

SENATE BILL No. 357

By Committee on Agriculture

1-30

Proposed Amendment to SB 357 by KLA, KS Assoc. of Counties, Riley County and KS Farm Bureau Committee on Agriculture 2/15/12 (Corrected Version) Prepared by David Wiese Office of Revisor of Statutes

AN ACT concerning agriculture; relating to soil erosion caused by wind; duties of county commissioners, conservations districts; amending K.S.A. 2-2004 and repealing the existing section

and 2-2008

sections; also repealing K.S.A. 2-2003, 2-2005, 2-2006 and 2-2007.

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

Section 1. K.S.A. 2-2004 is hereby amended to read as follows: 2-2004. (a) Further to administer, carry out and make effective the purposes of this act section, the board of county commissioners of each county, upon knowing receiving a complaint or being advised that dust, any plant or weed is blowing from any particular land in the county, are hereby authorized and directed immediately to inspect such land. If it is determined the soil, any plant or weed is blowing therefrom in sufficient quantity to be injurious to the land because of erosion thereof, to nearby land because of dirt blown thereon, to nearby land because of any plant or weed blown thereon or to the public health because of dust therefrom blown into the air, they shall determine what, if anything, can be done to prevent or materially lessen the soil, any plant or weed blowing from such land, and if in their judgment that can be accomplished by prompt cultivation of the soil in some manner, they are authorized and directed to order work to be done and the time when and the type of work to be done. The board of county commissioners may order that the land be disced, hixed, chiseled, cultivated, chopped or worked by any other method of control approved by the board. If the board of county commissioners determines a sustained, dust-laden wind is occurring which poses an extreme and immediate physical danger to public safety or irreparable damage to such land unless immediate corrective action is taken, such board of county commissioners shall order the owner of the land at issue to take immediate corrective action, including but not limited to, disking, hitting, chiseling, cultivating, chopping or any other recognized method of dust control. If such board of county commissioners receive a complaint and determine no sustained, dust-laden wind posing an extreme and immediate physical danger to public safety or irreparable damage to such land is occurring, the board of county commissioners shall direct the complaining citizen to present such complaint to the local conservation district with jurisdiction over the land at issue.

that shall include any recognized method of dust control in the applicable field office technical guide of the natural resources conservation service.

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(b) If a complaint is referred by the board of county commissioners to

1 the local conservation district, and if the complaining party wishes to
2 proceed with such complaint, the board of county commissioners shall
3 request that such local conservation district schedule the complaint for a
4 hearing at such local conservation district's next regularly scheduled
5 meeting.

6 (1) The board of county commissioners shall advise the owner and
7 any tenant of the land at issue, no less than 10 calendar days prior to such
8 meeting, of the date and time the ~~complaining party will appear~~ before the
9 local conservation district.

10 (2) The local conservation district shall have authority to hear such
11 complaint and any response from the owner or tenant of the land at issue
12 at such scheduled meeting. At such meeting, the local conservation district
13 may, upon receiving permission from the owner of the land at issue, view
14 the land, either as a group or by individual board members and with or
15 without the presence of either the complaining party, the owner or the
16 tenant of the land at issue. Such local conservation district may also
17 continue the matter to a different date or take such other reasonable steps
18 as in the discretion of such local conservation district which allows such
19 conservation district to make a recommendation to the board of county
20 commissioners regarding such complaint.

21 (3) The local conservation district shall act only in an advisory
22 capacity and shall have authority only to make a written recommendation
23 to the board of county commissioners regarding the complaint referred to
24 such local conservation district. The local conservation district shall
25 recommend specific corrective action to the board of county
26 commissioners or recommend no corrective action.

27 (c) For the purpose of making a recommendation, the local
28 conservation district:

29 (1) May request technical assistance from the natural resources
30 conservation service of the United States department of agriculture. It
31 shall be within the sole discretion of the natural resources conservation
32 service whether or not to provide such technical assistance; and

33 (2) shall consider the applicable field office technical guide of the
34 natural resources conservation service. Any corrective action
35 recommended by the local conservation district shall be based upon one
36 or more terms of the field office technical guide and the local conservation
37 district's written recommendation shall identify the specific term or terms
38 of the field office technical guide upon which the recommendation is
39 based.

40 (d) In formulating a recommendation, the local conservation district
41 shall rely entirely upon the voluntary cooperation of the complaining party
42 and the owner or tenant of the land at issue. If the complaining party,
43 owner or tenant of the land at issue did not cooperate with the local

complaint will be heard

written

Included in such recommendation shall be a determination by the local conservation district as to whether the land at issue is in compliance with a conservation plan promulgated by the owner or tenant under 7 CFR §12.5, as in effect on the effective date of this act. If the land at issue is determined to be in compliance with a conservation plan promulgated by the owner or tenant under 7 CFR § 12.5, as in effect on the effective date of this act, the conservation district shall recommend no corrective action be taken by the board of county commissioners. If the land at issue is determined to not be in compliance with a conservation plan promulgated by the owner or tenant under 7 CFR §12.5, as in effect on the effective date of this act, the

1 conservation district regarding such complaint, the local conservation
 2 district shall advise the board of county commissioners of this fact in such
 3 recommendation. If the local conservation district recommends no
 4 corrective action, such local conservation district shall explain why no
 5 corrective action was recommended.

6 (e) Upon receipt of the written recommendation of the local
 7 conservation district, the board of county commissioners shall schedule
 8 such recommendation for review by the board of county commissioners at
 9 a regularly scheduled meeting. The complaining party, owner of the land
 10 at issue and any tenant shall be notified in writing of such meeting no less
 11 than 10 calendar days prior to such meeting. At such meeting, the board of
 12 county commissioners may accept, reject or modify the recommendations
 13 of the local district in the sole discretion of the board of county
 14 commissioners. The board of county commissioners at all times shall
 15 retain the authority to order any corrective action allowed by this section.
 16 The board of county commissioners may take into consideration, when
 17 developing any remedy or refusing to impose a remedy, the cooperation or
 18 lack of cooperation that the parties of the complaint have extended to the
 19 local conservation district, the natural resource conservation service or
 20 to any other person or agency assisting the local conservation district in
 21 the matter.

22 (f) If a complaint has been referred to a local conservation district,
 23 but the board of county commissioners later determines immediate
 24 corrective action is appropriate, such board of county commissioners shall
 25 have the authority to order such immediate corrective action before the
 26 local conservation district has issued a recommendation.

27 (g) In all cases where the board of county commissioners orders
 28 corrective action, where it can be done reasonably, the board of county
 29 commissioners shall confer with the owner of the land before determining
 30 or ordering work to be done thereon, and advise the owner of their
 31 conclusions and give the owner an opportunity to do the work they
 32 conclude should be done, but if the owner cannot be consulted without
 33 unreasonable delay, or cannot or will not do the work in the manner and
 34 within the time it should be done, the board of county commissioners may
 35 do the work, or employ someone to do it, and issue its warrants to pay the
 36 actual cost thereof, and pay such warrants from the fund hereinafter
 37 provided, without regard to any other statute pertaining to the issuing or
 38 paying of county warrants.

39 Sec. 2. ~~3~~ K.S.A. 2-2004 is hereby repealed.
 40 Sec. 3. ~~4~~ This act shall take effect and be in force from and after its
 41 publication in the statute book.

shall accept or reject the recommendations of the local conservation district. In such case where the board of county commissioners rejects the local conservation district's recommendations, the board of county commissioners may, if it is determined corrective action is needed other than the corrective action recommended by the local conservation district, request the local conservation district develop an alternative recommendation. A request for an alternative recommendation from the local conservation district by the board of county commissioners shall set forth reasons why the board of county commissioners believes an alternative recommendation is necessary. Upon receiving an alternative recommendation from the local conservation district, the board of county commissioners shall accept or reject the alternative recommendation.

under subsection (a)

Sec. 2. K.S.A. 2-2008 is hereby amended to read as follows: (see the following page)

2-2003, 2-2004, 2-2005, 2-2006, 2-2007 and 2-2008 are

2-2008. Soil erosion caused by wind; work performed for prevention; notice to landowners; special assessments; limitation; division of cost; action by landowner. (a) When work has been done by the county, or by anyone employed by it to carry out its orders respecting the planting or cultivation of any specific tract of land under K.S.A. 2-2004 ~~or 2-2006~~, and amendments thereto, and warrants issued therefor, the board of county commissioners shall notify the owner of the land, by certified mail or otherwise, of the amount thereof and require the owner to make a showing before them, on a day named, which shall not be less than 30 days after the date of the notice, as to why the cost of the work should not be levied against the land as a special assessment. Unless the owner of the land can show that the work was necessitated by circumstances beyond the owner's control, and which could not reasonably have been anticipated, the expense thereof shall be assessed against the land as a special assessment.

(b) The assessment shall be made by an order of the board of county commissioners, which order shall be recorded in its minutes, and shall be collected as a special assessment. The amount of the assessment shall not exceed \$3 per acre for each acre on which work is done for any one year, unless the board of county commissioners determines at its first meeting during any calendar year that \$3 per acre is not adequate to cover the actual cost of the work. Upon such determination the board of county commissioners shall fix, at the first business meeting of the board during any calendar year, an amount in excess of \$3 per acre which the board determines to be a reasonable assessment per acre to cover the actual cost of the work during such calendar year. If the amount assessed against any such acre in any year exceeds \$3 or exceeds the amount fixed by the board of county commissioners in any year to cover the cost per acre of the work for that year, or the total amount assessed against any such acre in more than one year and which is uncollected exceeds \$3 or exceeds the amount fixed by the board of county commissioners in any year to cover the cost per acre of the work for that year, such amount shall be collected in annual installments not exceeding \$3 or the amount fixed by the board of county commissioners at its first meeting during any calendar year to cover the actual cost of the work per such acre, as applicable.

(c) For good cause shown, the board of county commissioners may divide the cost between the owner of the land and the county. ~~All moneys collected on such special assessment shall be credited to the soil-diffing fund.~~ Any landowner aggrieved at the amount of the assessment against the landowner's land may bring an action in the district court of the county in which the land is situated to test the validity of the assessment or to enjoin its collection, but such action must be brought within 30 days after the assessment is made, and cannot be brought thereafter.

History: L. 1937, ch. 189, § 8; L. 1955, ch. 8, § 1; L. 1987, ch. 11, § 1; July 1.