

SESSION OF 2021

SUPPLEMENTAL NOTE ON SENATE BILL NO. 40

As Amended by House Committee of the Whole

Brief*

SB 40, as amended, would add and amend law regarding the roles of the Division of Conservation (Division) within the Kansas Department of Agriculture (KDA) and the State Conservation Commission (Commission). [Note: In 2011, ERO 40 moved the Commission within the KDA.]

The bill would also make technical corrections.

Definitions (Sections 1, 8, 10-11, 21)

The bill would amend the definitions of "Commission," "Division," and "United States" or "agencies of the United States" and add definitions of "Director," "invasive plant species," and "Secretary."

State Conservation Commission Membership and Oversight (Section 2)

The bill would require the Dean of the Kansas State University College of Agriculture to appoint two designees to serve on the Commission as non-voting members, with one representing an agricultural experiment station and the other representing the cooperative extension service. The Secretary of Agriculture (Secretary) would be required to request the U.S. Secretary of Agriculture appoint one resident of Kansas to serve as a non-voting member of the Commission.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would require the Commission to work with the Division to make certain conservation program policy decisions to be approved by the Secretary, including on current and new programs and annual budget recommendations.

Rules and Regulations (Sections 2, 6, 19)

The bill would require the Division to submit rules and regulations to the Commission for consideration and comment before officially submitting the rules and regulations in accordance with state law. The bill would also require the Commission to review all rules and regulations proposed by the Division that are necessary for the Division to execute its functions under the law.

Conservation Districts (Sections 3-7)

The bill would allow for the removal of a conservation district supervisor by the Secretary in consultation with the Commission, after certain actions found in continuing law.

The bill would add control of invasive species, drought, soil and grassland health and health initiatives, and water quality and protection of water quality in multiple provisions of law related to the powers of conservation districts. These additions would also be added to the list for which conservation districts could provide appropriations for state grant funding. The bill would allow the Director of the Division (Director) to update any applicable standards from time to time as necessary for continued success of the federal Conservation Reserve Program.

In addition, the bill would add gifts and donations of projects to the list of different types of projects a conservation district could take over. The bill would also clarify that in these projects, the conservation district's action would be subject to the authority of the authorizing state or federal agency.

Program Oversight (Sections 3-4, 6-10, 12-15, 18-23)

The bill would make the following changes regarding various program oversight responsibilities replacing certain references, to reflect the current structure of the Commission within the KDA:

- “Commission” changed to “Director”;
- “Commission” changed to “Division”;
- “Commission” changed to “Division, in consultation with the Commission”;
- “Commission” changed to “KDA Division”;
- “Commission” changed to “Secretary”;
- “Director” changed to “Secretary”;
- “His or her office” in reference to the Secretary of State changed to the “Secretary of State’s office”;
- “Kansas Department of Agriculture Division of Conservation” to “Division”;
- “State Soil Conservation Committee” and “committee” changed to “Division”; and
- “With the approval of the Commission” changed to “Secretary, at the request of the Director.”

The bill would also require the Division to consult with the Commission regarding an annual base rate for the Water Right Transition Assistance Program.

Penalties, Violations, and Final Orders (Sections 9, 16-17)

The bill would prohibit any civil penalties or orders for repayment to be imposed for violations of the Kansas Water

Right Transition Program except under written order of the Secretary or the Secretary's designee. The bill would require the order to state the violation, imposed penalty, and the right to an appeal. Within 15 calendar days of notification, any person could make a written request to the Secretary for a hearing in accordance with the Kansas Administrative Procedure Act. The Secretary would affirm, reverse, or modify the order and specify the reason for the decision. Any person aggrieved by an order of the Secretary under this section of the bill could appeal the order to the district court in a manner provided by the Kansas Judicial Review Act.

The bill would require the Secretary, upon the Director's request, to issue a written order stating the nature of the violation, the imposed penalty, and the right of the person to appeal to the Secretary for violations of surface mining land conservation and reclamation laws. Current law states the violation will be referred to the Commission.

In addition, the bill would require the Secretary, upon the Director's request, to institute a proceeding for forfeiture of a bond posted by an operator to guarantee reclamation of a site where the operator is in violation of surface mining land conservation reclamation laws once an issued order becomes a final order. Current law states the Attorney General shall institute proceedings upon request of the Commission.

Report to Legislative Committees (Section 10)

The bill would update the names of legislative committees to the Senate Committee on Agriculture and Natural Resources and House Committee on Agriculture, to which the KDA is required to submit various annual reports.

Statutory Repeal (Section 24)

The bill would repeal KSA 49-619, which concerns surface mining land conservation and reclamation violation

hearings, conduct, bond forfeiture proceedings, and duties of the Attorney General. [Note: Provisions for violation hearings and bond forfeiture proceedings would be moved to Sections 16 and 17 of the bill.]

Effective Date

The bill would be in effect upon publication in the *Kansas Register*.

Background

The bill was introduced by the Senate Committee on Agriculture and Natural Resources at the request of a representative of the KDA.

Senate Committee on Agriculture and Natural Resources

In the Senate Committee hearing on January 27, 2021, the Chief Counsel of the KDA provided **proponent** testimony and stated that, in 2011, an executive reorganization order consolidated the State Conservation Commission within the KDA; however, the statutes were not updated to reflect this change and the Commission exists within the KDA as a program advisory board. He explained the bill continues the existence of the State Conservation Commission, while replacing certain references that reflect the current structure of the Commission within the KDA.

No neutral or **opponent** testimony was provided.

The Senate Committee amended the bill to add language clarifying that local conservation districts cannot unilaterally act in place of the Kansas Department of Health and Environment regarding water quality projects.

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to correct statutory references.

House Committee on Agriculture

In the House Committee hearing, the Director of Conservation, KDA, provided **proponent** testimony. No other testimony was provided.

House Committee of the Whole

The House Committee of the Whole adopted a technical amendment that would make the bill effective upon publication in the *Kansas Register*.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the KDA states enactment of the bill would have no fiscal effect on agency operations.

Kansas Department of Agriculture; Division of Conservation; State Conservation Commission