

HOUSE BILL No. 2452

By Committee on Water and Environment

1-10

1 AN ACT concerning property; relating to conservation easements; relating
2 to the duration of certain conservation easements; amending K.S.A. 58-
3 3811 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 58-3811 is hereby amended to read as follows: 58-
7 3811. (a) A conservation easement may be created only by the record
8 owner of the surface of the land specifically stating the intention of the
9 grantor to create such an easement under this act.

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

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

18 (d) Except as provided in ~~subsection (b)~~ of K.S.A. 58-3812(b) or (g),
19 and amendments thereto, and unless the instrument creating it otherwise
20 provides, a conservation easement shall be limited in duration to the
21 lifetime of the grantor and may be revoked at grantor's request.

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

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

29 (g) (1) *If a conservation easement is required as a condition for the*
30 *issuance of a permit pursuant to section 404 of the federal clean water act,*
31 *33 U.S.C. § 1344, to satisfy the requirements for compensatory mitigation*
32 *pursuant to 33 C.F.R. § 332 et seq., or to satisfy special conditions for*
33 *mitigation of significant losses imposed pursuant to 33 C.F.R. § 325 et*
34 *seq., such conservation easement shall be limited in duration to the life of*
35 *the project and shall not be binding in perpetuity.*

36 (2) *Any holder of or party to a conservation easement entered into*

1 *pursuant to this subsection or the heirs, assigns or successors in interest of*
2 *such holder or party may petition the division of water resources to*
3 *determine whether the life of the project of such a conservation easement*
4 *has been completed and termination of such easement is required. Prior to*
5 *making its determination, the division of water resources shall convene the*
6 *holders of or parties to such easement and any relevant agencies that have*
7 *an interest in or oversight of such easement to receive evidence upon*
8 *whether the life of the project has been completed. The division of water*
9 *resources shall have authority to summarily deny any meritless petition*
10 *prior to convening the holders or parties to such easement. The division of*
11 *water resources shall have 180 days after receipt of such petition to make*
12 *a determination on a petition or deny a petition under this paragraph.*

13 *(3) Upon a determination by the division of water resources that a*
14 *conservation easement should be terminated pursuant to this subsection,*
15 *such easement shall terminate upon the earliest of:*

16 *(A) An agreement to terminate such easement by the holder of and*
17 *the party to such easement; or*

18 *(B) 30 days after the division of water resources has issued a*
19 *determination that the life of the project has been completed and*
20 *termination of such easement is required.*

21 *(4) For the purposes of this subsection, "life of the project" means*
22 *that a conservation easement created as a condition of a permit pursuant*
23 *to section 404 of the federal clean water act, 33 U.S.C. § 1344, either:*

24 *(A) No longer accomplishes the purpose that such conservation*
25 *easement was designed to serve due to impracticability or impossibility;*

26 *(B) is no longer beneficial to the public;*

27 *(C) has satisfied performance standards and has satisfied the*
28 *requirements of a long-term management plan; or*

29 *(D) no longer requires a long-term management plan to ensure the*
30 *sustainability of a mitigation project.*

31 *(5) This subsection applies to any conservation easement created on*
32 *or after July 1, 2018. This subsection shall not apply to any conservation*
33 *easement created prior to July 1, 2018, and shall not invalidate any*
34 *interest, whether designated as a conservation or preservation easement*
35 *or as a covenant, equitable servitude, restriction, easement or otherwise,*
36 *that is enforceable under other laws of this state.*

37 *Sec. 2. K.S.A. 58-3811 is hereby repealed.*

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