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February 6, 2012

The Honorable Mark Taddiken, Chairman
Senate Committee on Agriculture
Capitol Building, Rm. 159-S
Topeka, KS 66612

Re: S.B. 357 - Amended Version

Dear Chairman Taddiken and Members of the Committee:

I am the lawyer representing the Board of Riley County Commissioners. On behalf of the Board of Riley County Commissioners, I would like to offer my support of S.B.357, in its amended form (copy attached).

The original of S.B. 357 was created by the collective work of Riley County, the Kansas Association of Counties and Kansas Farm Bureau. The Kansas Livestock Association afterward approached us with proposals for changes to the text. We representatives of those groups met recently and developed the attached revised version of the bill.

The attached revision represents a significant improvement to a series of statutes enacted in the "dirty thirties." Under our proposed revisions, county commissioners across the state will retain their authority to address blowing dust whenever it represents a threat to public safety. All other complaints involving less serious situations will be first vetted by the local soil conservation district. Local agricultural producers will be given the opportunity to evaluate the complaint and make a recommendation to the board of county commissioners. But commissioners will still have the final say about any necessary remedies. Those remedies will be drawn from a recognized and established authority.

In my client's view, these proposed changes to S.B. 357 represent a significant improvement in the existing statutory scheme.

Thank you for allowing me to testify in support of S.B. 357.

Sincerely,

Clancy Holeman
Riley County Counselor

cc: Board of Riley County Commissioners

2012 SENATE BILL NO. 357 By Committee on Agriculture

AN ACT concerning agriculture; relating to soil erosion caused by wind; duties of county commissioners, conservations districts; amending K.S.A. 2-2004 and repealing the existing section.

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

Section 1. K.S.A. 2-2004 is hereby amended to read as follows: 2-2004. (a) Further to administer, carry out and make effective the purposes of this act ~~section,~~ the board of county commissioners of each county upon receiving a complaint that dust, any plant, or weed is blowing from any particular land in the county, are hereby authorized and directed immediately to inspect such land. ~~If it is determined the soil, any plant or weed is blowing therefrom in sufficient quantity to be injurious to the land because of erosion thereof, to nearby land because of dirt blown thereon, to nearby land because of any plant or weed blown thereon or to the public health because of dust therefrom blown into the air, they shall determine what, if anything, can be done to prevent or materially lessen the soil, any plant or weed blowing from such land, and if in their judgment that can be accomplished by prompt cultivation of the soil in some manner, they are authorized and directed to order work to be done and the time when and the type of work to be done. The board of county commissioners may order that the land be disced, listed, chiseled, cultivated, chopped or worked by any other method of control approved by the board. If the board of county commissioners determines a sustained, dust-laden wind is occurring which poses an extreme and immediate physical danger to public safety unless immediate corrective action is taken, such board of county commissioners shall order the owner of the land at issue to take immediate corrective action that shall include any recognized method of dust control in the applicable field office technical guide of the Natural Resources Conservation Service. If such board of county commissioners receive a complaint and determine no sustained, dust-laden wind posing an extreme and immediate physical danger to public~~

safety is occurring, the board of county commissioners shall direct the complaining citizen to present such complaint to the local conservation district with jurisdiction over the land at issue.

(b) If a complaint is referred by the board of county commissioners to the local conservation district, and if the complaining party wishes to proceed with such complaint, the board of county commissioners shall request that such local conservation district schedule the complaint for a hearing at such local conservation district's next regularly scheduled meeting.

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

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

(3) The local conservation district shall act only in an advisory capacity and shall have authority only to make a written recommendation to the board of county commissioners regarding the complaint referred to such local conservation district. 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 C.F.R. § 12.5 (2011). If the land at issue is determined to be in compliance with a conservation plan promulgated by the owner or tenant under 7 C.F.R. § 12.5 (2011), 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 C.F.R. § 12.5 (2011), the local conservation district shall recommend specific corrective action to the board of county commissioners.

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

(1) May request technical assistance from the Natural Resources Conservation Service of the United States Department of Agriculture. It shall be within the sole discretion of the Natural Resources Conservation Service whether or not to provide such technical assistance; and

(2) Shall consider the applicable field office technical guide of the Natural Resources Conservation Service. Any corrective action recommended by the local conservation district shall be based upon one or more terms of the field office technical guide and the local conservation district's written recommendation shall identify the specific term or terms of the field office technical guide upon which the recommendation is based.

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

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

(e) Upon receipt of the written recommendation of the local conservation district, the board of county commissioners shall schedule such recommendation for review by the board of county commissioners at a regularly scheduled meeting. The complaining party, owner of the land at issue, and any tenant shall be notified in writing of such meeting no less than 10 calendar days prior to such meeting. At such meeting, the board of county commissioners shall accept or reject the recommendations of the local conservation district. In such case where the board of county commissioners reject the local conservation board'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. The board of county commissioners at all times shall retain the authority to order any corrective action allowed by this section.

(f) If a complaint has been referred to a local conservation district, but the board of county commissioners later determines immediate corrective action is appropriate under subsection

(a) such board of county commissioners shall have the authority to order such immediate corrective action before the local conservation district has issued a recommendation.

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

Sec. 2. K.S.A. 2-2004, 2-2005, and 2-2006 are hereby repealed.

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

