

SENATE BILL No. 191

By Committee on Federal and State Affairs

2-13

Natural Resources

Proposed Amendments for
Committee on Natural Resources
Recommended Substitu
March 21, 2013
Prepared by Tamera Law
Office of the Revisor of S

SEN. NATURAL RESOURCES

Date 3-21-13
Attachment # 6-1

1 AN ACT concerning agricultural corporations; amending K.S.A. 2012
2 Supp. 17-5903 and 19-101a and repealing the existing sections; also
3 repealing K.S.A. 17-5902 and K.S.A. 2012 Supp. 17-5904, 17-5907
4 and 17-5909

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

6 ~~[New Section 1. (a) Any agricultural business entity, as defined in~~
7 ~~K.S.A. 17-5903, and amendments thereto, may conduct agricultural~~
8 ~~business and establish agricultural operations anywhere in the state.~~

9 (b) This section shall be part of and supplemental to article 50 of
10 chapter 17 of the Kansas Statutes Annotated, and amendments thereto.
11 Sec. 2. K.S.A. 2012 Supp. 17-5903 is hereby amended to read as

12 follows: 17-5903. As used in this act section:
13

14 (a) "Agricultural business entity" means a corporation, nonprofit
15 corporation, limited partnership, limited agricultural partnership,
16 corporate partnership, family farm corporation, authorized farm
17 corporation, trust, family trust, authorized trust, testamentary trust,
18 limited liability company, limited liability agricultural company, and
19 family farm limited liability agricultural company.

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

22 (b) (c) "Nonprofit corporation" means a corporation organized not
23 for profit and which qualifies under section 501(c)(3) of the federal
24 internal revenue code of 1986 as amended.

25 (b) (d) "Limited partnership" has the meaning provided by K.S.A. 56-
26 1401 and amendments thereto.

27 (b) (e) "Limited agricultural partnership" means a limited partnership
28 founded for the purpose of farming and ownership of agricultural land in
29 which

30 (1) ~~the partners do not exceed 10 in number;~~

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

35 (3) ~~at least one of the general partners is a person residing on the farm~~
36 ~~and engaged in the full or substantial part of the farming operation;~~

~~Kansas liquor control act except as provided by paragraph (B).~~

~~(B) Counties may adopt resolutions which are not in conflict with the~~

~~Kansas liquor control act.~~

~~(32) (A) Counties may not exempt from or effect changes in the~~

~~Kansas cereal malt beverage act except as provided by paragraph (B);~~

~~(B) Counties may adopt resolutions which are not in conflict with the~~

~~Kansas cereal malt beverage act.~~

~~(34) Counties may not exempt from or effect changes in the Kansas~~

~~lottery act.~~

~~(35) Counties may not exempt from or effect changes in the Kansas~~

~~expanded lottery act.~~

~~(36) Counties may neither exempt from nor effect changes to the~~

~~eminent domain procedure act.~~

~~(37) Any county granted authority pursuant to the provisions of~~

~~K.S.A. 19-5001 through 19-5005 and amendments thereto, shall be~~

~~subject to the limitations and prohibitions imposed under K.S.A. 19-5001~~

~~through 19-5005 and amendments thereto.~~

~~(38) Except as otherwise specifically authorized by K.S.A. 19-5001~~

~~through 19-5005 and amendments thereto, counties may not exercise any~~

~~authority granted pursuant to K.S.A. 19-5001 through 19-5005, and~~

~~amendments thereto, including the imposition or levy of any retailers' sales~~

~~tax.~~

~~(39) Counties may not exempt from or effect changes in K.S.A. 2012-~~

~~Supp-19-271 and amendments thereto.~~

~~(b) Counties shall apply the powers of local legislation granted in~~

~~subsection (a) by resolution of the board of county commissioners. If no~~

~~statutory authority exists for such local legislation other than that set forth~~

~~in subsection (a) and the local legislation proposed under the authority of~~

~~such subsection is not contrary to any act of the legislature, such local~~

~~legislation shall become effective upon passage of a resolution of the~~

~~board and publication in the official county newspaper. If the legislation~~

~~proposed by the board under authority of subsection (a) is contrary to an~~

~~act of the legislature which is applicable to the particular county, but not~~

~~uniformly applicable to all counties, such legislation shall become~~

See Insert A

5.

17-5907

6.

~~resolutions in subsection (a) is null and void~~
~~K.S.A. 17-5902 and K.S.A. 2012 Supp. 17-5903, 17-5904, 17-~~
~~5907, 17-5908 and 19-101a are hereby repealed.~~
Sec. 5. This act shall take effect and be in force from and after its
publication in the statute book.

Section 1. K.S.A. 17-5907 is hereby amended to read as follows: 17-5907. (a) (1) The board of county commissioners, by resolution, may permit or deny a dairy production facility, as defined in K.S.A. 17-5903, and amendments thereto; the following to be established within the county by a corporation, trust, limited liability company, limited partnership or corporate partnership: (A) A dairy production facility, as defined in K.S.A. 17-5903, and amendments thereto; (B) a swine production facility, as defined in K.S.A. 17-5903, and amendments thereto; or (C) a poultry confinement facility, as defined in K.S.A. 17-5903.

Such resolution shall be published once each week for two consecutive weeks in the official county newspaper. The resolution shall take effect 60 days after final publication unless a valid petition in opposition to the same is filed.

(2) If within 60 days of the final publication of the resolution, a valid protest petition to submit the resolution to the qualified voters of the county is signed by qualified electors of the county equal in number to not less than 5% of the electors of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected and is filed with the county election officer, the county election officer shall submit the question, as established in subsection (c), of whether a dairy production facility, swine production facility or poultry confinement facility shall be allowed to be established in such county at the next state, county or special election.

(b) (1) The board of county commissioners, upon a petition filed in accordance with paragraph (b)(2), shall submit to the qualified electors of the county a proposition to permit a dairy production facility, as defined in K.S.A. 17-5903, and amendments thereto; the following to be established within the county by a corporation, trust, limited liability company, limited partnership or corporate partnership: (A) A dairy production facility, as defined in K.S.A. 17-5903, and amendments thereto; (B) a swine production facility, as defined in K.S.A. 17-5903, and amendments thereto; or (C) a poultry confinement facility, as defined in K.S.A. 17-5903.

(2) A petition to submit a proposition to the qualified voters of a county pursuant to this section shall be filed with the county election officer. The petition shall be signed by qualified electors of the county equal in number to not less than 5% of the electors of the county who voted for the office of secretary of state at the last preceding general election at which such office was elected. The following shall appear on the petition:

"We request an election to determine whether a corporation, trust, limited liability company, limited partnership or corporate partnership shall be allowed to, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in _____ county for the purpose of establishing a dairy production facility."

(3) Upon the submission of a valid petition calling for an election pursuant to this subsection, the county election officer shall submit the question, as established in subsection (c), of whether a dairy production facility, swine production facility or poultry confinement facility shall be allowed to be established in such county at the next countywide election which occurs more than 60 days after the petition is filed with the county election officer.

(c) In any election established pursuant to this section, the following shall appear on the ballot:

"Shall a corporation, trust, limited liability company, limited partnership or corporate partnership be allowed to, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in _____ county for the purpose of establishing a dairy production facility?"

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

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

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

New Sec. 2. (a) The department of agriculture shall compile and maintain a current list of counties that have within the county any of the following:

- (1) Dairy production facility established pursuant to K.S.A. 17-5907, and amendments thereto;

- (2) swine production facility established pursuant to K.S.A. 17-5907, and amendments thereto;
- (3) poultry confinement facility established pursuant to K.S.A. 17-5907, and amendments thereto; or
- (4) any other type of corporation, trust, limited liability company, limited partnership established for the purpose of farming and ownership of agricultural land.

(b) Such list shall include, but not be limited to: (1) The name of the county; and (2) the type of facilities established in such county.

Sec. 3. K.S.A. 2012 Supp. 17-5904 is hereby amended to read as follows: 17-5904. (a) No corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited liability agricultural company, family farm limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust shall, either directly or indirectly, own, acquire or otherwise obtain or lease any agricultural land in this state. The restrictions provided in this section do not

apply to the following:

- (1) A bona fide encumbrance taken for purposes of security.
- (2) Agricultural land when acquired as a gift, either by grant or devise, by a bona fide educational, religious or charitable nonprofit corporation.
- (3) Agricultural land acquired by a corporation or a limited liability company in such acreage as is necessary for the operation of a nonfarming business. Such land may not be used for farming except under lease to one or more natural persons, a family farm corporation, authorized farm corporation, family trust, authorized trust or testamentary trust. The corporation shall not engage, either directly or indirectly, in the farming operation and shall not receive any financial benefit, other than rent, from the farming operation.
- (4) Agricultural land acquired by a corporation or a limited liability company by process of law in the collection of debts, or pursuant to a contract for deed executed prior to the effective date of this act, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise, if such corporation divests itself of any such agricultural land within 10 years after such process of law, contract or procedure, except that provisions of K.S.A. 9-1102, and amendments thereto, shall apply to any bank which acquires agricultural land.
- (5) A municipal corporation.
- (6) Agricultural land which is acquired by a trust company or bank in a fiduciary capacity or as a trustee for a nonprofit corporation.
- (7) Agricultural land owned or leased or held under a lease purchase agreement as described in K.S.A. 12-1741, and amendments thereto, by a corporation, corporate partnership, limited corporate partnership or trust on the effective date of this act if: (A) Any such entity owned or leased such agricultural land prior to July 1, 1965, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act; (B) any such entity was in compliance with the provisions of K.S.A. 17-5901, prior to its repeal by this act, provided such entity shall not own or lease any greater acreage of agricultural land than it owned or leased prior to the effective date of this act unless it is in compliance with the provisions of this act, and absence of evidence in the records of the county where such land is located of a judicial determination that such entity violated the provisions of K.S.A. 17-5901, prior to its repeal, shall constitute proof that the provisions of this act do not apply to such agricultural land, and that such entity was in compliance with the provisions of K.S.A. 17-5901, prior to its repeal; or (C) any such entity was not in compliance with the provisions of K.S.A. 17-5901, prior to its repeal by this act, but is in compliance with the provisions of this act by July 1, 1991.
- (8) Agricultural land held or leased by a corporation or a limited liability company for use as a feedlot, ~~a poultry confinement facility~~ or rabbit confinement facility.

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- (9) Agricultural land held or leased by a corporation for the purpose of the production of timber, forest products, nursery products or sod.
- (10) Agricultural land used for bona fide educational research or scientific or experimental farming.
- (11) Agricultural land used for the commercial production and conditioning of seed for sale or resale as seed or for the growing of alfalfa by an alfalfa processing entity if such land is located within 30 miles of such entity's plant site.
- (12) Agricultural land owned or leased by a corporate partnership or limited corporate partnership in which the partners associated therein are either natural persons, family farm corporations, authorized farm corporations, limited liability agricultural companies, family trusts, authorized trusts or testamentary trusts.
- (13) Any corporation, either domestic or foreign, or any limited liability company, organized for coal mining purposes which engages in farming on any tract of land owned by it which has been strip mined for coal.
- (14) Agricultural land owned or leased by a limited partnership prior to the effective date of this act.
- (15) Except as provided by K.S.A. 17-5908, as it existed before the effective date of this act, and K.S.A. 1998 Supp. 17-5909, agricultural land held or leased by a corporation or a limited liability company for use as a swine production facility in any county which, before the effective date of this act, has voted favorably pursuant to K.S.A. 17-5908, as it existed before the effective date of this act, either by county resolution or by the electorate.
- (16) Agricultural land held or leased by a corporation, trust, limited liability company, limited partnership or corporate partnership for use as a swine production facility in any county where the voters, after the effective date of this act, have voted pursuant to K.S.A. 17-5907, and amendments thereto, to allow establishment of swine production facilities within the county.
- (17) Agricultural land held or leased by a corporation, trust, limited liability company, limited partnership or corporate partnership for use as a dairy production facility in any county which has voted favorably pursuant to K.S.A. 17-5908 K.S.A. 17-5907, and amendments thereto, either by county resolution or by the electorate.
- (18) Agricultural land held or leased by a corporation, trust, limited liability company, limited partnership or corporate partnership for use as a poultry confinement facility in any county which has voted favorably pursuant to K.S.A. 17-5907, and amendments thereto, either by county resolution or by the electorate.
- (19) Agricultural land held or leased by a corporation or a limited liability company used in a hydroponics setting.
 - (b) Production contracts entered into by a corporation, trust, limited liability company, limited partnership or corporate partnership and a person engaged in farming for the production of agricultural products shall not be construed to mean the ownership, acquisition, obtainment or lease, either directly or indirectly, of any agricultural land in this state.
 - (c) Any corporation, trust, limited liability company, limited partnership or corporate partnership, other than a family farm corporation, authorized farm corporation, limited liability agricultural company, family farm limited liability agricultural company, limited agricultural partnership, family trust, authorized trust or testamentary trust, violating the provisions of this section shall be subject to a civil penalty of not more than \$50,000 and shall divert itself of any land acquired in violation of this section within one year after judgment is entered in the action. The district courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or district or county attorney shall institute suits on behalf of the state to enforce the provisions of this section.
 - (d) Civil penalties sued for and recovered by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered by the county attorney or district attorney shall be paid into the general fund of the county where the proceedings were instigated.

Sec. 4. K.S.A. 19-101a is hereby amended to read as follows: 19-101a. a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

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- (1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.
- (2) Counties may not affect the courts located therein.
- (3) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.
- (4) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.
- (5) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271 - 74th congress, or amendments thereof.
- (6) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.
- (7) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.
- (8) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.
- (9) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.
- (10) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.
- (11) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.
- (12) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.
- (13) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto.
- (14) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.
- (15) Counties may not exempt from or effect changes in K.S.A. 19-15,139, 19-15,140 and 19-15,141, and amendments thereto.
- (16) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provisions of K.S.A. 12-1260 through 12-1270 and 12-1276, and amendments thereto.
- (17) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-211, and amendments thereto.
- (18) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto.
- (19) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.
- (20) Counties may not exempt from or effect changes in K.S.A. 79-41a04, and amendments thereto.
- (21) Counties may not exempt from or effect changes in K.S.A. 79-1611, and amendments thereto.
- (22) Counties may not exempt from or effect changes in K.S.A. 79-1494, and amendments thereto.

- (23) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-202, and amendments thereto.
- (24) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-204, and amendments thereto.
- (25) Counties may not levy or impose an excise, severance or any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water.
- (26) Counties may not exempt from or effect changes in K.S.A. 79-2017 or 79-2101, and amendments thereto.
- (27) Counties may not exempt from or effect changes in K.S.A. 2-3302, 2-3305, 2-3307, 2-3318, 17-5904, ~~17-5908~~, 17-5907, 47-1219, 65-171d, 65-1, 178 through 65-1, 199, 65-3001 through 65-3028, and amendments thereto.
- (28) Counties may not exempt from or effect changes in K.S.A. 2012 Supp. 80-121, and amendments thereto.
- (29) Counties may not exempt from or effect changes in K.S.A. 19-228, and amendments thereto.
- (30) Counties may not exempt from or effect changes in the wireless enhanced 911 act, in the VoIP enhanced 911 act or in the provisions of K.S.A. 12-5301 through 12-5308, and amendments thereto.
- (31) Counties may not exempt from or effect changes in K.S.A. 2012 Supp. 26-601, and amendments thereto.
- (32) (A) Counties may not exempt from or effect changes in the Kansas liquor control act except as provided by paragraph (B).
- (B) Counties may adopt resolutions which are not in conflict with the Kansas liquor control act.
- (33) (A) Counties may not exempt from or effect changes in the Kansas cereal malt beverage act except as provided by paragraph (B).
- (B) Counties may adopt resolutions which are not in conflict with the Kansas cereal malt beverage act.
- (34) Counties may not exempt from or effect changes in the Kansas lottery act.
- (35) Counties may not exempt from or effect changes in the Kansas expanded lottery act.
- (36) Counties may neither exempt from nor effect changes to the eminent domain procedure act.
- (37) Any county granted authority pursuant to the provisions of K.S.A. 19-5001 through 19-5005, and amendments thereto, shall be subject to the limitations and prohibitions imposed under K.S.A. 19-5001 through 19-5005, and amendments thereto.
- (38) Except as otherwise specifically authorized by K.S.A. 19-5001 through 19-5005, and amendments thereto, counties may not exercise any authority granted pursuant to K.S.A. 19-5001 through 19-5005, and amendments thereto, including the imposition or levy of any retailers' sales tax.
- (39) Counties may not exempt from or effect changes in K.S.A. 2012 Supp. 19-271, and amendments thereto.
- (b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.
- (c) Any resolution adopted by a county which conflicts with the restrictions in subsection (a) is null and void.