

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman John Faber at 3:30 P.M. on February 18, 2008, in Room 783 of the DSOB.

All members were present except:

Josh Svaty- excused
Clay Aurand- excused
Vaughn Flora- excused

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Hank Avila, Kansas Legislative Research Department
Gordon Self, Revisor of Statutes
Kristen Kellems, Revisor of Statutes
Florence Deeter, Committee Assistant

Conferees appearing before the committee:

Scott Carlson, Assistant Director, State Conservation Commission
Steve Swaffer, Director of Natural Resources, Kansas Farm Bureau
Mark Salley, Regional Environmental Coordinator, Army Central Regional Environmental Office,
U. S. Army
Mike Beam, Senior Vice President, Kansas Livestock Association
Craig Phillips, Branch Chief, Public Works, Fort Riley

Others attending:

See attached list.

The Chair opened the hearing on **HB 2626 - farm and ranch land protection grant program, conservation easements** - and welcomed Scott Carlson, Assistant Director, State Conservation Commission (SCC), who testified in support of the bill (Attachment 1). He said the bill authorizes the SCC to provide state-funded grants to eligible entities for land easements contiguous to military facilities. He noted that in FY 2008 the SCC received \$311,500 as the basis for available matching federal funds, and, with continued funding, the SCC will be able to carry on the program.

Mark Salley, Regional Environmental Coordinator, Army Central Regional Environmental Office, U. S. Army, spoke in support of the bill (Attachment 2). He said the legislation will coordinate well with the Army's Compatible Use Buffer program, which maintains habitat for native species in areas threatened by development. He commented that the bill will help the Army sustain its mission.

Craig Phillips, Branch Chief, Directorate of Public Works, Fort Riley, testified as a proponent, saying that the bill serves well the interests of Fort Riley as well as the state's conservation efforts (Attachment 3).

Mike Beam, Senior Vice President, Kansas Livestock Association, speaking as a neutral party, praised the concept of conservation expressed by the bill, but, because of the restrictive language of the bill, recommended instead that the Committee take one of two alternative actions: either reconsider **HB 2147**, which was tabled by the Committee last session; or consider **SB 538**, a bill presently making its way through the Senate. He said either of these initiatives would provide wider support for the easement conservation program (Attachment 4).

Steve Swaffer, Director of Natural Resources, Kansas Farm Bureau, also speaking as a neutral party, testified in support of the concept of conservation easements on agricultural land, but observed that section five of the bill overemphasizes easements near military bases (Attachment 5). He expressed hope that a permanent funding mechanism could be provided for the program.

Written testimony was submitted with qualified support of the bill from RoxAnne Miller, Kansas Land Trust (Attachment 6).

Luke Bell, Director of Governmental Relations, Kansas Association of Realtors, provided written testimony

CONTINUATION SHEET

MINUTES OF THE House Agriculture and Natural Resources Committee at 3:30 P.M. on February 18, 2008, in Room 783 of the DSOB.

supporting the concept of the bill but opposing subjecting property to additional taxes (Attachment 7). Chris Wilson, Executive Director, Kansas Building Industry Association, also provided written testimony opposing the use of tax dollars for landowners that restrict the land use for future generations (Attachment 8).

The meeting was adjourned at 4:10 p.m. The next meeting is scheduled for February 20, 2008, at 3:30 p.m.

Testimony on HB 2626
to
The House Agriculture and Natural Resources Committee
by
Scott B. Carlson
Assistant Director
State Conservation Commission
February 18, 2008

Chairman Faber and members of the committee, thank you for the opportunity to provide testimony on HB 2626. The empowering statute for the State Conservation Commission (SCC) is Conservation District Law, K.S.A. 2-1901 et seq. The proposed HB 2626 would amend K.S.A. 2-1904 and establish the Farm and Ranchlands Protection Program and specifically authorizes the SCC to provide state funded grants to eligible entities for the administration, lease or purchase of perpetual conservation easements. The SCC could adopt rules and regulations to implement an easement program. This bill requires that eligible lands be contiguous to a federal or state military facility of more than 100 acres or is located adjacent to lands already in the program. The SCC has the ability to implement this program if HB 2626 is passed and funds appropriated as the bill does not require the SCC to be tasked with the actual contracting, maintaining or holding of the easement.

Conservation Easement Program Implementation:

Under proviso, the SCC received \$311,500 for FY 2008 to use as a match to the Army Compatible Use Buffer (ACUB) Program and the USDA, NRCS Farm and Ranchlands Protection Program (FRPP) funds. The SCC has funded part of one easement combined with FRPP and ACUB funding in the buffer area around Fort Riley of 640 acres. The ACUB program establishes buffer areas around Army installations to limit effects of encroachment and maximize land inside the installation that can be used to support the installation's mission. Under the FRPP, the Natural Resources Conservation Service (NRCS) may provide up to 50 percent of the appraised fair market value of the conservation easement; the cooperation entity provides the other 50 percent. Landowner donations up to 25 percent of the appraised fair market value of the conservation easement may be considered part of the entity's matching offer. In FFY 2008 the FRPP was funded at \$633,313. The NRCS had over \$1.2 million in easement funds request on 7,200 acres during FFY 2008.

In FY 2007 the SCC received \$311,500 under proviso authority and funded the state share of four easements and supplemented part of a fifth easement with FY 2008

funds. The easements were in the Fort Riley Buffer area and the Flint Hills totaling 2,287 acres plus part of an easement shared with FY 2008 funds of 640 acres. The first year the SCC received conservation easement funding was FY 2006. Proviso language gave the SCC authority to enter into a conservation easement in the Flint Hills in conjunction with the FRPP in the amount of \$31,250 on 500 acres.

Fiscal Year	Area	Acres	Total Cost	Cost/Acre	State Funds
2006	Flint Hills	500	\$125,000	\$250	\$31,250
2007	Flint Hills & Ft Riley	2,287	\$988,594	\$432	\$246,775
2008	Ft Riley	640	\$483,999	\$756	\$109,999*

***Funded from FY 2007 and 2008 funds**

Fiscal Impact on the SCC:

The fiscal impact on the SCC is contingent upon the amount of funding appropriated toward this effort. In FY 2006, 2007 and 2008, the SCC managed with current staff and resources administering the state funding of six conservation easements totaling \$388,024. Fiscal Year 2009 would have costs associated with the development and adoption of administrative rules and regulations and potential implementation costs for program administration. The majority of costs associated with salary and wages will be absorbed by the agency through reassignment of current staff duties and priorities.

Furthermore, HB 2626 does allow easement contracting with other entities that may not seek FRPP funding to supplement an easement purchase. If this occurs the SCC will have the responsibility to rank and prioritize applications. This may increase staff workload. To date, all SCC funded easements have been prioritized by adopting the FRPP ranked applications.

Mr. Chairman, this concludes my comments and I will stand for questions at the pleasure of the committee.



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
INSTALLATIONS AND ENVIRONMENT
CENTRAL REGIONAL ENVIRONMENTAL OFFICE
601 EAST 12TH STREET, SUITE 647
KANSAS CITY, MO 64106-2896

Testimony
of
Mr. Mark Salley
Regional Environmental Coordinator, Region 7
Army Central Regional Environmental Office
House Bill 2626
AN ACT concerning the environment; establishing the farm and ranch
land protection grant program

Mr. Chairman and members of the committee, good afternoon, my name is Mark Salley and I am the Regional Coordinator for the Army's Central Regional Environmental Office which includes Army installations in the state of Kansas.

I am pleased to have this opportunity to speak to you in support of House Bill 2626. The purpose of my testimony today is to relay to the committee that we support this legislation and the potential benefit it can provide for our military mission in Kansas. The Army believes that programs designed to minimize development adjacent to our installations are a vital part of sustaining the military mission now and far into the future.

This legislation could work hand-in-hand with the Army's Compatible Use Buffer (ACUB) program, which seeks to prevent incompatible development adjacent to military installations and military training routes. Buffers also serve to maintain habitat for native species that may prevent the installation from becoming the only habitat in the region - thus further limiting the military's ability to train on the land it owns.

The significance of House Bill 2626 is that it provides a method to establish conservation easements which also provides our installations with the opportunity to pursue initiatives that will protect habitat and training without acquiring any new land for Army ownership.

Because this legislation could potentially help the Army sustain our mission and installations in Kansas, the army supports this legislation and encourages its approval by the committee.

I thank you for taking the time to consider our comments on this bill, and I am pleased to respond to your questions.



DEPARTMENT OF THE ARMY
INSTALLATION MANAGEMENT COMMAND
HEADQUARTERS, UNITED STATES ARMY GARRISON, FORT RILEY
500 HUEBNER ROAD
FORT RILEY, KANSAS 66442-5000

February 18, 2008

Testimony Regarding House Bill 2626, before the House Agriculture and Natural Resources Committee

Offered by B. Craig Phillips, Chief, Conservation and Restoration Branch, Environmental Division, Directorate of Public Works, Fort Riley, Kansas

Chairman Faber, members of the Committee, thank you for the opportunity to testify today regarding House Bill 2626.

Fort Riley appreciates the committee's consideration of this bill and the aspects of the bill that support Fort Riley's military mission. We believe that a program to manage development in proximity to the installation is a vital part of sustaining Fort Riley's mission now and far into the future. Fort Riley's efforts toward that end are focused on the Army Compatible Use Buffer, or ACUB, program. Through ACUB, Army funds are provided to a private conservation organization, in our case the Kansas Land Trust, to enter into conservation easements within the designated buffer area. State funding for conservation easements helps Fort Riley better compete for Army ACUB funding.

I would like to point out that the ranking criteria in this bill (new Section 5) adequately serves the interests of Fort Riley as well as other entities in the state involved in conservation easements. However, the language in new section 2, paragraph (d) referring to, "eligible farm and ranch lands" as those, "contiguous to a federal or state military facility..." will not allow funds to be used throughout the designated ACUB buffer area. That area includes lands that are not adjacent or contiguous to Fort Riley and extends into grassland areas some distance from the Fort Riley boundary.

Conservation easements executed in the Flint Hills region, whether accomplished under the ACUB program or not, have a secondary benefit to Fort Riley through protection of habitat for declining grassland bird species. If the greater prairie-chicken or Henslow's sparrow were to be listed as endangered or threatened, Fort Riley's mission could be adversely impacted. Conservation easements are a proven means of conserving the habitat of those species.

This bill could help secure the future of conservation easements in Kansas, and thereby, Fort Riley's mission.

Thank you for your time today.



Since 1894

TESTIMONY

To: House Agricultural and Natural Resources Committee
Rep. John Faber, Chairperson

From: Mike Beam, Sr. Vice President
Kansas Livestock Association

Date: February 18, 2008

Subject: HB 2626 – Establishing a farm and ranch land protection program.

Thank you, Mr. Chairman, for holding a hearing on this legislation. This hearing gives us an opportunity to visit with you about an opportunity the state has in offering a voluntary conservation program that preserves working agricultural lands for future generations. In many instances, our state's agricultural lands (a) represent the legacy of multi-generation farm and ranch families; (b) provide habitat for wildlife species in need of conservation; (c) enhance water quality; and (d) offer enjoyable scenic open spaces that we Kansans often take for granted.

The Kansas Livestock Association supports the creation of a state conservation easement purchase program. We also believe it is appropriate for such a program to be administered by the State Conservation Commission. I feel obligated today, however, to ask that you not act on this bill and consider two alternatives to HB 2626.

We have a concern with a significant limitation to HB 2626.

Subsection (d), of New Sec. 2 (page 4), limits eligible land to property contiguous to a military facility or land adjacent to property already in the program (USDA Farm and Ranchland Protection funded conservation easement property?).

This provision is very restrictive and would prohibit most areas of the state from participating in the program.

Furthermore, you may want to strike New Section 7, at the bottom of page 5. While we usually support efforts to limit the use of eminent domain, this section appears to conflict with KSA 58-3816.

HS Ag & Nat'l. Resources
2-18-08

(Section of Kansas Conservation Easement Statute)

58-3816. Same; certain utility and water district easements not impaired. Nothing in this act shall be construed so as to impair the rights of a public utility or city with respect to the acquisition of rights-of-way, easements or other property rights, whether through voluntary conveyance or eminent domain, upon which facilities, plants, systems or other improvements of a public utility or city are located or are to be located or so as to impair the rights of a watershed district under K.S.A. 24-1201 et seq. and amendments thereto with respect to rights-of-way, easements or other property rights upon which watershed structures are located or are to be located.

If this committee is inclined to pass legislation this session, we'd ask you to consider two options.

You could reconsider your February 20, 2007 action to table HB 2147. This bill directed priority to land near military facilities for two years, but did not exclude other land from eligibility.

Another alternative is to act on SB 538 if it passes the Senate this session. (SB 538 is attached)

Please note SB 538 is a collective effort of KLA, the KLA Ranchland Trust, Kansas Land Trust, and The Nature Conservancy of Kansas.

I want to stress that we are very supportive of creating a conservation easement funding program in Kansas. We appreciate the supportive efforts of Rep. Sloan, other legislators and private conservation groups who share our vision for a state program that recognizes the valuable public purpose of preserving a small part of our state's heritage and natural resources.

For now, we respectfully ask that you modify HB 2626 or consider legislation such as HB 2711 or SB 538.

Thank you!

SENATE BILL No. 538

By Committee on Natural Resources

2-4

9 AN ACT concerning the conservation commission; relating to conser-
10 vation easements; establishing the farm and ranch land protection pro-
11 gram; amending K.S.A. 2-1904 and repealing the existing section.
12

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

14 Section 1. K.S.A. 2-1904 is hereby amended to read as follows: 2-
15 1904. (a) There is hereby established, to serve as an agency of the state
16 and to perform the functions conferred upon it in this act, the state con-
17 servation commission. The state conservation commission shall succeed
18 to all the powers, duties and property of the state soil conservation com-
19 mittee. The commission shall consist of nine members as follows:

20 (1) The director of the cooperative extension service and the director
21 of the state agricultural experiment station located at Manhattan, Kansas,
22 or such persons' designees shall serve, ex officio, as members of the
23 commission.

24 (2) The commission shall request the secretary of agriculture of
25 United States of America to appoint one person and the secretary of the
26 Kansas department of agriculture to appoint one person, each of whom
27 shall be residents of the state of Kansas to serve as members of the com-
28 mission. These members shall hold office for four years and until a suc-
29 cessor is appointed and qualifies, with terms commencing on the second
30 Monday in January beginning in 1973.

31 (3) Five members of the state commission shall be elected by the
32 conservation district supervisors at a time and place to be designated by
33 the state conservation commission. The method of electing such members
34 to be conducted as follows: The state is to be divided into five separate
35 areas. Area No. I to include the following counties: Cheyenne, Rawlins,
36 Decatur, Norton, Phillips, Smith, Osborne, Rooks, Graham, Sheridan,
37 Thomas, Sherman, Wallace, Logan, Gove, Trego, Ellis and Russell. Area
38 No. II to include: Greeley, Wichita, Scott, Lane, Ness, Rush, Pawnee,
39 Hodgeman, Finney, Kearny, Hamilton, Edwards, Ford, Gray, Haskell,
40 Grant, Stanton, Morton, Stevens, Seward, Meade, Clark, Comanche and
41 Kiowa. Area No. III to include: Jewell, Republic, Mitchell, Cloud, Lin-
42 coln, Ottawa, Ellsworth, Saline, Rice, McPherson, Reno, Harvey, King-
43 man, Sedgwick, Sumner, Harper, Barber, Pratt, Barton and Stafford. Area

1 request.

2 (d) The commission shall designate its chairperson and, from time to
3 time, may change such designation. A majority of the commission shall
4 constitute a quorum, and the concurrence of a majority in any matter
5 within their duties shall be required for its determination. Members of
6 the state conservation commission attending meetings of such commis-
7 sion or attending a subcommittee meeting thereof authorized by such
8 commission shall be paid compensation, subsistence allowances, mileage
9 and other expenses as provided in K.S.A. 75-3223, and amendments
10 thereto. The commission shall provide for keeping of a full and accurate
11 record of all proceedings and of all resolutions, regulations and orders
12 issued or adopted.

13 (e) In addition to the duties and powers hereinafter conferred upon
14 the state conservation commission, it shall have the following duties and
15 powers:

16 (1) To offer such assistance as may be appropriate to the supervisors
17 of conservation districts, organized as provided hereinafter, in the carry-
18 ing out of any of their powers and programs;

19 (2) to keep the supervisors of each of the several districts organized
20 under the provisions of this act informed of the activities and experience
21 of all other districts organized hereunder and to facilitate an interchange
22 of advice and experience between such districts and cooperation between
23 them;

24 (3) to coordinate the programs of the several conservation districts
25 organized hereunder;

26 (4) to secure the cooperation and assistance of the United States and
27 any of its agencies and of agencies of this state, in the work of such districts
28 and to contract with or to accept donations, grants, gifts and contributions
29 in money, services or otherwise from the United States or any of its agen-
30 cies or from the state or any of its agencies in order to carry out the
31 purposes of this act;

32 (5) to disseminate information throughout the state concerning the
33 activities and programs of the conservation districts organized hereunder
34 and to encourage the formation of such districts in areas where their
35 organization is desirable;

36 (6) to cooperate with and give assistance to watershed districts and
37 other special purpose districts in the state of Kansas for the purpose of
38 cooperating with the United States through the secretary of agriculture
39 in the furtherance of conservation pursuant to the provisions of the wa-
40 tershed protection and flood prevention act, as amended;

41 (7) to cooperate in and carry out, in accordance with state policies,
42 activities and programs to conserve and develop the water resources of
43 the state and maintain and improve the quality of such water resources;

1 land protection program, eligible entities must make application to the
2 commission in the manner prescribed by the commission and shall pro-
3 vide to the commission:

4 (1) Documentation from the internal revenue service that the entity
5 meets the requirement of subsection (c) of section 2, and amendments
6 thereto;

7 (2) a copy of the conservation easement agreement negotiated with
8 the United States department of agriculture, United States department
9 of defense or other public agency or private entity and the landowner of
10 the property for which funding is sought;

11 (3) a written statement that creation and recordation of appropriate
12 deed restrictions will occur upon disbursement of the funds to the
13 landowner;

14 (4) a written agreement to implement the terms of the conservation
15 easement and to report the status of the conservation easement as the
16 commission deems necessary; and

17 (5) any other relevant information the commission deems necessary
18 to assure the appropriate use of grant funds.

19 New Sec. 5. (a) The commission shall evaluate and rank each appli-
20 cation based upon the following criteria:

21 (1) Contiguous acres of farm and ranch land to be conserved and its
22 ability to economically sustain agricultural activities;

23 (2) historic agricultural use and condition of the property;

24 (3) location of the property within a buffer area of: (A) A military
25 installation or facility under the supervision of the United States secretary
26 of the army or the United States secretary of the air force; or (B) a military
27 installation or facility under the supervision of the Kansas national guard;

28 (4) location of the property in proximity to land protected by conser-
29 vation easement or protected from development because of ownership;

30 (5) imminent threat of development for residential or commercial
31 purposes;

32 (6) commitment of eligible entity and landowner to the long-term
33 conservation of the property; and

34 (7) other factors the commission deems critical for fulfillment of the
35 purposes of this act.

36 (b) Upon completion of the evaluations and rankings, the commission
37 shall timely award funds to successful applicants.

38 New Sec. 6. (a) There is hereby established in the state treasury the
39 farm and ranch land protection program fund. All moneys received by
40 the Kansas farm and ranch land protection program shall be remitted to
41 the state treasurer in accordance with the provisions of K.S.A. 75-4215,
42 and amendments thereto. Upon receipt of each such remittance, the state
43 treasurer shall deposit the entire amount in the state treasury to the credit

FRPP Fiscal Year 1996-2007 Cumulative Summary¹

State	Financial Assistance Cumulative Allocations	Easements Acquired		Easements Pending	
		Number	Acres	Number	Acres
Alabama	\$4,791,622	8	1,171	9	1,520
Alaska	\$430,000	0	0	1	40
Arizona	\$2,413,956	2	2,300	1	47
Arkansas	\$153,572	0	0	1	247
California	\$24,250,600	33	10,347	15	6,056
Colorado	\$20,106,630	71	29,643	11	14,850
Connecticut	\$18,714,353	61	7,910	18	1,356
Delaware	\$21,923,144	94	16,614	7	1,577
Florida	\$16,305,997	13	14,176	6	1,495
Georgia	\$6,849,563	10	1,550	9	1,492
Hawaii	\$5,005,166	1	167	3	306
Idaho	\$2,944,289	6	2,556	6	1,465
Illinois	\$9,886,419	18	2,800	5	814
Indiana	\$999,919	0	0	0	0
Iowa	\$2,682,311	13	2,757	0	0
Kansas	\$2,595,201	12	7,802	3	6,761
Kentucky	\$19,337,786	132	22,675	17	3,776
Louisiana	\$27,000	0	0	0	0
Maine	\$6,586,315	17	4,160	8	1,401
Maryland	\$31,860,667	169	22,162	88	12,973
Massachusetts	\$24,702,691	111	8,091	35	2,485
Michigan	\$18,178,514	58	7,162	24	2,462
Minnesota	\$5,138,896	16	1,495	7	789
Mississippi	\$0	0	0	0	0
Missouri	\$4,062,153	2	172	3	1,302
Montana	\$9,253,219	18	25,200	6	5,077
Nebraska	\$653,534	1	524	1	229
Nevada	\$5,165,134	4	405	1	579
New Hampshire	\$17,785,303	79	5,223	21	1,140
New Jersey	\$30,345,086	116	12,517	96	9,325
New Mexico	\$3,174,832	7	204	4	95
New York	\$19,366,664	78	15,858	17	4,436
North Carolina	\$14,496,348	50	8,113	10	1,652
North Dakota	\$1,881,605	3	140	1	68
Ohio	\$15,817,702	71	15,091	35	6,096
Oklahoma	\$4,043,466	10	991	18	1,658
Oregon	\$2,533,866	4	15,575	2	508
Pennsylvania	\$28,043,374	224	33,331	67	7,800
Rhode Island	\$16,750,057	28	1,721	13	1,133
South Carolina	\$8,673,384	22	3,259	12	2,296
South Dakota	\$267,900	0	0	1	374
Tennessee	\$2,678,464	1	420	3	526
Texas	\$7,450,796	5	2,981	2	542
Utah	\$5,516,332	10	2,572	3	399
Vermont	\$22,271,257	183	40,050	61	12,044
Virginia	\$7,990,721	16	4,247	9	1,123
Washington	\$11,186,801	42	3,950	37	2,380
West Virginia	\$8,949,557	26	2,866	31	4,230
Wisconsin	\$13,347,782	64	8,397	15	2,607
Wyoming	\$4,234,278	6	14,509	5	5,766
Total	\$511,824,226	1,915	383,859	748	135,297

¹ Easements enrolled through September 30, 2007.

Questions and Answers

September 2004

Farm and Ranch Lands Protection Program

Q What is the Farm and Ranch Lands Protection Program (FRPP)?

A. FRPP is a voluntary Federal program that helps farmers and ranchers keep their land in agriculture. The program provides matching funds to State, Tribal, and local governments and non-governmental organizations with existing farm and ranch land protection programs to purchase conservation easements. The Natural Resources Conservation Service (NRCS) is designated as the lead agency in implementing this program.

Q What are the major changes to FRPP in the 2002 Farm Bill?

A. The Farm Security and Rural Investment Act of 2002 (Farm Bill) expands the program beyond state and local governments to include non-governmental organizations as eligible entities. It also makes farm and ranch land containing historical and archaeological sites eligible. The 2002 Farm Bill also allows a State, Tribal, or local government or non-governmental organization to supplement its share of the easement cost through a landowner's donation.

Q What is a conservation easement?

A. A conservation easement is an interest in land, as defined and delineated in a deed, whereby the landowner conveys specific rights, title, and interests in a property to a State, Tribal, or local government or non-governmental organization. The landowner retains those rights, title, and interests in

the property which are specifically reserved to the landowner in the easement deed, such as the right to farm.

Q What is a purchase of agricultural conservation easement (PACE) program?

A. A PACE program, sometimes referred to as a purchase of development rights program, is a voluntary farmland protection program that compensates landowners for voluntarily limiting future development of their land for non-agricultural uses. PACE programs, which are generally operated by Federal, State, and local governments or non-governmental organizations, enable landowners to sell development rights on their land to a government agency or non-governmental organization, such as a land trust, while retaining full ownership.

Q How does a landowner participate in FRPP?

A. A landowner submits an application to an entity—a State, Tribal, or local government or a non-governmental organization—that has an existing farm or ranch land protection program. In exchange for payment, participating landowners agree not to convert their land to non-agricultural uses and to develop and implement a conservation plan for any highly erodible land. The NRCS State Conservationist, with advice from the State Technical Committee, awards funds to qualified entities to conduct their farm and ranch land protection programs. These

entities acquire perpetual conservation easements from landowners.

Q How is the value of a conservation easement determined?

A. The value of a conservation easement usually is determined through a professional appraisal. A qualified appraiser assesses the difference between the fair market value of the property, often using comparable sales, and its restricted value under the easement.

Q What restrictions are found in a typical easement?

A. The easements generally restrict non-farm development and subdivisions. Some farm-related housing may be allowed. Generally, there are few restrictions on improvements and construction related to the farming operation. The easements become part of the land deed and are recorded in the local land records.

Q Are all agricultural conservation easements the same?

A. The basic purpose and structure of all agricultural conservation easements are the same. However, each easement is tailored to the specific farm being protected. Exact language in the easement may reflect future expansion plans of the landowners, including the needs of their heirs.

Q How do the easements affect other rights of ownership?

A. The landowner controls the land and use of the land according to the agricultural conservation easement. The land still is owned by the landowner and can be transferred, deeded, or sold, just as any other property. The easement does not require any provisions for public access, unless such access was negotiated as part of the easement purchase transaction.

Q Does a conservation easement affect a farmer's ability to borrow money?

A. A farm loan usually is based on the ability of the farm operation to carry the loan. Therefore, a conservation easement, which only affects non-farm development activities, not the farm operation, should not have a bearing on the farmer's ability to borrow operating funds. If a lending institution holds a lien on a property, it must review the sale of the conservation easement just as it would need to approve any transaction on the property.

Q What are the local property tax implications of protecting farmland with conservation easements?

A. Because the landowner still owns the property, he or she still is responsible for paying any associated property taxes. Since many states have programs that tax farmland based on its use or farm value, the net effect of the easement on local property tax revenues is little to none.

Q How are the proceeds from the sale of a conservation easement treated for tax purposes?

A. The easement sale proceeds are treated as any other capital gain for Federal, State, and local income tax purposes. Some State or local programs have provisions that allow for installment purchases or have used securable tax-exempt bonds as a method of payment.

Q What is the role of the Federal, State, Tribal, and local governments and non-governmental organizations?

A. Cooperating governmental or non-governmental organizations process the easement acquisition, hold, manage, and enforce easements. A Federal contingent right interest in the property must be incorporated in each easement deed to

4-11

protect the Federal investment if the cooperating entity terminates, defaults, or divests itself from the easement.

Q Which is a State, Tribal, or local government or non-governmental organization required to contribute?

- A. The NRCS share of the conservation easement cannot exceed 50 percent of the appraised fair market value of the conservation easement. As part of its share of the cost of purchasing a conservation easement, a cooperating entity may include a charitable donation by the landowner not to exceed 25 percent of the appraised fair market value of the conservation easement. As a minimum, the cooperating entity shall provide, in cash, 25 percent of the appraised fair market value or 50 percent of the purchase price of the conservation easement.

Q Could the Adjusted Gross Income provision of the 2002 Farm Bill impact my participation in FRPP?

- A. Yes, if you are an individual or entity that has an average adjusted gross income exceeding \$2.5 million for the three tax years immediately preceding the application year, you are not eligible to receive program benefits or payments. However, an exemption is provided in cases where 75 percent of the adjusted gross income is derived from farming, ranching, or forestry operations.

For More Information

If you need more information about FRPP, please contact your local USDA Service Center, listed in the telephone book under U.S. Department of Agriculture, or your local conservation district. Information also is available on the World Wide Web at: <http://www.nrcs.usda.gov/programs/farmbill/2002/>



Visit USDA on the Web at:
<http://www.usda.gov/farmbill>

Note: This is not intended to be a definitive interpretation of farm legislation. Rather, it is preliminary and may change as USDA develops implementing policies and procedures. Please check back for updates.

Kansas Farm Bureau
POLICY STATEMENT

House Agriculture and Natural Resources Committee

**Re:HB 2626 an act establishing the farm and
ranchland protection program**

February 18, 2008

Submitted by:

Steve M. Swaffar

Director of Natural Resources

Chairman Faber and members of the committee, on behalf of the members of Kansas Farm Bureau (KFB) we provide the following comments about HB 2626. I am Steve Swaffar, Director of Natural Resources for Kansas Farm Bureau. KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

KFB policy supports both state and federal voluntary, incentive-based, cost-share conservation programs. We also have policy that specifically supports programs offering conservation easements on agriculture production areas. Clearly we support the overall concept proposed in HB 2626, and in the future we hope a permanent funding mechanism can be found for this program. However, we believe there is a need and desire for this type of program in all areas of the State and encourage the committee to establish a statewide program. New section 5 in the bill clearly places greater emphasis on properties adjacent to military installations. Although property adjacent or near military reservations is important, we believe that there are other important areas of the State that need to be able to compete on a even playing field for these grants.

Development around urban centers that takes agriculture land out of production is a concern for many of our members farming and ranching close to these areas. Escalating land values create market competition for land for those farmers and ranchers trying to expand their operations. In some cases land sale prices are high enough that production agriculture simply would not be profitable because payments on the loan would be greater than the profits from grain or livestock production. Farmers and ranchers have few mechanisms to preserve valuable farm and ranch lands when developmental pressures drive prices to unrealistic levels. This is one of the primary reasons our members developed policy in 2006 supporting the concept of a conservation easement program. We encourage the committee to continue to discuss the topic and search for an appropriate funding mechanism for a statewide program in the future. Thank you for this opportunity to provide comments on this important topic.



Kansas Land Trust

MEMORANDUM TO: House Agriculture & Natural Resources Committee
Rep. John Faber, Chairperson
DATE: February 18, 2008
FROM: RoxAnne Miller
RE: House Bill No. 2626

The Kansas Land Trust supports efforts to establish a voluntary conservation easement purchase program in Kansas similar to House Bill No. 2626. In fact, the Kansas Land Trust and others such as the Kansas Livestock Association Ranchland Trust and The Nature Conservancy have worked together to introduce SB 538 this year. It includes all the provisions we believe are important to this type of program.

As you know, the Kansas Land Trust partners with Ft. Riley to preserve approximately 50,000 acres of important land surrounding the military installation, through the Army Compatible Use Buffer (ACUB) program.

KLT utilizes the ACUB program and U.S.D.A. Farm and Ranch Lands Protection Program (FRPP) to fund the purchase of conservation easements and both programs require a funding match. A state funded match for these federal programs maximizes use of these funds and preserves more important lands. The Kansas Land Trust whole-heartedly supports a state funded conservation easement purchase program to match the federal funds available. **With the suggested changes below, KLT supports HB 2626.**

Specifically, the requirement in New Sec. 2(d) that the property be contiguous to a federal or state military facility may limit the objectives of the ACUB program in a manner that does not benefit the state. The ACUB area is 50,000 acres and is designed to provide a buffer area to minimize neighbor conflicts over military activities, reduce or eliminate potential for military training and testing restrictions, maximize the army's training on the military land, and support conservation objectives for agricultural lands and species habitat. **Limiting the use of the state conservation easement program matching funds to properties adjacent to military lands, could cause a chilling effect on the success of the buffer.** The Kansas Land Trust Cooperative Agreement with the Army is for a five-year period with the possibility of a five-year extension. To accomplish the greatest buffer objectives during this brief period, any restraints by the state on the eligibility may slow down the program. Entering into conservation easements with landowners of buffer land that is not adjacent to the military border offers strong benefits to the military's objectives and preserves important agricultural lands. KLT wants to accept conservation easements from all willing landowners in the buffer to maximize success.

KLT suggests New Sec. 2 (d) include **all lands within a buffer of** a federal or state military facility or is near lands already in the program.

Our second comment is a clarification of New Section 4 (2). The FRPP and ACUB conservation easements are negotiated and held by an "Eligible Entity", such as the Kansas Land Trust. The Eligible Entity is the grantee of the conservation easement and negotiates directly with the landowner. The Eligible Entity consults separately with the representatives of the U.S.D.A. and U.S. Department of Defense regarding the FRPP and ACUB requirements. Excluding the Eligible Entity from this subsection creates a misperception that the U.S.D.A. or U.S. Department of Defense is negotiating with the landowner.

I am attaching additional information as background and would be happy to provide additional information upon request.

HS Ag & Nat'l. Resources
2-18-08
Attachment 6

BACKGROUND INFORMATION

KLT holds thirty conservation easements on 5,776 acres. Five of these conservation easements totaling 1,875 acres used state matching funds and we have three more underway on 1,500 acres.

Historically, Kansas did not have matching funds to access the federal funding. Every year between 2002 and 2005 Kansas turned back money to the FRPP program because there was no matching funds.¹ Beginning in FY2006 the Kansas Conservation Commission (KCC) budget provided conservation easement matching funds, we were finally able to match the federal funds. While annual budgeted funds have served us well in the short term, for the long term we believe Kansas would be improved if conservation easements were funded with a dedicated funding source.

All 50 states have conservation funding through **13 common funding mechanisms** and many less common funding mechanisms (see Exhibit A for a list of funding mechanisms used in other states.) A portion of these are conservation ballot measures that have passed in 20 states, funded through bonds, sales tax, lottery, and oil and gas drilling revenues. Just the ballot measures collectively approved over \$18 billion dollars.²

The Kansas Land Trust needs a reliable state program to provide matching funds for the ACUB partnership with Ft. Riley in order to preserve approximately 50,000 acres of important agricultural land surrounding the military installation.

- The Kansas Land Trust will provide willing landowners in the buffer area the opportunity to sell a permanent conservation easement.
- Landowner participation will be entirely voluntary.
- Ft. Riley's goal is to limit encroachment related issues:
 - Minimize neighbor conflicts over military activities,
 - Reduce or eliminate potential for military training and testing restrictions,
 - Maximize the army's training on the military land, and
 - Support conservation objectives for open space and species habitat.
- The Kansas Land Trust's goal is to preserve important agricultural land in the buffer.
 - Approximately 45% of the buffer land is native tallgrass prairie.
 - Approximately 55% of the buffer land includes prime agricultural soils.
- The Army will have no right to use or access the buffer land.

¹ In 2003 Kansas turned back \$239,087 of FRPP funds, in 2004 \$735,500, and in 2005 \$824,933.

² Bonds (\$12.9 billion), sales tax (\$3.2 billion) and other finance mechanisms including lottery revenue and oil and gas drilling revenues (\$2.4 billion).

Common Funding Mechanisms	Total States
Non-game Tax Check-off	32
Special License Plate Sales	17
Hunting and Fishing Licenses	16
Direct/General Appropriation	15
Real Estate Transfer Tax	14
Wildlife/Duck Stamp Program	12
Lottery	7
Cigarette Tax	3
Mitigation Monies	3
Sales Tax	3
State Conservation Tax Credit	3
General Obligation Bond	2
Trust Fund: Oil and Gas Severance Tax	2

Less Common Funding Mechanisms	Total States
Agricultural Transfer Tax	1
Forest and Park Entrance Fees	1
Gaming Revenues	1
Interest Income	1
Mineral Severance Tax	1
Motor Vehicle Registration Fee	1
Surcharge of Water Used by Out-of-state Utilities	1
Property Tax Incentives, Penalty Fees	1
Real Estate Property Levy and Sales	1
Revenue from State-owned Mineral Interests	1
Ski Area Revenues	1
Sporting Goods Tax	1
State Capital Funds	1
State Income Tax Deduction	1
Tradelands/Tideland Leases	1
Trust Fund: Court Settlement	1
Trust Fund: Mineral Tax, Penalties, License Plates	1
Trust Fund: Offshore Oil Drilling Tax	1
Trust Fund: State and Federal Appropriations	1
Trust Fund: State Oil and Gas Revenues	1
Total Funding Mechanisms	149



To: House Agriculture and Natural Resources Committee
From: Luke Bell, KAR Director of Governmental Relations
Date: February 18, 2008
Subject: **HB 2626** – Establishing the Farm and Ranch Land Protection Grant Program

Chairman Faber and members of the House Agriculture and Natural Resources Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® (KAR) to offer neutral testimony on **HB 2626**. KAR has faithfully represented the interests of the 10,000 real estate professionals and over 700,000 homeowners in the State of Kansas for over 85 years.

HB 2626 would establish a farm and ranch land protection grant program to fund the acquisition of additional conservation easements in the State of Kansas. A conservation easement is a transfer of legal rights to the use of a specific property that creates a legally enforceable land preservation agreement between a landowner and a qualified private or public organization.

Conservation easements typically restrict the future use of the land by prohibiting real estate development, commercial and industrial use or any other activities that materially alter the present use of the land. Once these restrictions are set in place, they typically “run with the land” and are binding on all future landowners in perpetuity.

In past versions of this legislation (notably **HB 2147**), the proponents of this legislation have proposed to fund this program through a new excise tax levied on the fair market value of any agricultural property rezoned for residential or commercial use within seven years of the property’s transfer. KAR absolutely opposes the enactment of any new excise taxes on real property or real estate development.

Even though the developer of the property would initially pay the excise tax levied against the property, in order to recoup these costs, the developer would be forced to pass this added cost along to the consumer or business who is wishing to purchase a new home or commercial building in the development.

In closing, we understand that the main thrust of this legislation is to establish a state level grant program to leverage additional federal dollars for the purchase of conservation easements. While we do not object to the state using state general funds to support this program, we believe it is absolutely inappropriate to levy new excise taxes on real property and real estate development in this challenging real estate market.

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FAX

HS Ag & Nat’l. Resources
2-18-08
Attachment 7

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KANSAS
BUILDING
INDUSTRY
ASSOCIATION, INC.

**STATEMENT OF THE KANSAS BUILDING INDUSTRY
ASSOCIATION**

**TO THE HOUSE AGRICULTURE AND NATURAL
RESOURCES COMMITTEE**

REPRESENTATIVE JOHN FABER, CHAIR

REGARDING H.B. 2626

**ESTABLISHING THE FARM AND RANCH LAND PROTECTION GRANT
PROGRAM**

FEBRUARY 18, 2008

Mr. Chairman and Members of the Committee, I am Chris Wilson, Executive Director of the Kansas Building Industry Association (KBIA). KBIA's members are involved in the residential building industry. Thank you for the opportunity to comment on H.B. 2626. Our position is neutral, with concerns.

This bill would establish a farm and ranch land protection grant program in Kansas. The federal Farm and Ranch Lands Protection Program administered by the Natural Resources Conservation Service of USDA as authorized under the 2002 Farm Bill provides funding for governments to acquire conservation easements from landowners. Participating landowners agree not to convert their land to non-agricultural uses and to develop and implement a conservation plan for any highly erodible land.

I noted in researching this program that Kansas is participating in the federal program and for FY2007 had the second highest number of acres enrolled in the program. Kansas had 6,761 acres second only to Vermont's 7,486. The total number of acres Kansas has enrolled in the program are 14,563. In FY 2007, the federal dollars allocated for Kansas were \$676,136. I am interested in learning more about how this program has been utilized in Kansas to date.

KBIA does not agree with the philosophy of encouraging and providing tax dollars to landowners to limit the land use of their land for future generations. I relate to that philosophy personally as a farmland owner myself and an 11th generation U.S. farmer. I hope my farmland stays in agricultural production for generations to come and that my children and their children choose to remain involved in agriculture. But that decision will be theirs, and I cannot know what needs or opportunities they may have in the generations to come, and that may involve the conversion of farmland. I will not tie their hands.

HS Ag & Nat'l. Resources
2-18-08
Attachment 8

In my family, we have seen that development opportunities often come unexpectedly. I would not have anticipated this in my lifetime, but due to the increased development necessitated with the expansion of Ft. Riley, the City of Wamego planned to annex to the property line of farmland we owned. Being able to sell that property for development was by far the best alternative for us. Had that land been in a conservation easement, we would not have been able to do so, and our farm would have been at the city limit and surrounded by development.

Also, in my work nationally as an officer of American Agri-Women, I have many friends throughout the country, and I have seen often that the opportunity to sell farmland for development provides a much-needed retirement income for those in agriculture. KBIA is particularly concerned that you not approve a funding mechanism for this program that would provide for a tax on real estate to fund it. That would result in taxing those who sell their farmland to a developer, and taxing that retirement income.

KBIA respectfully asks you to oppose any revenue provisions that would raise taxes on real estate.

FRPP FY2007 Number of Acres	
State	Total Acres
Alabama	1,309
Alaska	40
Arizona	0
Arkansas	0
California	2,015
Colorado	1,177
Connecticut	1,305
Delaware	280
Florida	663
Georgia	176
Hawaii	200
Idaho	546
Illinois	313
Indiana	0
Iowa	0
Kansas	6,761
Kentucky	3,150
Louisiana	0
Maine	83
Maryland	1,116
Massachusetts	2,140
Michigan	463
Minnesota	322
Mississippi	0
Missouri	901
Montana	1,277
Nebraska	0
Nevada	579
New Hampshire	611
New Jersey	3,014
New Mexico	16
New York	1,444
North Carolina	761
North Dakota	0
Ohio	3,531
Oklahoma	0
Oregon	508
Pennsylvania	2,672
Rhode Island	339
South Carolina	814
South Dakota	0
Tennessee	125
Texas	250
Utah	234
Vermont	7,486
Virginia	428
Washington	419
West Virginia	1,625
Wisconsin	1,166
Wyoming	4,229
Total	54,488

**Farm and Ranch Lands Protection Program
FY 2007 Financial and Technical Assistance
Dollars to States**

STATE	Total Allocations
ALABAMA	\$964,624
ALASKA	\$534,316
ARIZONA	\$454,758
ARKANSAS	\$261,595
CALIFORNIA	\$2,462,828
COLORADO	\$2,112,601
CONNECTICUT	\$2,925,228
DELAWARE	\$3,109,574
FLORIDA	\$1,678,077
GEORGIA	\$943,664
HAWAII	\$1,116,459
IDAHO	\$817,786
ILLINOIS	\$1,131,926
INDIANA	\$316,543
IOWA	\$594,598
KANSAS	\$676,136
KENTUCKY	\$1,808,238
LOUISIANA	\$303,935
MAINE	\$1,103,324
MARYLAND	\$2,987,098
MASSACHUSETTS	\$3,961,185
MICHIGAN	\$1,705,365
MINNESOTA	\$701,843
MISSISSIPPI	\$166,967
MISSOURI	\$639,621
MONTANA	\$1,504,268
NEBRASKA	\$454,195
NEVADA	\$1,962,923
NEW HAMPSHIRE	\$3,301,147
NEW JERSEY	\$4,740,488
NEW MEXICO	\$428,372
NEW YORK	\$2,099,172
NORTH CAROLINA	\$1,614,567
NORTH DAKOTA	\$405,330
OHIO	\$1,988,580
OKLAHOMA	\$826,563
OREGON	\$614,037
PENNSYLVANIA	\$3,067,978
RHODE ISLAND	\$2,916,852
SOUTH CAROLINA	\$1,284,991
SOUTH DAKOTA	\$162,111
TENNESSEE	\$752,599
TEXAS	\$1,081,011
UTAH	\$889,015
VERMONT	\$3,048,322
VIRGINIA	\$1,091,895
WASHINGTON	\$1,178,980
WEST VIRGINIA	\$1,725,675
WISCONSIN	\$1,442,973
WYOMING	\$741,616
PACIFIC BASIN	\$0
PUERTO RICO	\$0
Total	\$72,801,948