

## HOUSE BILL No. 2558

By Representative Sloan

12-28

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9 AN ACT concerning conservation and environmental protection or en-  
10 croachment restriction districts; providing for the creation, enlarge-  
11 ment and dissolution thereof.

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

14 Section 1. (a) As used in this section:

15 (1) "District" means a conservation and environmental protection or  
16 encroachment restriction district created pursuant to this section.

17 (2) "Governing body" means the governing body of the board of  
18 county commissioners of the county where the property is located.

19 (3) "Military reservation" means a military installation or facility un-  
20 der the supervision of the United States secretary of the army or the  
21 United States secretary of the air force or a military installation or facility  
22 under the supervision of the Kansas national guard.

23 (4) "Person" means any individual, sole proprietorship, partnership,  
24 joint venture, association, trust, estate, business trust, corporation, limited  
25 liability company or not-for-profit corporation; any federal, state or local  
26 governmental or quasi-governmental unit or agency, or any instrumen-  
27 tality or political subdivision thereof; or any similar entity or organization.

28 (5) "Property" means real property used as or contiguous to a military  
29 reservation or to a state park, state lake, recreational area, wildlife area  
30 and sanctuary, fish hatchery, natural area or other lands, waters or facil-  
31 ities under the jurisdiction of the secretary of wildlife and parks.

32 (b) A governing body may create, modify or dissolve conservation and  
33 environmental protection or encroachment restriction districts in the  
34 manner provided by this section for the purpose of protecting the long-  
35 term sustainability and economic contribution of the property.

36 (c) Any person who owns or possesses any property may submit an  
37 application for the creation, modification or dissolution of a district to the  
38 appropriate governing body. Such application shall be on a form provided  
39 by the governing body. The application shall be accompanied by any in-  
40 formation deemed necessary by the governing body including, but not  
41 limited to, specific conservation, environmental protection, growth man-  
42 agement or encroachment restrictions addressing requirements such as  
43 light, noise, height and distance restrictions and the reasons such restric-

1 tions are necessary or requested to sustain or protect the viability of the  
2 property and its operations and mission requirements. A request also may  
3 be made or included to create a conservation and environmental protec-  
4 tion district adjacent or within close proximity to the border of the prop-  
5 erty to help preserve unique or valuable flora, fauna and associated habitat  
6 within the district. The application also shall include a description of the  
7 impact of the applicant's operations on property not owned or possessed  
8 by the applicant, such as noise levels and frequency at specific distances,  
9 light intensity and other pertinent information, as determined by the gov-  
10 erning body. Such information shall be available to any person seeking to  
11 develop or make improvements to property located within the district.  
12 Such information shall constitute constructive notice of the activities and  
13 shall serve as an affirmative defense to any nuisance claim arising from  
14 the noticed activity. Impacts approved in the district shall not be subject  
15 to restriction and shall be considered an ambient condition of property  
16 located within the district.

17 (d) The governing body shall adopt such regulations as are necessary  
18 to implement the provisions of this section. Such regulations may include:

19 (1) The procedure for the approval of the creation, modification or  
20 dissolution of a district;

21 (2) the time limit within which action shall be taken by the governing  
22 body;

23 (3) a schedule of application fees;

24 (4) penalties for violations of restrictions imposed pursuant to this  
25 section; and

26 (5) any other provision deemed necessary by the governing body.

27 (e) The governing body shall hold a public hearing on the application  
28 and shall cause an accurate written summary to be made of the proceed-  
29 ings. Notice of such public hearing shall be published at least once in the  
30 official city newspaper if the property is located within the corporate  
31 limits of a city or in the official county newspaper if the property is located  
32 outside the corporate limits of a city. Such notice shall be published at  
33 least 20 days prior to the date of the hearing. Such notice shall include  
34 the time and place for such hearing and describe the proposal in general  
35 terms. In addition to such publication notice, written notice of the appli-  
36 cation shall be mailed at least 20 days before the hearing to all owners of  
37 record of property within the boundaries of the proposed district and to  
38 all owners of record of property located outside the boundaries of the  
39 district but within 200 feet of such boundaries. All notices shall include  
40 a statement that a complete legal description of the proposed district is  
41 available for public inspection and shall indicate where such description  
42 is available. At any public hearing held to consider the creation or en-  
43 largement of a district, an opportunity to be heard shall be granted to

1 interested parties.

2 (f) Following the public hearing, the governing body may approve or  
3 disapprove the creation or modification of the district as requested in the  
4 application or may approve the creation or modification of the district  
5 with such changes as made by the governing body. The governing body  
6 shall consider the impact of approving or disapproving the creation or  
7 modification of the district on the entire community involved in order to  
8 ensure the orderly growth and development of the community. Action by  
9 the governing body approving or disapproving the creation or modifica-  
10 tion of a district shall be by resolution. A copy of any resolution approving  
11 the creation or modification of a district shall be filed in the office of the  
12 register of deeds of the county in which any part of the district is located.

13 (g) At the time a district is created or modified, the governing body  
14 may exempt property located within the district from restrictions imposed  
15 on other property located within the district.

16 (h) Unless a waiver is granted for a new nonconforming condition in  
17 the district, the governing body shall require development of land or land  
18 use within a district to comply with the restrictions imposed by the res-  
19 olution creating the district. A waiver may be granted upon the written  
20 consent of the governing body, after consultation with the person sub-  
21 mitting the original application for the creation or modification of the  
22 district, or such person's successor or designee.

23 (i) The creation or modification of a district shall not preclude nor  
24 restrict any lawful activity of a public utility holding a certificate of con-  
25 venience and authority from the state corporation commission or lawful  
26 operations of a rural water district.

27 (j) The provisions of this section are permissive and nothing in this  
28 section shall be construed as repealing or voiding existing planning and  
29 zoning regulations if the governing body determines such regulations pro-  
30 vide the same protection provided by this section. This section shall not  
31 preclude the adoption or enactment of alternative or conflicting regula-  
32 tions which provide the same protection provided by this section.

33 Sec. 2. This act shall take effect and be in force from and after its  
34 publication in the statute book.