

SESSION OF 2021

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 38**

As Agreed to April 7, 2021

Brief*

SB 38 would establish a pesticide waste disposal program and add and amend law regarding the roles of the Division of Conservation within the Kansas Department of Agriculture and the State Conservation Commission.

The bill would be in effect upon publication in the *Kansas Register*.

Kansas Pesticide Waste Disposal Program

The bill would establish the Kansas Pesticide Waste Disposal Program (Program) that would be administered by the Secretary of Agriculture (Secretary) for the collection and disposal of pesticide waste in the state. The bill would also create in the State Treasury the Kansas Pesticide Waste Disposal Fund (Disposal Fund) with the purpose of funding the Program.

The bill would require all moneys credited to the Disposal Fund to be used by the Secretary for the Program and all expenditures from the Disposal Fund would be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued after vouchers are approved by the Secretary.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

The bill would authorize the Kansas Agricultural Remediation Board (Board) to approve an annual transfer of moneys from the Kansas Agricultural Remediation Fund (Remediation Fund) to the Disposal Fund in an amount not exceeding \$50,000 in any calendar year.

The bill would require the Secretary to submit to the Board on or before January 1 of each year a report regarding the annual expenditures made from the Program.

The bill would also require the Director of Accounts and Reports to transfer from the State General Fund to the Disposal Fund interest earnings based on the average daily balance of moneys in the Disposal Fund for the preceding month and the net earnings rate of the pooled money investment portfolio for the preceding month.

The bill would add definitions for “Kansas Pesticide Waste Disposal Fund,” “Kansas Pesticide Waste Disposal Program,” “pesticide,” and “pesticide waste.” The bill would also amend law regarding the Remediation Reimbursement Program to allow this program to provide funding to the new Program.

***Division of Conservation and State Conservation
Commission Statutory Changes***

The bill would add and amend law regarding the roles of the Division of Conservation (Division) within the Kansas Department of Agriculture (KDA) and the State Conservation Commission (Commission).

[*Note:* In 2011, Executive Reorganization Order No. 40 moved the Commission within the KDA.]

Definitions

The bill would amend the definitions of “Commission,” “Division,” and “United States” or “agencies of the United States” and add definitions of “Director,” “invasive plant species,” and “Secretary.”

State Conservation Commission Membership and Oversight

The bill would require the Dean of the Kansas State University College of Agriculture to appoint two designees to serve on the Commission as non-voting members, with one representing an agricultural experiment station and the other representing the cooperative extension service. The Secretary would be required to request the U.S. Secretary of Agriculture appoint one resident of Kansas to serve as a non-voting member of the Commission.

The bill would require the Commission to work with the Division to make certain conservation program policy decisions to be approved by the Secretary, including on current and new programs and annual budget recommendations.

Rules and Regulations

The bill would require the Division to submit rules and regulations to the Commission for consideration and comment before officially submitting the rules and regulations in accordance with state law. The bill would also require the Commission to review all rules and regulations proposed by the Division that are necessary for the Division to execute its functions under the law.

Conservation Districts

The bill would allow for the removal of a conservation district supervisor by the Secretary in consultation with the Commission, after certain actions found in continuing law.

The bill would add control of invasive species, drought, soil and grassland health and health initiatives, and water quality and protection of water quality in multiple provisions of law related to the powers of conservation districts. These additions would also be added to the list for which conservation districts could provide appropriations for state grant funding. The bill would allow the Director of the Division (Director) to update any applicable standards from time to time as necessary for continued success of the federal Conservation Reserve Program.

In addition, the bill would add gifts and donations of projects to the list of different types of projects a conservation district could take over. The bill would also clarify that in these projects, the conservation district's action would be subject to the authority of the authorizing state or federal agency.

Program Oversight

The bill would make the following changes regarding various program oversight responsibilities replacing certain references, to reflect the current structure of the Commission within the KDA:

- "Commission" changed to "Director";
- "Commission" changed to "Division";
- "Commission" changed to "Division, in consultation with the Commission";
- "Commission" changed to "KDA Division";
- "Commission" changed to "Secretary";

- “Director” changed to “Secretary”;
- “His or her office” in reference to the Secretary of State changed to the “Secretary of State’s office”;
- “Kansas Department of Agriculture Division of Conservation” to “Division”;
- “State Soil Conservation Committee” and “committee” changed to “Division”; and
- “With the approval of the Commission” changed to “Secretary, at the request of the Director.”

The bill would also require the Division to consult with the Commission regarding an annual base rate for the Water Right Transition Assistance Program.

Penalties, Violations, and Final Orders

The bill would prohibit any civil penalties or orders for repayment to be imposed for violations of the Kansas Water Right Transition Program except under written order of the Secretary or the Secretary’s designee. The bill would require the order to state the violation, imposed penalty, and the right to an appeal. Within 15 calendar days of notification, any person could make a written request to the Secretary for a hearing in accordance with the Kansas Administrative Procedure Act. The Secretary would affirm, reverse, or modify the order and specify the reason for the decision. Any person aggrieved by an order of the Secretary under this section of the bill could appeal the order to the district court in a manner provided by the Kansas Judicial Review Act.

The bill would require the Secretary, upon the Director’s request, to issue a written order stating the nature of the violation, the imposed penalty, and the right of the person to appeal to the Secretary for violations of surface mining land conservation and reclamation laws. Current law states the violation will be referred to the Commission.

In addition, the bill would require the Secretary, upon the Director's request, to institute a proceeding for forfeiture of a bond posted by an operator to guarantee reclamation of a site where the operator is in violation of surface mining land conservation reclamation laws once an issued order becomes a final order. Current law states the Attorney General shall institute proceedings upon request of the Commission.

Report to Legislative Committees

The bill would update the names of legislative committees to the Senate Committee on Agriculture and Natural Resources and House Committee on Agriculture, to which the KDA is required to submit various annual reports.

Statutory Repeal

The bill would repeal KSA 49-619, which concerns surface mining land conservation and reclamation violation hearings, conduct, bond forfeiture proceedings, and duties of the Attorney General. [Note: Provisions for violation hearings and bond forfeiture proceedings would be moved within the bill.]

Conference Committee Action

The Conference Committee agreed to the provisions of SB 38, as amended by the House Committee on Agriculture, and agreed to add the provisions of SB 40, as amended by the House Committee of the Whole, which would update provisions related to the Division and the Commission.

Background

The Conference Committee added the provisions of SB 40, as amended by the House Committee of the Whole, to the provisions of SB 38.

SB 38 (Pesticide Waste Disposal Program)

SB 38 was introduced by the Senate Committee on Agriculture and Natural Resources at the request of a representative of the Kansas Grain and Feed Association.

Senate Committee on Agriculture and Natural Resources

In the Senate Committee hearing, representatives of the Kansas Agribusiness Retailers Association, Kansas Cooperative Council, KDA, and Kansas Grain and Feed Association provided **proponent** testimony on the bill, stating the bill would facilitate the proper disposal of unwanted pesticides by reducing the financial burden associated with the disposal and reduce the human exposure risk by having the waste pesticides packaged, shipped, and disposed of by professionals.

Written-only proponent testimony was provided by representatives of the Kansas Association of Wheat Growers, Kansas Corn Growers Association, Kansas Department of Health and Environment, Kansas Farm Bureau, Kansas Sorghum Producers Association, Kansas Soybean Association, and Sierra Club.

No other testimony was provided.

The Senate Committee amended the bill by moving the phrase “with no identifiable owner or responsible party” to earlier in the sentence to clarify the term “pesticide waste” includes “pesticides with no identifiable owner or responsible

party that have been abandoned or illegally dumped at a site.”

House Committee on Agriculture

In the House Committee hearing, **proponent** testimony was provided by the Deputy Secretary of Agriculture and representatives of the Kansas Agribusiness Retailers Association, Kansas Cooperative Council, and Kansas Grain and Feed Association.

Written-only proponent testimony was provided by representatives of the Kansas Association of Wheat Growers, Kansas Corn Growers Association, Kansas Department of Health and Environment, Kansas Farm Bureau, Kansas Sorghum Producers Association, and Kansas Soybean Association.

No other testimony was provided.

The House Committee amended the bill by changing the effective date from upon publication in the statute book to upon publication in the *Kansas Register*. [Note: The Conference Committee retained this amendment.]

Fiscal Information

According to the fiscal note provided by the Division of the Budget on SB 38, as introduced, the KDA indicates enactment of the bill would not result in additional costs or personnel requirements for the agency, as the program was previously funded by a federal grant and will continue with support from the Remediation Fund, which consists of fees related to pesticide sales and products. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor’s Budget Report*.

SB 40 (Division of Conservation and State Conservation Commission)

SB 40 was introduced by the Senate Committee on Agriculture and Natural Resources at the request of a representative of the KDA.

Senate Committee on Agriculture and Natural Resources

In the Senate Committee hearing, the Chief Counsel of the KDA provided **proponent** testimony and stated that, in 2011, an executive reorganization order consolidated the Commission within the KDA; however, the statutes were not updated to reflect this change and the Commission exists within the KDA as a program advisory board. He explained the bill continues the existence of the Commission, while replacing certain references that reflect the current structure of the Commission within the KDA.

No other testimony was provided.

The Senate Committee amended the bill to add language clarifying that local conservation districts cannot unilaterally act in place of the Kansas Department of Health and Environment regarding water quality projects.

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to correct statutory references. [*Note:* The Conference Committee retained this amendment.]

House Committee on Agriculture

In the House Committee hearing, the Director of Conservation, KDA, provided **proponent** testimony. No other testimony was provided.

House Committee of the Whole

The House Committee of the Whole amended the bill by changing the effective date to upon publication in the *Kansas Register*. [Note: The Conference Committee retained this amendment.]

Fiscal Information

According to the fiscal note provided by the Division of the Budget on SB 40 as introduced, the KDA states enactment of the bill would have no fiscal effect on agency operations.

Kansas Department of Agriculture; pesticide; pesticide waste; Division of Conservation; State Conservation Commission

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