

Proposed Amendment to SB 357 by KLA, KS  
Assoc. of Counties, Riley County and KS Farm  
Bureau

Committee on Agriculture  
2/8/12

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Office of Revisor of Statutes

Session of 2012

## 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 repealing the existing section.  
4

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

6 Section 1. K.S.A. 2-2004 is hereby amended to read as follows: 2-  
7 2004. (a) Further to administer, carry out and make effective the purposes  
8 of this act section, the board of county commissioners of each county,  
9 upon knowing, receiving a complaint or being advised that dust, any plant  
10 or weed is blowing from any particular land in the county, are hereby  
11 authorized and directed immediately to inspect such land. If it is  
12 determined the soil, any plant or weed is blowing therefrom in sufficient  
13 quantity to be injurious to the land because of erosion thereof, to nearby  
14 land because of dirt blown thereon, to nearby land because of any plant or  
15 weed blown thereon or to the public health because of dust therefrom  
16 blown into the air, they shall determine what, if anything, can be done to  
17 prevent or materially lessen the soil, any plant or weed blowing from such  
18 land, and if in their judgment that can be accomplished by prompt  
19 cultivation of the soil in some manner, they are authorized and directed to  
20 order work to be done and the time when and the type of work to be done.  
21 The board of county commissioners may order that the land be diseed,  
22 listed, chiseled, cultivated, chopped or worked by any other method of  
23 control approved by the board. If the board of county commissioners  
24 determines a sustained, dust-laden wind is occurring which poses an  
25 extreme and immediate physical danger to public safety or irreparable  
26 damage to such land unless immediate corrective action is taken, such  
27 board of county commissioners shall order the owner of the land at issue  
28 to take immediate corrective action, including, but not limited to, disking,  
29 listing, chiseled, cultivating, chopping or any other recognized method of  
30 dust control. If such board of county commissioners receive a complaint  
31 and determine no sustained, dust-laden wind posing an extreme and  
32 immediate physical danger to public safety or irreparable damage to such  
33 land is occurring, the board of county commissioners shall direct the  
34 complaining citizen to present such complaint to the local conservation  
35 district with jurisdiction over the land at issue.

36 (b) If a complaint is referred by the board of county commissioners to

that shall include any recognized method of dust  
control in the applicable field office technical  
guide of the natural resources conservation  
service.

1 the local conservation district, and if the complaining party wishes to  
2 proceed with such complaint, the board of county commissioners shall  
3 request that such local conservation district schedule the complaint for a  
4 hearing at such local conservation district's next regularly scheduled  
5 meeting.

6 (1) The board of county commissioners shall advise the owner and  
7 any tenant of the land at issue, no less than 10 calendar days prior to such  
8 meeting, of the date and time the complaining party will appear before the  
9 local conservation district.

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

21 (3) The local conservation district shall act only in an advisory  
22 capacity and shall have authority only to make a written recommendation  
23 to the board of county commissioners regarding the complaint referred to  
24 such local conservation district. ~~The local conservation district shall~~  
25 ~~recommend specific corrective action to the board of county~~  
26 ~~commissioners or recommend no corrective action.~~

27 (c) For the purpose of making a recommendation, the local  
28 conservation district:

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

33 (2) shall consider the applicable field office technical guide of the  
34 natural resources conservation service. Any corrective action  
35 recommended by the local conservation district shall be based upon one  
36 or more terms of the field office technical guide and the local conservation  
37 district's written recommendation shall identify the specific term or terms  
38 of the field office technical guide upon which the recommendation is  
39 based.

40 (d) In formulating a recommendation, the local conservation district  
41 shall rely entirely upon the voluntary cooperation of the complaining party  
42 and the owner or tenant of the land at issue. If the complaining party,  
43 owner or tenant of the land at issue did not cooperate with the local

included in such recommendation shall be a  
determination by the local conservation district as  
to whether the land at issue is in compliance with  
a conservation plan promulgated by the owner or  
tenant under 7 CFR §12.5. If the land at issue is  
determined to be in compliance with a  
conservation plan promulgated by the owner or  
tenant under 7 CFR § 12.5, the conservation  
district shall recommend no corrective action be  
taken by the board of county commissioners. If  
the land at issue is determined to not be in  
compliance with a conservation plan promulgated  
by the owner or tenant under 7 CFR §12.5, the

1 conservation district regarding such complaint, the local conservation  
 2 district shall advise the board of county commissioners of this fact in such  
 3 recommendation. If the local conservation district recommends no  
 4 corrective action, such local conservation district shall explain why no  
 5 corrective action was recommended.

6 (e) Upon receipt of the written recommendation of the local  
 7 conservation district, the board of county commissioners shall schedule  
 8 such recommendation for review by the board of county commissioners at  
 9 a regularly scheduled meeting. The complaining party, owner of the land  
 10 at issue and any tenant shall be notified in writing of such meeting no less  
 11 than 10 calendar days prior to such meeting. At such meeting, the board of  
 12 county commissioners may accept, reject or modify the recommendations  
 13 of the local district in the sole discretion of the board of county  
 14 commissioners. The board of county commissioners at all times shall  
 15 retain the authority to order any corrective action allowed by this section.  
 16 The board of county commissioners may take into consideration when  
 17 developing any remedy or refusing to impose a remedy the cooperation or  
 18 lack of cooperation that the parties of the complaint have extended to the  
 19 local conservation district, the natural resources conservation service of  
 20 to any other person or agency assisting the local conservation district in  
 21 the matter.

22 (f) If a complaint has been referred to a local conservation district,  
 23 but the board of county commissioners later determines immediate  
 24 corrective action is appropriate, such board of county commissioners shall  
 25 have the authority to order such immediate corrective action before the  
 26 local conservation district has issued a recommendation.

27 (g) In all cases where the board of county commissioners orders  
 28 corrective action, where it can be done reasonably, the board of county  
 29 commissioners shall confer with the owner of the land before determining  
 30 or ordering work to be done thereon, and advise the owner of their  
 31 conclusions and give the owner an opportunity to do the work they  
 32 conclude should be done, but if the owner cannot be consulted without  
 33 unreasonable delay, or cannot or will not do the work in the manner and  
 34 within the time it should be done, the board of county commissioners may  
 35 do the work, or employ someone to do it, and issue its warrants to pay the  
 36 actual cost thereof, and pay such warrants from the fund hereinafter  
 37 provided, without regard to any other statute pertaining to the issuing or  
 38 paying of county warrants.

39 Sec. 2. K.S.A. 2-2004 is hereby repealed.

40 Sec. 3. This act shall take effect and be in force from and after its  
 41 publication in the statute book.

shall accept or reject the recommendations of the  
 local conservation district. In such case where the  
 board of county commissioners reject the local  
 conservation district's recommendations, the  
 board of county commissioners may, if it is  
 determined corrective action is needed other than  
 the corrective action recommended by the local  
 conservation district, request the local  
 conservation district develop an alternative  
 recommendation. A request for an alternative  
 recommendation from the local conservation  
 district by the board of county commissioners  
 shall set forth reasons why the board of county  
 commissioners believes an alternative  
 recommendation is necessary. Upon receiving an  
 alternative recommendation from the local  
 conservation district, the board of county  
 commissioners shall accept or reject the  
 alternative recommendation.

under subsection (a)