

MINUTES OF THE HOUSE AGRICULTURE & NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Larry Powell at 9:00 a.m. on March 14, 2012, in Room 783 in the Docking State Office Building.

All members were present except:

Representative Michael Peterson (Unexcused)

Committee Staff Present:

Randy Gilliland, Kansas Legislative Research Department

Sean Ostrow, Office of the Revisor of Statutes

Chris Sevedge, Kansas Legislative Research Department

Joyce Hladky, Committee Assistant

Conferees appearing before the committee:

Harriet M. Hageman, Hageman & Brighton, P.C. – Cheyenne, WY

Phyllis Setchel

Nancy Hanahan – Overland Park, KS

Jim Hoy, Emporia, KS

John Armbrust, Governor's Military Council

Joyce Wolf, Audubon of Kansas

Ginny Moore, Executive Director, Kansas Land Trust

Stanley Rasmussen, Department of the Army

Rob Manes, Nature Conservancy

Mike Beam, Director, Ranchland Trust of Kansas

Others attending:

See Attached List.

Chairman Powell welcomed the Committee and opened the floor for hearings on **HB2587** **limiting duration of conservation easements.**

Harriet M. Hageman, Hageman & Brighton, P.C. of Cheyenne, Wyoming, presented testimony in favor of **HB2587.**

Ms. Hageman is a landowner and partner in the firm of Hageman & Brighton, P.C. which has handled cases in the state of Wyoming with respect to conversation easements.

## CONTINUATION SHEET

Minutes of the HOUSE AGRICULTURE AND NATURAL RESOURCES Committee at 9:00 a.m. on  
March 14, in 783-DSOB

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The definition of conservation easements is that it is a legally-binding agreement between a property owner and a “nonprofit” organization typically a land trust or a government agency. Conservation easements restrict the development on the land covered by the easement, usually in exchange for tax “benefits” for the property owner.

The property owner, the “grantor,” retains partial ownership rights over the land, but relinquishes the rights to use the property for development. Conservation easements often limit all development, including housing, minerals, etc.

The organization to receive or buy the easements is the grantee that holds the interest in the property and enforces the restrictions.

Conservation easements are a contract and are usually fully transferrable by the grantee and can be sold to another organization or the federal government.

With respect to the tax benefits, the land owner must agree to allow the land to be used for:

1. Outdoor recreation for the general public;
2. Protection of animals, plants or ecosystems;
3. Preservation of open spaces (farming, forestry, or ranching);
4. Scenic enjoyment for the general public; or
5. Preservation of historic land or structures.

The landowner must donate the easement to a government agency or a “qualified” “nonprofit” organization. The landowner must agree that the easement be held in perpetuity, meaning that all future owners of the easement are bound by the terms of the deed.

Conservation easements may involve public access to the land.

Ms. Hageman discussed a situation in Colorado where a conservation easement involved the leasing of the property to graze sheep and the grantee intervened and advised the owner of the property the sheep could not graze on the easement due to the possibility of transmitting disease to the big horn sheep in the area. This decision caused the sheep rancher to lose his business and sell his sheep.

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Concerns with conservation easements are the potential of “federalizing” our private property rights through allowing the federal government and “nonprofits” to make decisions regarding the land use.

Ms. Hageman discussed the “pre-arranged flip” which means that increasingly the land trust does not hold on to the easement and it is sold to federal or state agencies. Most easements are purchased at below market value with the landowner donating the difference to the nonprofit land trust. Land trusts sell the easement to the government at market value and pocket the difference. Pre-arranged flips or preacquisitions enable the government to obtain private land when public funds are not yet available.

Conservation easements that bind landowners and their descendants in perpetuity ultimately become antiquated, useless, or harmful. Scientific advances cannot be accounted for, nature affects changes that aren’t predictable and there is an impact on housing costs, e.g. prevents construction of homes far into the future. There is a critical issue in California where 427,000 acres are encumbered by conservation easements; housing costs have skyrocketed.

Public policy counsels against allowing the current generation to dictate how the next generation uses, manages, operates, sells, and develops our real property resources.

Ms. Hageman answered questions. (Attachment 1)

Ms. Phyllis Setchel presented testimony in favor of **HB2587**. Ms. Setchel presented her two concerns about conservation easement:

1. The threat to property rights. There is a difference between the worldview about land use and conservation. There is traditional stewardship vs. today’s environmentalism. Perpetuity is forever. How will we know how the new owners/overseer will steward the conservation easement? Without a sunset provision the very reason the original land owner had for selling their easement being that it will conserve the land and protect it may not be the outcome.
2. For those with oversight responsibility for the conservation easement in the future when the properties are public lands and out of private owners control the new

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environmental oversight could prefer the land to be undisturbed, left to nature and not continue the vigilance necessary to protect the Flint Hills Tall Prairie.

In perpetuity is a long time. It would be safer in private hands and for shorter time period to overcome the unforeseen or objectionable. (Attachment 2)

Ms. Setchel answered questions.

Ms. Nancy Hanahan of Overland Park, Kansas, presented testimony in favor of **HB2587**.

One of the prime targets of the Sustainability Movement is the acquisition and control of private property of this country and its natural resources. Conservation easements provide the tools to legally take land and ultimately transfer it to the federal government under the guise of preserving it for future generations, protecting wildlife, etc. while being provided tax benefits. The problem is these conservation easements are FOREVER. They cannot be severed. This is the trap a property owner doesn't realize until it is too late unless they have hired a good attorney to help them overcome the pitfalls.

Once a contract is signed the property owner is responsible for the care and compliance of the contract. Once signed, they have released to the land trust the 'controlled' use of the land and development rights. They are unable to do anything to the land that might go against the contract, but they are obligated to pay taxes on the land although it is no longer theirs yet they still have the 'title' to said property. Should the landowner have financial reasons to sell the property, they discover the land cannot be divided and it is difficult to get rid of.

There must be a deadline to conservation easements. (Attachment 3)

Ms. Hanahan answered questions.

Mr. Jim Hoy, Flying H Ranch, presented testimony in opposition to **HB2587**.

The philosophy of underlying conservation easements is one of good land stewardship particularly in protecting native grass, one of the great natural resources in Kansas. Ecologists have noted that the tall grass prairie is one of the most endangered ecosystems in the world, in far greater danger than rain forests. Placing conversation easements on prairie land means that

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the prairie will not be plowed or turned into housing developments. Instead, it will be there for grandchildren and great grandchildren and for their grandchildren.

Mr. Hoy entered into a conservation easement agreement, voluntarily, with the intent to protect the land forever. He finds the proposed legislation disturbing and inimical to his desire to preserve his patch of prairie. Conservation easements are one way that helps Kansas continue to look like Kansas far into the future. (Attachment 4)

John Armbrust with the Governor's Military Council presented testimony in opposition of **HB2587**.

In today's environment of defense budget reductions and the possibility of future rounds of Base Realignment and Closure (BRAC), it is important for the State of Kansas to take all prudent actions possible to demonstrate Kansas is a military-friendly state. This is especially true given the fiscal and economic impact of military activities in Kansas.

Several years ago Wichita State University conducted an analysis of the fiscal and economic impact of military activities in Kansas. They concluded that military activities in Kansas add approximately \$7.5 billion per year to the state's gross state product; over 165,000 people are employed as a result of these military activities and their wages total over \$5.5 billion per year; and military activities in Kansas generate approximately \$390 million per year in property, sales and income taxes.

The passage of **HB2587** puts the military installations in Kansas needlessly at risk by eliminating the military's best option for sustaining capabilities of our nation's installations through mutually beneficial partnerships with its neighboring landowners. (Attachment 5)

Mr. Armbrust answered questions.

Chairman Powell announced hearings on **HB2587** would be continued on Thursday, March 15, 2012.

Meeting adjourned at 10:50 a.m.

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