

Substitute for HOUSE BILL No. 2583

By Committee on Environment

2-25

10 AN ACT concerning certain recreational trails; amending K.S.A. 2003
11 Supp. 58-3212, 58-3213 and 58-3215 and repealing the existing
12 sections.

13

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

15 Section 1. K.S.A. 2003 Supp. 58-3212 is hereby amended to read as
16 follows: 58-3212. (a) The responsible party, at all times after transfer of
17 the deed to the responsible party, shall:

18 (1) Perform the duties imposed by K.S.A. 2-1314 and amendments
19 thereto along the recreational trail;

20 (2) provide for the safety, use and accessibility of existing easements,
21 utility facilities and access licenses along the recreational trail;

22 (3) provide for trail-user education and signs regarding trespassing
23 laws and safety along the recreational trail;

24 (4) provide for litter control and the enforcement of laws prohibiting
25 littering along the recreational trail, including but not limited to trail-user
26 education and signs about laws prohibiting littering and the provision of
27 trash receptacles and the cleanup of trash and litter;

28 (5) develop and maintain the recreational trail in a condition that does
29 not create a fire hazard;

30 (6) designate the recreational trail for nonmotorized vehicle use with
31 exceptions only for motorized wheelchairs and maintenance, law enforce-
32 ment and emergency vehicles;

33 (7) prohibit hunting or trapping on or from the recreational trail;

34 (8) provide for law enforcement along the recreational trail;

35 (9) grant easements to adjacent property owners to permit such own-
36 ers to cross the recreational trail in a reasonable manner consistent with
37 the use of the adjacent property and with K.S.A. 66-301 through 66-303,
38 and amendments thereto;

39 (10) (A) maintain any existing fencing between the trail and adjacent
40 property; (B) maintain any future fencing installed between the trail and
41 adjacent property; (C) install between the trail and adjacent property
42 fencing corresponding in class to that maintained on the remaining sides
43 of such adjacent property; and (D) on request of an adjacent property

1 owner, pay one-half the cost of installing fencing between the trail and
2 such property owner's adjacent property with a fence of the class re-
3 quested by such property owner, if not all remaining sides of such prop-
4 erty are fenced; and

5 (11) (A) maintain the trail; (B) maintain all bridges, culverts, roadway
6 intersections and crossings on the trail, essential to the reasonable and
7 prudent operation of the trail or needed for drainage, flood control or
8 the use of easements for crossing the trail between adjacent properties,
9 or cause maintenance thereof by other parties that have assumed con-
10 tractual responsibility therefor; and (C) install and maintain any warranted
11 traffic signs on the trail.

12 (b) If the responsible party is not a governmental entity, the respon-
13 sible party shall file with the county clerk of each county where a portion
14 of the recreational trail is or will be located a bond or proof of an escrow
15 account in a Kansas financial institution, as defined by K.S.A. 16-117 and
16 amendments thereto, payable to the county. The bond or proof of an
17 escrow account shall be filed at the time of transfer of the deed to the
18 responsible party and annually thereafter. The bond or escrow account
19 shall be conditioned on the responsible party's performance, and shall be
20 ~~in an~~ *maintained at all times in the full amount agreed upon between the*
21 *responsible party and **set by** the county commission as sufficient to fully*
22 *cover the annual costs, of:*

- 23 (1) Weed control along the trail, as required by subsection (a)(1);
- 24 (2) litter control along the trail, as required by subsection (a)(4);
- 25 (3) maintenance of the trail in a condition that does not create a fire
26 hazard, as required by subsection (a)(5);
- 27 (4) installation and maintenance of fencing between the trail and ad-
28 jacent property within the county, as required by subsection (a)(10); and
- 29 (5) installation and maintenance of signs along the trail, as required
30 by subsections (a)(3), (a)(4) and (a)(11)(C).

31 If separate bonds are submitted to or escrow accounts established for
32 the various counties through which the trail transverses, the annual costs
33 listed above shall be only for that portion of the trail located within the
34 particular county that is the holder of the bond or beneficiary of the
35 escrow. A responsible party may submit a single bond or escrow account
36 with multiple counties respectively as coobligees or cobeneficiaries, but
37 in that event the annual costs used in computation of the bond amount
38 shall be for the entire trail length.

39 (c) ~~*If the responsible party is not a governmental entity, the respon-*~~
40 ~~*sible party shall execute a quit claim deed conveying to the county the*~~
41 ~~*responsible party's interest in that portion of the recreational trail which*~~
42 ~~*is or will be located within the county. The deed shall be placed in escrow*~~
43 ~~*with an independent third party escrow agent agreed upon by the re-*~~

1 ~~sponsible party and the county commission. The responsible party shall~~
2 ~~not convey the responsible party's interest in the recreational trail to an-~~
3 ~~yone other than the county. The quit claim deed shall be placed in escrow~~
4 ~~at the time of transfer of the deed to the responsible party or within 45~~
5 ~~days after the effective date of this act, whichever is later.~~

6 ~~(d)~~ If the responsible party is not a governmental entity, the respon-
7 sible party shall file with the county clerk of each county where a portion
8 of the recreational trail is or will be located; proof of liability insurance
9 in an amount ~~agreed upon between the responsible party and~~ **set by** the
10 county commission as sufficient. Such proof shall be filed at the time of
11 transfer of the deed to the responsible party and annually thereafter.

12 ~~(e)~~ **(d)** *If the responsible party is not a governmental entity, the re-*
13 *sponsible party shall file with the clerk of each county where any portion*
14 *of the recreational trail is or will be located the name and address of the*
15 *person to whom any notice required by this act shall be sent. Such name*
16 *and address shall be filed at the time of transfer of the deed to the re-*
17 *sponsible party or within 45 days after the effective date of this act, whic-*
18 *ever is later. Such name and address shall be filed with the county clerk*
19 *also at any time when there is a change in the name or address, or both,*
20 *of the person to whom such notice shall be sent. If notice pursuant to this*
21 *act is sent by certified mail to the latest such name and address filed by*
22 *the responsible party, such notice shall be deemed sufficient.*

23 ~~(d)~~ ~~(f)~~ **(e)** The provisions of this section shall apply to all recreational
24 trails, regardless of when approval to enter into negotiations for interim
25 trail use is or was received from the appropriate federal agency.

26 ~~(e)~~ ~~(g)~~ **(f)** The provisions of this section may be modified or supple-
27 mented by any city governing body for recreational trails within the cor-
28 porate limits of such city in the manner provided by K.S.A. 12-137 *et seq.*
29 and amendments thereto. If a city governing body adopts requirements
30 in addition to those provided by this section, the city shall pay all costs of
31 compliance with such additional requirements.

32 Sec. 2. K.S.A. 2003 Supp. 58-3213 is hereby amended to read as
33 follows: 58-3213. (a) Upon receipt of permission from the appropriate
34 federal agency to enter into negotiations for interim trail use, the respon-
35 sible party shall give written notice to each adjacent property owner that
36 the responsible party intends to build a recreational trail adjacent to the
37 property owner's property. The responsible party may utilize the ad-
38 dresses to which real estate tax statements are sent, as maintained by
39 county officials, for such notices. Such notice shall be given by first-class
40 mail unless the notice is returned undelivered, in which case a further
41 notice shall be given by certified mail. Further notice shall be published
42 once each week for three consecutive weeks in the official newspaper of
43 the county in which such trail is proposed to be located.

1 (b) Before commencing development or operation of a recreational
2 trail, the responsible party shall:

3 (1) Prepare a project plan that includes: (A) The name and address
4 of the responsible party, (B) an itemized estimate of the costs of the
5 project and sources of funding for the project, and (C) maps of the rec-
6 reational trail;

7 (2) submit by certified mail, not later than 180 days after receiving
8 approval of interim trail use from the appropriate federal agency, the
9 initial project plan to the county commission of each county where a
10 portion of the trail is to be located outside of city limits and to the gov-
11 erning body of each city where a portion of the trail is to be located inside
12 the city limits;

13 (3) submit the final project plan to the county commission of each
14 county where a portion of the trail is to be located outside of city limits
15 and make subsequent reports to such county commission as to the status
16 of trail development or operation, or both, at intervals determined by the
17 commission and consider all recommendations the commission has re-
18 garding the trail; and

19 (4) submit the final project plan to the governing body of each city
20 where a portion of the trail is to be located inside the city limits and make
21 subsequent reports to such city governing body as to the status of trail
22 development or operation, or both, at intervals determined by the gov-
23 erning body and consider all recommendations the governing body has
24 regarding the trail.

25 (c) *The county commission or governing body of a city shall have 60*
26 *days after submission of the final project plan to make recommendations*
27 *regarding the trail.*

28 (d) The responsible party shall complete development of a recrea-
29 tional trail within a period of time equal to two years times the number
30 of counties in which the recreational trail is located. *A county commission*
31 *may extend the required time for completion of that portion of a trail*
32 *which lies within the county by not more than two one-year extensions.*
33 Such period of time shall begin only when the appeal period pursuant to
34 subsection (d) of 16 U.S.C. 1247 (1983) has expired. Any time during
35 which there is pending any court action challenging the development or
36 use of the trail shall not be computed as part of the time limitation im-
37 posed by this subsection.

38 ~~(d)~~ (e) The provisions of this section shall apply to only recreational
39 trails for which approval to enter into negotiations for interim trail use is
40 received from the appropriate federal agency on or after ~~the effective~~
41 ~~date of this act~~ *July 1, 1996.*

42 Sec. 3. K.S.A. 2003 Supp. 58-3215 is hereby amended to read as
43 follows: 58-3215. ~~A city or county may institute procedures for recourse~~

1 against the responsible party pursuant to 16 U.S.C. 1247 (1983) and 49
2 C.F.R. 1152.29 (1986) upon the failure of the responsible party to comply
3 with the provisions of this act.

4 ~~(a) The county commission of a county where a recreational trail is~~
5 ~~located may appoint an advisory board to carry out the duties of the~~
6 ~~county commission to inspect such trail and hear complaints filed by ad-~~
7 ~~acent property owners, the responsible party or others regarding the~~
8 ~~condition of such trail.~~

9 ~~(b) The county commission or advisory board shall inspect the rec-~~
10 ~~reational trail at least annually to determine compliance with the provi-~~
11 ~~sions of this act and shall prepare a report of the inspection. If, based on~~
12 ~~the inspection report, the county commission determines that the respon-~~
13 ~~sible party is not maintaining the trail as required by K.S.A. 2003 Supp.~~
14 ~~58-3212, and amendments thereto, or has not completed development of~~
15 ~~the trail as required by K.S.A. 2003 Supp. 58-3213, and amendments~~
16 ~~thereto, the county commission shall notify the responsible party of the~~
17 ~~determination and the reasons for the determination. If the responsible~~
18 ~~party, within 14 days after notice of the determination, requests a hearing~~
19 ~~on the issue, a hearing shall be held as provided by subsection (c). If the~~
20 ~~responsible party does not request a hearing, the county commission ei-~~
21 ~~ther shall provide for the county to perform the required maintenance or~~
22 ~~shall authorize adjacent property owners to perform such maintenance.~~
23 ~~The documented costs of such maintenance shall be paid to the county~~
24 ~~from the bond or escrow account maintained by the responsible party. If~~
25 ~~the county commission has authorized adjacent property owners to per-~~
26 ~~form the maintenance, the county commission shall pay to such property~~
27 ~~owners any portion of the amount recovered from the bond or escrow~~
28 ~~account which is attributable to such property owners' documented costs.~~

29 ~~(c) At any time upon inspection of a recreational trail within the~~
30 ~~county, upon request of a responsible party pursuant to subsection (b) or~~
31 ~~upon the filing of a complaint by an adjacent property owner regarding~~
32 ~~a recreational trail located within the county, the county commission or~~
33 ~~the advisory board shall conduct a public hearing on the matter within~~
34 ~~30 days after completion of the inspection report or receipt of the request~~
35 ~~or complaint. The county commission shall cause notice of the time, place~~
36 ~~and purpose of such hearing to be given to the responsible party as pro-~~
37 ~~vided by K.S.A. 2003 Supp. 58-3212, and amendments thereto, and to the~~
38 ~~public by publication in the official county newspaper not less than seven~~
39 ~~days before the hearing. If upon the hearing, the county commission or~~
40 ~~advisory board determines that the responsible party is not maintaining~~
41 ~~the trail as required by K.S.A. 2003 Supp. 58-3212, and amendments~~
42 ~~thereto, or has not completed development of the trail as required by~~
43 ~~K.S.A. 2003 Supp. 58-3213, and amendments thereto, the county com-~~

- 1 ~~mission may take any of the following actions:~~
- 2 ~~—(1) The county commission may provide for the county to perform~~
3 ~~the required maintenance or may authorize adjacent property owners to~~
4 ~~perform such maintenance. The documented costs of such maintenance~~
5 ~~shall be paid to the county from the bond or escrow account maintained~~
6 ~~by the responsible party. If the county commission has authorized adja-~~
7 ~~cent property owners to perform the maintenance, county commission~~
8 ~~shall pay to such property owners any portion of the amount recovered~~
9 ~~from the bond or escrow account which is attributable to such property~~
10 ~~owners' documented costs.~~
- 11 ~~—(2) The county may seek to have the quit claim deed released to the~~
12 ~~county. If the deed is released to the county, the county may convey the~~
13 ~~county's interest to another responsible party, may retain the county's~~
14 ~~interest and develop and maintain the recreational trail or may institute~~
15 ~~abandonment procedures pursuant to 16 U.S.C. 1247 (1983) and 49~~
16 ~~C.F.R. 1152.29 (1986).~~
- 17 ~~—(d) At any time upon the filing of a complaint by a responsible party~~
18 ~~that any adjacent property owner is interfering with development, main-~~
19 ~~tenance or use of a recreational trail located within the county, the county~~
20 ~~commission or the advisory board shall conduct a public hearing on the~~
21 ~~matter within 30 days after receipt of the complaint. The county com-~~
22 ~~mission shall cause notice of the time, place and purpose of such hearing~~
23 ~~to be given to the responsible party as provided by K.S.A. 2003 Supp. 5S-~~
24 ~~3212, and amendments thereto, and to the public by publication in the~~
25 ~~official county newspaper not less than seven days before the hearing. If~~
26 ~~upon the hearing, the county commission or advisory board determines~~
27 ~~that an adjacent property owner is interfering with development, main-~~
28 ~~tenance or use of the trail, the county commission may refer the matter~~
29 ~~to the sheriff or the county or district attorney.~~
- 30 ~~—(e) The county commission or advisory board may consolidate hear-~~
31 ~~ings pursuant to subsections (c) and (d).~~
- 32 ~~—(f) Any person aggrieved by the action of the county commission pur-~~
33 ~~suant to subsection (c) or (d) may appeal such action in accordance with~~
34 ~~K.S.A. 60-2101, and amendments thereto. Upon appeal, the district court~~
35 ~~may enter such orders as just, including, but not limited to:~~
- 36 ~~—(1) An order requiring the responsible party to comply with the pro-~~
37 ~~visions of this act;~~
- 38 ~~—(2) an order requiring the responsible party to pay a civil penalty to~~
39 ~~the aggrieved party in an amount not exceeding \$100 for each day of~~
40 ~~noncompliance;~~
- 41 ~~—(3) an order requiring any adjacent property owner to pay a civil~~
42 ~~penalty to the responsible party in an amount not exceeding \$100 for each~~
43 ~~day of interference in the development, maintenance or use of the trail;~~

1 ~~(4) an order enjoining any adjacent property owner from interfering~~
2 ~~with development, maintenance or use of the trail, or~~

3 ~~(5) an order requiring any party to the action to pay reasonable at-~~
4 ~~torney fees and costs of the aggrieved party.~~

5 **If the responsible party fails to comply with the provisions of this**
6 **act, any adjacent property owner, city or county aggrieved by the**
7 **noncompliance may bring an action in the district court to enforce**
8 **the provisions of this act. Upon a finding that the responsible party**
9 **has failed to comply with the provisions of this act, the court may**
10 **enter any one or more of the following orders:**

11 (a) **An order requiring the responsible party to comply with the**
12 **provisions of this act;**

13 (b) **an order requiring the responsible party to pay a civil pen-**
14 **alty to the aggrieved party in an amount not exceeding \$100 for**
15 **each day of noncompliance.**

16 Sec. 4. **If the time has expired for an action required by this act**
17 **to be performed, the party required to perform such action shall**
18 **have 90 days after this act takes effect to comply.**

19 Sec. 5. K.S.A. 2003 Supp. 58-3212, 58-3213 and 58-3215 are hereby
20 repealed.

21 Sec. ~~5~~ 6. This act shall take effect and be in force from and after its
22 publication in the statute book.