facility encompasses swine finishing facilities, we support this bill.

We are opposed, however, to the grandfather provision of this bill, found at K.S.A. 17-5904(a)(18). This provision excepts from the prohibition of ownership of agricultural land, "Agricultural land held or leased by a corporation or limited liability company prior to July 1, 1998, for use as a swine feedlot." This language is unacceptably broad. This clause should except only those facilities for which a valid permit, if required, has been issued by KDHE prior to the effective date of this act.

We would also wholeheartedly support the elimination of K.S.A. 17-5904(b). Where a swine producing corporation assists in the development of a contract farming facility, and owns the hogs which are raised on it, we feel that this amounts to indirect acquisition of agricultural land, and should be prohibited. This section of the existing law merely provides corporations a back door into the swine production business in Kansas.

With the above concerns addressed, we feel that this bill would serve to initiate the original intent of Kansas corporate farming law and the family farm exception.



Testimony for the Senate Energy and Natural Resources Committee
SB 594 Submitted by Mary Fund
February 24, 1998

The Kansas Rural Center is a 19 year old private, non-profit organization that promotes sustainable agriculture - an environmentally sound, economically viable family farm agriculture. The Kansas Rural Center has a long history of support for public policies that protect family farming interests, the environment, and rural communities in this state. In addition we have always supported the right of citizens to have a meaningful role in the decisions that most affect them. Indeed that is why we support the kind of agriculture we do - because it puts the control and decision making back into the farmer's hands and the profits back into the community. Therefore we consider ourselves a Pro-Agriculture, Pro-Family Farm organization.

The corporate farming and factory swine issues now facing the state are part of a long debate over the future of agriculture - a debate that perhaps the legislature felt was over with the establishment of the county option vote regarding corporate swine and dairy facilities back in 1994.

SB 594 deals specifically with the weaknesses within the corporate farm law and the county option process that have become apparent as citizens throughout western and central Kansas have found that (1) the law does not provide them the protection and control they thought it did; and (2) that their votes against corporate swine facilities in their counties mean little to nothing in the eyes of some elected officials.

The fact that we have the largest hog corporation in the world now entering Kansas under the guise that it is a family farm corporation and is thus exempt from the county option vote is outrageous to a growing number of people in the state. Citizens who thought they had voted no to corporate swine production facilities or who thought they were safe because their county did not take any action at all, are finding facilities moving into their communities anyway. In other counties, county officials are reluctant to take binding action based on the vote of county citizens against such production.

The Kansas Rural Center supports SB 594 as a reasonable solution to the problems within the corporate farming law and within the county option process. SB 594 clarifies the definitions of a family farm corporation, an authorized farm corporation, a limited agricultural partnership, and a family farm limited liability company so that any business entity that falls outside those definitions would fall under the county option provision before they could operate within a county. This is good because it would bring the out of state corporations such as Murphy Family Farms under the test of the county option vote.

Current law states that at least one stockholder be actively engaged in the labor or management of the operation; and that any stockholder who holds an office in the corporation and is a related stockholder holding a majority of the voting stock, is defined as "actively engaged in the labor or management". SB 594's redefinition includes residency in the county and active engagement in the labor or management of the farm which would provide the family farm and community protection that we believe the legislature intended when the statute was drafted in 1981.

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SB 594 also repeals the feedlot exemption for swine, which would mean that a corporation could not move hog finishing facilities into a county unless that county had approved corporate swine facilities either through a county commissioner resolution or a citizen vote. This would ease the fears many citizens have of unwanted neighbors (several thousand pigs) suddenly moving in next door.

It is also important to note what SB 594 does not do. SB 594 does not prohibit corporate hog production. It does not stand in the way of expansion of family farm corporations or family hog operations. It is not anti-animal agriculture. It does not deal with environmental issues. It is not anti-growth as some are claiming all of the pending hog related legislation to be.

SB 594 addresses the questions of local control by ensuring the rights of the state's citizens to participate in the decisions most affecting them, which in this case is the county option process. It does so by clarifying who falls under the county option provision, and ensuring that all appropriate (as defined in the definition section of the law) corporately owned swine fall under that provision.

Citizens who want county level control have legitimate questions concerning the economic and environmental impacts of corporate farms. Numerous studies have concluded that:

1) Family farms employ more people per pig produced. Smaller independent producers employ three times as many people as mega-barns producing an equal number of hogs. The main benefit claimed by mega-hog advocates - job creation- appears to be unsupported because quality employment for farmers and others continues to disappear in those rural communities where large hog factories locate.

2) Family farms invest more in local communities. A 1993 Minnesota study found that smaller producers made 79% of their business expenditures within 20 miles from their farms, while the largest producers spent only 47%. Another study found that while 69% and 62% of small and medium producers bought the majority of their feed within 10 miles of their farms, only 42% of large producers did so.

3) Claims that mega-hog farms will increased prices for local feed grains have not been substantiated. Anecdotal information from producers and southwest Kansas elevators don't add up to any premium prices.

State statutes in Kansas, and a number of other states, have not kept pace with the changes in agriculture. The corporate swine facilities that are the most contentious are not family farms of a few hundred or even a few thousand head of hogs. An opinion from the Kentucky General's Office has stated that "An industrial-scale hog operation is less a farm than a manufacturing facility...It is rather an industrial operation producing industrial waste." In other words, these are factories that should be treated and regulated as such but our laws have yet to recognize this.

Counties already have the authority to zone for industry. Agriculture is exempt from zoning. But agriculture on the scale we are seeing in southwest Kansas is industry. And the people of Kansas have a right to make decisions regarding that industry in their communities and in their counties. I remind you that in the 21 counties holding votes on this question, 72% have voted no.

In closing, I urge you to support SB 1594 as a reasonable means of addressing the concerns Kansas citizens have regarding corporate swine facilities.

1) *The Economic Impacts of Increased Contract Swine Production in Missouri: Another Viewpoint*, John Ikerd, University of Missouri, 1994.

2) *Local Spending Patterns for Farm Business in Southwest Minnesota*, Unpublished Thesis, John Chism, University of Minnesota, 1993.

3) *Purchasing Patterns of Hog Producers: Implications for Rural Agribusinesses*, John Lawrence, Daniel Otto, and Seth Meyer, *Journal of Agribusiness*, Spring 1997.



Since 1894

Testimony

presented by

Rich McKee

Executive Secretary, Feedlot Division

regarding

Senate Bill ⁵⁹⁴~~664~~

before the

Senate Committee on Energy and Natural Resources

February 24, 1998

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 7,400 members on legislative and regulatory issues. KLA members are involved in all segments of the livestock industry including cow-calf, feedlot, seedstock, swine, dairy and sheep. In 1996 cash receipts from agriculture products totaled over \$7.8 billion, with nearly sixty percent of that coming from the sale of livestock. Cattle represent the largest share of cash receipts, representing approximately ninety percent of the livestock and poultry marketings.

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Chairperson Corbin and members of the Senate Committee on Energy and Natural Resources, thank you for the opportunity to testify. My name is Rich McKee and I am representing the Kansas Livestock Association.

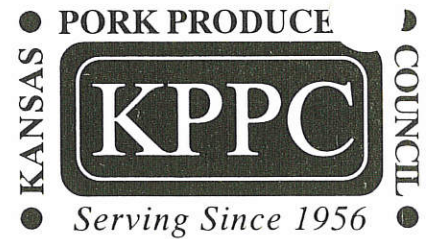
The Kansas Livestock Association opposes Senate Bill 594. This bill would make some very significant and broad changes to the statutes governing who can own agricultural land in Kansas. As proposed, SB 594 would require a “family farm corporation” or “authorized farm corporation” to have at least one stockholder, with ownership of 10% or more of the stock, to be a resident of the county where ag land is owned. The bill would also require “limited agricultural partnerships”, “limited liability agricultural companies” and “family farm limited liability agricultural companies” to have at least one member be a resident of the county where ag land is owned.

These changes would affect an untold number of families and individuals. The entities listed above would be prohibited from purchasing farm or ranch land in a county where they do not reside. Furthermore, the changes proposed would require some families to divest agriculture land owned in counties where they do not reside. Failure to divest the land would result in fines of up to \$50,000. There is a significant amount of agricultural land owned in Kansas that could be affected by these proposed changes.

Please know these proposed changes appear to affect all agriculture land, not just land used for the location of a swine facility.

Under current law, any person or entity can own ag land for the purpose of operating a feedlot. The definition of feedlot includes swine finishing or nursery units. The changes proposed on page 1 of the bill, line 41, would remove swine from the feedlot definition. This change would strip some individuals of the freedom they have to produce swine.

Thank you for considering our position on this proposal.



February 24, 1998

Testimony to Senate Energy and Natural Resources Committee

Opposition to Senate Bill 594

Prepared by Mike Jensen, Executive Vice President

The KPPC strongly opposes this bill. The bill has two major impacts.

1. The language "except swine" on line 41 of page one would preclude certain businesses from operating swine feedlots in the state. Some have chosen to refer to this as a "loophole". In fact, this language has been in place since 1981. Two Attorney General's opinions in the mid-80's and one just last year have supported the definition that the feeding of swine for slaughter was not prohibited under our corporate farm law that has been in place for 17 years.

2. Requiring certain owners of a swine operation to be residents of the county where the facility is located would be devastating to the future of our industry. From a practical standpoint, we have untold numbers of operations across the state who have multi-county operations. The current trend in our industry is towards multi-site production which will only increase this number. Every producer who lives near a county line could potentially be affected.

This legislation is obviously targeted towards two unnamed swine businesses, but will have the effect of severely limiting the ability of producers all across Kansas from staying competitive in today's industry.

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