

SESSION OF 2015

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2061

As Amended by Senate Committee on
Agriculture

Brief*

HB 2061 would permit the Division of Conservation of the Kansas Department of Agriculture (KDA), in consultation with the State Conservation Commission, to take action necessary to restore, establish, enhance, and protect natural resources with conservation easements for the purpose of compensatory mitigation required under Section 404 of the Federal Clean Water Act in addition to other powers and duties authorized under existing law.

This new authority would permit the acceptance, purchase, or other acquisition of conservation easements for the purpose of protecting compensatory mitigation sites; contracts with engineering consultants, surveyors, and construction contractors for the purpose of restoration, establishment, and enhancement of natural resources; and the establishment of fees for the acquisition and administration of conservation easements, acceptance of fees from state and local government agencies, and the assumption of responsibility to ensure the terms of the conservation easement are met, as approved by the KDA, for the length of the term of the easement for the fees which were accepted.

In addition, the bill would create the Conservation Fund where fees for the administration of mitigation credits would be deposited. The fund would be administered by the Secretary of Agriculture and all expenditures would be for conservation.

*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 also would make explicit that all costs associated with compensatory mitigation would be paid by the watershed district for which the KDA, Division of Conservation, holds the conservation easement. The KDA would be prohibited from spending moneys from the State General Fund or any special revenue funds for the purpose of accepting, purchasing, or acquiring conservation easements, with the exception of the Conservation Fund created by the bill. Additionally, the bill would prohibit the KDA, Division of Conservation, from accepting, purchasing, or acquiring any conservation easement for another purpose besides those stated in the bill.

Background

The bill was introduced by the House Committee on Agriculture and Natural Resources.

At the hearing in the House Committee, Representative Moxley appeared as a proponent of the bill. He testified that the Kansas watershed districts are struggling with new rules for the U.S. Army Corps of Engineers (Corps) regarding “compensating mitigation” requirements before a permit is issued to construct a new water retention structure (dam). Representative Moxley explained the establishment of conservation easements was the remedy developed by the various stakeholders including watershed district officials and representatives of farm organizations, the KDA, and the Corps in order to address the compensating mitigation requirements. A representative of the KDA, also appearing as a proponent, explained the bill would authorize the agency to hold the mitigation sites (conservation easements) since the Corps requires these to be legally protected by a third party. Other proponents included representatives of the State Association of Kansas Watersheds, Mill Creek Watershed District No. 85, the Kansas Farm Bureau, and the Kansas Livestock Association. There was no neutral or opponent testimony for the bill.

The Senate Committee received proponent testimony from representatives of the Kansas Livestock Association, State Association of Kansas Watersheds, KDA, Upper Little Arkansas River Watershed Joint District No. 95, Mill Creek Watershed Joint District No. 85, Kansas Farm Bureau, Nemaha Brown Watershed Joint District No. 7, Wet Walnut Creek Water Joint District No. 58, and HorseThief Reservoir District. Opponent testimony was provided by representatives of the Kansas Wildlife Federation, Terra Technologies, The Watershed Institute, and Watershed Land Trust. Opponents stated the bill would expand government and put the State in direct competition with existing private business.

The Senate Committee amended the bill by clarifying the actions taken by the KDA, Division of Conservation, in conjunction with the State Conservation Commission, would apply to conservation easements. The Senate Committee also added language regarding the costs associated with compensatory mitigation and the funding the KDA would be authorized to use.

The fiscal note prepared by the Division of the Budget on the bill, as introduced, states the KDA indicates costs to establish mitigation sites would be borne by permit applicants. The Division of Conservation would establish fees to cover administrative costs and those costs would be added to approved contract agreements. The administrative services required for the expanded conservation duties in the bill would be provided by existing KDA employees. All fee revenue deposited to the Conservation Fund would be used for mitigation projects. The League of Kansas Municipalities indicates the bill could have a fiscal effect on cities if they are charged mitigation fees, but it was not able to quantify what the actual effect would be.