

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 ~~aet~~ 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 disced,*
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, discing,*
29 *listing, chiseling, 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*

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*

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 or
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.