

HOUSE BILL No. 2365

By Committee on Energy and Environment

2-15

1 AN ACT concerning property; relating to conservation easements;
2 amending K.S.A. 24-1209, 58-3810, 58-3811 and 58-3812 and
3 repealing the existing sections.
4

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

6 New Section 1. A watershed district shall not transfer or assign any
7 interest in a conservation easement to a third party unless otherwise
8 required by law. Existing conservation easements relating to water
9 retention structures that were created pursuant to K.S.A. 24-1201 et seq.,
10 and amendments thereto, shall be limited to the life of the water retention
11 structure.

12 Sec. 2. K.S.A. 24-1209 is hereby amended to read as follows: 24-
13 1209. Each watershed district incorporated under the provisions of this act
14 shall be a body politic and corporate and shall have the power:

15 *First.* To adopt a seal.

16 *Second.* To sue and be sued by its corporate name.

17 *Third.* To purchase, hold, sell and convey land and personal property
18 and to execute such contracts as may, by its board of directors, be deemed
19 necessary or convenient to enable it to properly carry out the purpose for
20 which organized.

21 *Fourth.* To construct, improve, maintain and operate works of
22 improvement including such facilities and appurtenances as necessary for
23 the conservation of soil, prevention of floods, disposal of water and the
24 conservation, development and utilization of water for domestic,
25 municipal, agricultural, industrial, recreational purposes and such other
26 uses as may be authorized by the provisions of K.S.A. 82a-701 to 82a-725,
27 ~~inclusive, and any~~ and amendments thereto; and in any case where the
28 construction, improvement or operation of such works causes the
29 substantial displacement of a wildlife habitat and when required by the soil
30 conservation service of the United States department of agriculture as a
31 condition precedent to the release of federal funds for such works, to
32 acquire land for the purpose of restoring such wildlife habitat. The power
33 of eminent domain shall not be used for any such acquisition.

34 *Fifth.* To operate or lease any and all district properties and facilities
35 associated with the use of water and to collect reasonable fees, rentals,
36 tolls, and charges for the use of such facilities, said revenue to be placed in

1 the maintenance fund of the district. Where the property is leased the
2 lessee or anyone authorized to collect such fees, rentals, tolls and charges
3 shall conform to a schedule approved by the board of directors of the
4 district.

5 *Sixth.* To employ such professional services and other assistance as is,
6 by its board of directors, deemed essential. Soil conservation engineering
7 services may be used whenever available.

8 *Seventh.* To acquire personal property by gift or purchase.

9 *Eighth.* To acquire land and interests in land by gift, purchase,
10 exchange or eminent domain; such power of eminent domain to be
11 exercised within or without the boundaries of the district in like manner as
12 provided by K.S.A. 26-501 to 26-516, ~~inclusive, or any~~ and amendments
13 thereto.

14 *Ninth.* To levy taxes and assessments, issue bonds and incur
15 indebtedness within the limitations prescribed by this act.

16 *Tenth.* To cooperate and contract with persons, firms, associations,
17 partnerships and private corporations, and with other watershed districts,
18 drainage districts, and cities of all classes of this state, and with drainage
19 districts, watershed districts, or other public corporations organized for
20 similar purposes in any adjoining state and with other local, state and
21 federal governmental agencies and to enter into co-operative contracts and
22 agreements with any such districts, corporations or agencies.

23 *Eleventh.* (a) To take appropriate actions to extend and transfer the
24 territory of the district, receive territory transferred from other districts,
25 and dissolve all or a portion of the district as provided for in this act; (b) to
26 merge with adjoining watershed districts, subject to approval of a majority
27 of the qualified voters voting on the proposition in each of the districts
28 proposing to merge.

29 *Twelfth.* To select a residence or home office for the watershed district,
30 which shall be at a place in a county in which the watershed district or any
31 part thereof is located and may be either within or without the watershed
32 district as may be designated by the board of directors. The board shall
33 thereupon designate the county in which said residence or home office is
34 located as the official county for the filing of all official acts and levies.
35 After an official county has been so designated, said county designation
36 shall not be changed even though the residence or home office of said
37 watershed district may be changed at a later date.

38 *After July 1, 2013, a watershed district shall not have the power to*
39 *transfer or assign any new interests in a conservation easement to a third*
40 *party unless otherwise required by law.*

41 Sec. 3. K.S.A. 58-3810 is hereby amended to read as follows: 58-
42 3810. As used in this act, unless the context otherwise requires:

43 (a) "Conservation easement" means a nonpossessory interest of a

1 holder in real property imposing limitations or affirmative obligations the
2 purposes of which include retaining or protecting natural, scenic or open-
3 space values of real property, assuring its availability for agricultural,
4 forest, recreational or open-space use, protecting natural resources,
5 maintaining or enhancing air or water quality, or preserving the historical,
6 architectural, archaeological or cultural aspects of real property.

7 (b) "Holder" means:

8 (1) A governmental body empowered to hold an interest in real
9 property under the laws of this state or the United States; or

10 (2) a charitable corporation, charitable association or charitable trust,
11 the purposes or powers of which include retaining or protecting the
12 natural, scenic, or open-space values of real property, assuring the
13 availability of real property for agricultural, forest, recreational or open-
14 space use, protecting natural resources, maintaining or enhancing air or
15 water quality, or preserving the historical, architectural, archaeological or
16 cultural aspects of real property.

17 ~~(c) "Third-party right of enforcement" means a right provided in a~~
18 ~~conservation easement to enforce any of its terms granted to a~~
19 ~~governmental body, charitable corporation, charitable association or~~
20 ~~charitable trust, which, although eligible to be a holder, is not a holder.~~

21 Sec. 4. K.S.A. 58-3811 is hereby amended to read as follows: 58-
22 3811. (a) A conservation easement may be created only by the record
23 owner of the surface of the land specifically stating the intention of the
24 grantor to create such an easement under this act.

25 (b) Except as otherwise provided in this act, a conservation easement
26 may be created, conveyed, recorded, assigned, released, modified,
27 terminated or otherwise altered or affected in the same manner as other
28 easements.

29 (c) No right or duty in favor of or against a holder and no right in
30 favor of a person having a third-party right of enforcement arises under a
31 conservation easement before its acceptance by the holder and a
32 recordation of the acceptance.

33 ~~(d) Except as provided in subsection (b) of K.S.A. 58-3812 and~~
34 ~~unless the instrument creating it otherwise provides, Notwithstanding any~~
35 ~~provision of law to the contrary, a conservation easement, except for~~
36 ~~conservation easements created to buffer military installations, executed~~
37 ~~on or after July 1, 2013 shall be limited in duration to 50 years, or, if the~~
38 ~~grantor is a natural person, the lifetime of the such grantor and, unless the~~
39 ~~instrument conveying such conservation easement provides otherwise, may~~
40 ~~be revoked at such grantor's request.~~

41 (e) An interest in real property in existence at the time a conservation
42 easement is created is not impaired by it unless the owner of the interest is
43 a grantor of the conservation easement.

1 (f) A conservation easement may not be conveyed or assigned by a
2 holder to any entity or person other than a city or county of this state, an
3 entity enumerated by subsection (b)(2) of K.S.A. 58-3810, *and*
4 *amendments thereto*, or the grantor thereof or such grantor's heirs.

5 Sec. 5. K.S.A. 58-3812 is hereby amended to read as follows: 58-
6 3812. (a) An action affecting a conservation easement may be brought by:

7 (1) An owner of an interest in the real property burdened by the
8 easement;

9 (2) a holder of the easement;

10 ~~(3) a person having a third-party right of enforcement;~~ or

11 ~~(4)~~(3) a person authorized by other law.

12 (b) This act does not affect the power of a court to modify or
13 terminate a conservation easement in accordance with the principles of law
14 and equity.

15 Sec. 6. K.S.A. 24-1209, 58-3810, 58-3811 and 58-3812 are hereby
16 repealed.

17 Sec. 7. This act shall take effect and be in force from and after its
18 publication in the statute book.