

**Joint Testimony in Opposition of HB 2311 to
the House Committee on Water and Environment
Developed by the Kansas Department of Agriculture, Kansas Department of Health and Environment,
and the Kansas Water Office
February 14, 2017**

Good morning, Chairman Sloan and members of the committee. I am Jaime Gaggero, Director for the Bureau of Water with the Kansas Department of Health and Environment (KDHE). I appreciate the opportunity to provide testimony in opposition of HB 2311 on behalf of KDHE, the Kansas Department of Agriculture (KDA), and the Kansas Water Office (KWO). I am joined today by Rob Reschke, Executive Director of the KDA Division of Conservation (DOC) and Earl Lewis, KWO Assistant Director.

As background and rationale for our opposition to HB 2311, I'd like to share the following information related to streambank stabilization projects, as well as KDA and KDHE cost-share programs.

Streambank Stabilization Projects:

- In 2014, KDA, KWO and KDHE formed an interagency Streambank Coordination Group to streamline multiple agency processes as well as to pool funding to support priority projects based on assessments. State-funded projects through the interagency group currently have protective provisions. Landowners agree not to destroy the installed streambank protection practice for a minimum of 20 years so long as the destruction is not beyond the landowner's control (i.e., act of nature). In addition, if the landowner destroys any part of the practice, including rock structures and tree or grass plantings, the landowner is required to pay damages equal to 100% of the project cost.
- Each streambank stabilization project agreement requires a minimum 66-foot-wide buffer. The landowner has four cost-share program options, all of which contain protective requirements ranging from a minimum of 10 years to perpetuity.
- HB 2311 requires the permission of land access for agency personnel to allow for inspection and maintenance of the conservation project. Access is also addressed in the state-funded streambank stabilization agreements, ensuring that access is provided on a continuous basis for a minimum of 20 years.

KDA Cost-Share Programs:

- In the past 10 years, only 17 projects were in violation of the landowner agreement in the water resources and non-point source cost-share programs. This represents 0.07 percent of the 22,767 contracts.
- There are two main reasons that a repayment of cost-share happens. First, the land has sold and the new landowner does not want to be bound by the landowner agreement in the cost-share contract or does not want to maintain or keep the practice. Second, the conservation district has found the landowner has violated the landowner agreement and requests the cost-share funds be paid back.
- Repayment for cost-share programs offered through the KDA-DOC is on a pro-rata basis and described in the cost-share agreements as follows: if constructed/installed less than six years — 100% repayment;

six years — 80%; seven years — 60%; eight years — 40%; nine years — 20%; and ten years — 10%. In addition, the landowner is declared ineligible for future cost-share funds.

- DOC landowner agreements account for practice lifespans up to 10 years. Practices which exceed a 10-year lifespan are still covered by a 10-year agreement. For example, the riparian and buffer practice has a lifespan of 15 years. If a landowner enters into a cost-share agreement for this practice, the contract will be a 10-year agreement with a requirement to maintain the practices for their described lifespan. However, the repayment schedule will not exceed 10 years. The rationale is that a 10-year repayment is an adequate requirement to protect the practice. Anything longer may disincentive participation. With the very low number of contracts in repayment, we maintain that the 10-year repayment, regardless of practice lifespan, maximizes participation while protecting the state's investment.
- DOC cost-share agreements also define the process when a change in ownership occurs. If the change in ownership occurs before the expiration of the agreement's maintenance provisions, it is the responsibility of the cost-share recipient to obtain in writing a contractual agreement with the new owner to transfer the contract maintenance obligations. This can be accomplished by including the contract maintenance obligations in either the real estate contract or a separate contract. If such an agreement is not made, the contract practice maintenance provisions remain binding with the original contract signatories.

KDHE Cost-Share Program:

- The primary cost-share program is the Kansas Watershed Restoration and Protection Strategy (WRAPS) program. The program offers grants to local WRAPS projects for the implementation of agricultural best management practices. The program has similar protective provisions and access provisions to that of HB 2311. The contracts state "as a condition of accepting financial assistance, I agree to maintain the practice according to commonly accepted standards with a minimum of 10 years. Destruction of a practice(s) by an act beyond the control of the landowner is exempt from this provision.
- The WRAPS program contract also contains access provisions. By accepting financial assistance, the landowner agrees to permit access to land where the practice was applied for the sponsoring organization to inspect maintenance of the conservation practice(s) and for public information and education purposes.
- The WRAPS program condition requires the landowner repay 100% of funds received if the standards and specifications of the practice are not maintained.
- In the past ten years, KDHE is aware of only one project not meeting the conditions. This represents 0.02 percent of the 4,330 contracts.
- The WRAPS program conditions also contain change of ownership language. The requirement is a contract to be signed in writing to transfer the maintenance obligations as stated in the contract to the new owner.

In conclusion, KDHE, KDA and KWO oppose HB 2311, a bill that places unnecessarily restrictive and duplicative requirements on landowners willing and interested in adopting conservation practices.

Thank you for the opportunity to present testimony in opposition of HB 2311.