

SENATE BILL No. 357

By Committee on Agriculture

1-30

1 AN ACT concerning agriculture; relating to soil erosion caused by wind;
2 duties of county commissioners, conservations districts; amending
3 K.S.A. 2-2004 *and 2-2008* and repealing the existing section *sections*;
4 *also repealing K.S.A. 2-2006 and 2-2007 and K.S.A. 2011 Supp. 2-*
5 *2003 and 2-2005.*

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2-2004 is hereby amended to read as follows: 2-
9 2004. (a) Further to administer, carry out and make effective the purposes
10 of this ~~aet~~ *section*, the board of county commissioners of each county,
11 upon ~~knowing, receiving a complaint or being advised~~ that dust, any plant
12 or weed is blowing from any particular land in the county, are hereby
13 authorized and directed immediately to inspect such land. ~~If it is~~
14 ~~determined the soil, any plant or weed is blowing therefrom in sufficient~~
15 ~~quantity to be injurious to the land because of erosion thereof, to nearby~~
16 ~~land because of dirt blown thereon, to nearby land because of any plant or~~
17 ~~weed blown thereon or to the public health because of dust therefrom~~
18 ~~blown into the air, they shall determine what, if anything, can be done to~~
19 ~~prevent or materially lessen the soil, any plant or weed blowing from such~~
20 ~~land, and if in their judgment that can be accomplished by prompt~~
21 ~~cultivation of the soil in some manner, they are authorized and directed to~~
22 ~~order work to be done and the time when and the type of work to be done.~~
23 ~~The board of county commissioners may order that the land be disced,~~
24 ~~listed, chiseled, cultivated, chopped or worked by any other method of~~
25 ~~control approved by the board. If the board of county commissioners~~
26 ~~determines a sustained, dust-laden wind is occurring which poses an~~
27 ~~extreme and immediate physical danger to public safety or irreparable~~
28 ~~damage to such land unless immediate corrective action is taken, such~~
29 ~~board of county commissioners shall order the owner of the land at issue~~
30 ~~to take immediate corrective action, including, but not limited to, discing,~~
31 ~~listing, chiseling, cultivating, chopping or any other recognized method of~~
32 ~~dust control that shall include any recognized method of dust control in~~
33 ~~the applicable field office technical guide of the natural resources~~
34 ~~conservation service. If such board of county commissioners receive~~

1 *receives a complaint and ~~determine~~ determines no sustained, dust-laden*
2 *wind posing an extreme and immediate physical danger to public safety or*
3 *irreparable damage to such land is occurring, the board of county*
4 *commissioners shall ~~direct the complaining citizen to present~~ refer such*
5 *complaint to the local conservation district with jurisdiction over the land*
6 *at issue.*

7 (b) *If a complaint is referred by the board of county commissioners to*
8 *the local conservation district, and if the complaining party wishes to*
9 *proceed with such complaint, the board of county commissioners shall*
10 *request that such local conservation district schedule the complaint for a*
11 *hearing at such local conservation district's next regularly scheduled*
12 *meeting.*

13 (1) *The board of county commissioners shall advise the owner and*
14 *any tenant of the land at issue, no less than 10 calendar days prior to such*
15 *meeting, of the date and time the ~~complaining party will appear~~ **complaint***
16 ***will be heard** before the local conservation district.*

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

28 (3) *The local conservation district shall act only in an advisory*
29 *capacity and shall have authority only to make a written recommendation*
30 *to the board of county commissioners regarding the complaint referred to*
31 *such local conservation district. **Included in such recommendation shall***
32 ***be a determination by the local conservation district as to whether the***
33 ***land at issue is in compliance with a conservation plan promulgated by***
34 ***the owner or tenant under 7 C.F.R § 12.5, as in effect on July 1, 2012. If***
35 ***the land at issue is determined to be in compliance with a conservation***
36 ***plan promulgated by the owner or tenant under 7 C.F.R § 12.5, as in***
37 ***effect on July 1, 2012, the conservation district shall recommend no***
38 ***corrective action be taken by the board of county commissioners. If the***
39 ***land at issue is determined to not be in compliance with a conservation***
40 ***plan promulgated by the owner or tenant under 7 C.F.R § 12.5, as in***
41 ***effect on July 1, 2012, the local conservation district shall recommend***
42 ***specific corrective action to the board of county commissioners or***
43 ***recommend no corrective action.***

1 (c) For the purpose of making a recommendation, the local
2 conservation district:

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

7 (2) shall consider the applicable field office technical guide of the
8 natural resources conservation service. Any corrective action
9 recommended by the local conservation district shall be based upon one
10 or more terms of the field office technical guide and the local conservation
11 district's written recommendation shall identify the specific term or terms
12 of the field office technical guide upon which the recommendation is
13 based.

14 (d) In formulating a recommendation, the local conservation district
15 shall rely entirely upon the voluntary cooperation of the complaining party
16 and the owner or tenant of the land at issue. If the complaining party,
17 owner or tenant of the land at issue did not cooperate with the local
18 conservation district regarding such complaint, the local conservation
19 district shall advise the board of county commissioners of this fact in such
20 recommendation. If the local conservation district recommends no
21 corrective action, such local conservation district shall explain why no
22 corrective action was recommended.

23 (e) Upon receipt of the written recommendation of the local
24 conservation district, the board of county commissioners shall schedule
25 such recommendation for review by the board of county commissioners at
26 a regularly scheduled meeting. The complaining party, owner of the land
27 at issue and any tenant shall be notified in writing of such meeting no less
28 than 10 calendar days prior to such meeting. At such meeting, the board of
29 county commissioners ~~may accept, reject or modify the recommendations~~
30 ~~of the local district in the sole discretion of the board of county~~
31 ~~commissioners shall accept or reject the recommendations of the local~~
32 ~~conservation district. In such case where the board of county~~
33 ~~commissioners rejects the local conservation district's recommendations,~~
34 ~~the board of county commissioners may, if it is determined corrective~~
35 ~~action is needed other than the corrective action recommended by the~~
36 ~~local conservation district, request the local conservation district develop~~
37 ~~an alternative recommendation. A request for an alternative~~
38 ~~recommendation from the local conservation district by the board of~~
39 ~~county commissioners shall set forth the reasons why the board of~~
40 ~~county commissioners believes an alternative recommendation is~~
41 ~~necessary. Upon receiving an alternative recommendation from the local~~
42 ~~conservation district, the board of county commissioners shall accept or~~
43 ~~reject the alternative recommendation. The board of county~~

1 commissioners at all times shall retain the authority to order any
2 corrective action allowed by this section. ~~The board of county~~
3 ~~commissioners may take into consideration, when developing any remedy~~
4 ~~or refusing to impose a remedy, the cooperation or lack of cooperation~~
5 ~~that the parties of the complaint have extended to the local conservation~~
6 ~~district, the natural resources conservation service or to any other person~~
7 ~~or agency assisting the local conservation district in the matter.~~

8 (f) If a complaint has been referred to a local conservation district,
9 but the board of county commissioners later determines immediate
10 corrective action is appropriate **under subsection (a)**, such board of
11 county commissioners shall have the authority to order such immediate
12 corrective action before the local conservation district has issued a
13 recommendation.

14 (g) In all cases where the board of county commissioners orders
15 corrective action, where it can be done reasonably, the board of county
16 commissioners shall confer with the owner of the land before determining
17 or ordering work to be done thereon, and advise the owner of their
18 conclusions and give the owner an opportunity to do the work they
19 conclude should be done, but if the owner cannot be consulted without
20 unreasonable delay, or cannot or will not do the work in the manner and
21 within the time it should be done, the board of county commissioners may
22 do the work, or employ someone to do it, and issue its warrants to pay the
23 actual cost thereof, ~~and pay such warrants from the fund hereinafter~~
24 ~~provided,~~ without regard to any other statute pertaining to the issuing or
25 paying of county warrants. ~~{The board of county commissioners may~~
26 ~~assess the costs of any corrective action ordered under this section~~
27 ~~against the owner, the complaining party or both the owner and~~
28 ~~complaining party in accordance with K.S.A. 2-2008, and amendments~~
29 ~~thereto.}~~

30 *Sec. 2. K.S.A. 2-2008 is hereby amended to read as follows: 2-2008.*

31 (a) *When work has been done by the county, or by anyone employed by it*
32 *to carry out its orders respecting the planting or cultivation of any*
33 *specific tract of land under K.S.A. 2-2004 ~~or 2-2006~~, and amendments*
34 *thereto, and warrants issued therefor, the board of county*
35 *commissioners shall notify the owner of the land, by certified mail or*
36 *otherwise, of the amount thereof and require the owner to make a*
37 *showing before them, on a day named, which shall not be less than 30*
38 *days after the date of the notice, as to why the cost of the work should*
39 *not be levied against the land as a special assessment. Unless the owner*
40 *of the land can show that the work was necessitated by circumstances*
41 *beyond the owner's control, and which could not reasonably have been*
42 *anticipated, the expense thereof shall be assessed against the land as a*
43 *special assessment.*

1 ***(b) The assessment shall be made by an order of the board of***
2 ***county commissioners, which order shall be recorded in its minutes, and***
3 ***shall be collected as a special assessment. The amount of the***
4 ***assessment shall not exceed \$3 per acre for each acre on which work is***
5 ***done for any one year, unless the board of county commissioners***
6 ***determines at its first meeting during any calendar year that \$3 per acre***
7 ***is not adequate to cover the actual cost of the work. Upon such***
8 ***determination the board of county commissioners shall fix, at the first***
9 ***business meeting of the board during any calendar year, an amount in***
10 ***excess of \$3 per acre which the board determines to be a reasonable***
11 ***assessment per acre to cover the actual cost of the work during such***
12 ***calendar year. If the amount assessed against any such acre in***
13 ***any year exceeds \$3 or exceeds the amount fixed by the board of***
14 ***county commissioners in any year to cover the cost per acre of the work***
15 ***for that year, or the total amount assessed against any such acre in more***
16 ***than one year and which is uncollected exceeds \$3 or exceeds the***
17 ***amount fixed by the board of county commissioners in any year to cover***
18 ***the cost per acre of the work for that year, such amount shall be***
19 ***collected in annual installments not exceeding \$3 or the amount fixed by***
20 ***the board of county commissioners at its first meeting during any***
21 ***calendar year to cover the actual cost of the work per such acre, as***
22 ***applicable.***

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

32 Sec. 2-3. K.S.A. 2-2004 is, 2-2006, 2-2007 and 2-2008 and K.S.A.
33 2011 Supp. 2-2003 and 2-2005 are hereby repealed.

34 Sec. 3-4. This act shall take effect and be in force from and after its
35 publication in the statute book.