

**CHAPTER 51****(SB 92)**

AN ACT relating to the Kentucky Soil and Water Conservation Commission.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 262.010 is amended to read as follows:

- (1) "Board" means the board of supervisors of a conservation district;
- (2) "Commission" means the Conservation Commission;
- (3) "District" means a conservation district whenever used in KRS 262.010 through 262.660 or a watershed conservancy district whenever used in KRS 262.700 through 262.795;
- (4) "Due notice" means notice published in accordance with the legal notice provisions of KRS Chapter 424;
- (5) **"Infrastructure" means the plant and assets required for maintaining a district office;**
- (6) "Land occupier" or "occupier of land" includes any person other than the landowner who is in possession of any lands lying within the district, whether as lessee or otherwise;
- ~~(7)~~~~(6)~~ "Landowner" or "owner of land" includes any person who holds legal or equitable title to the land within the district determined as follows:
  - (a) By his, her, or their names appearing on the recorded deed to the land;
  - (b) By title derived through a probated will or by the laws of descent and distribution under KRS Chapter 391;
  - (c) Where a minor or person adjudged mentally disabled is the owner of land within the district, the guardian or conservator or whoever has the power of attorney shall have the right to vote for such landowner under the provisions of KRS Chapter 262;
  - (d) Where the will has not been probated by the date of the referendum or election as provided in KRS Chapter 262, the executor of the deceased landowner shall have the right to vote for the devisee or devisees;
  - (e) Where the land within the districts is held in trust, the trustee shall have the right to vote for the landowner under the provisions of KRS Chapter 262;
  - (f) A landowner shall be entitled to but one (1) vote whenever he is given the right to vote under KRS Chapter 262 regardless of the number of tracts or parcels of land which he owns either wholly or in part, within the district;
  - (g) Where a trustee, executor, guardian, conservator or other person with authority to vote for a landowner exercises such duty in relation to two (2) or more estates or tracts of land, within a district, such person shall have the right to vote separately for each such landowner which he represents within the district;
  - (h) In the case of a dispute as to whether or not a person has the right to vote in an election or referendum under the provisions of KRS Chapter 262, the person seeking such right must provide to the satisfaction of the polling superintendent that he has the right to vote under this section.
- ~~(8)~~~~(7)~~ "Supervisor" means one of the members of the governing body of a conservation district.

Section 2. KRS 262.620 is amended to read as follows:

The Division of Conservation shall retain title to each piece of heavy or specialized ~~machinery or~~ equipment **or any infrastructure** ~~so~~ purchased and made available to any soil and water conservation district until such time as the soil and water conservation districts fully amortize the commission's investment in ~~the~~ ~~such machinery or~~ equipment **or the infrastructure. If the soil and water conservation district purchases infrastructure with use of funds made available by the Division of Conservation for that purpose, then the Division of Conservation shall be listed on the deed to the property jointly with the district.** After the commission's investment in ~~the~~ ~~such machinery or~~ equipment **or infrastructure** has been fully amortized, it is authorized and empowered to transfer the title thereto to the district. **If the district has purchased infrastructure with funds made available by the Division of Conservation, the district shall consult with the division prior to the dispossession of the property.**

Section 3. KRS 262.630 is amended to read as follows:

- (1) Each soil and water conservation district which receives or uses the ~~the machinery or~~ equipment referred to in KRS 262.610 shall maintain its public records to show for each piece of ~~the machinery or~~ equipment: (1) the hours same has worked on each job in each district; (2) the amounts collected from each job in each district; (3) the expense of repairing, moving, manning and other usual costs of operation, and (4) the amount paid by each district for the purpose of amortizing the commission's investment in ~~the such machinery or~~ equipment.
- (2) ***Each soil and water conservation district which leases or otherwise obtains a right of use of the infrastructure with the support of the Division of Conservation pursuant to KRS 262.610 shall maintain in public records a copy of the lease or other contract which provides the district a right of use of the infrastructure; and***
  - (a) ***In the case of a purchase, the amount paid by each district for the purpose of amortizing the commission's investment in the infrastructure; or***
  - (b) ***In the case of lease without right of purchase or some other contractual arrangement or agreement, the payments made to the Division of Conservation for the right of use of the infrastructure.***
- (3) Each of ~~the such~~ soil and water conservation districts shall send a duplicate copy of ~~the such~~ records to the commission, who shall retain same in its files for public inspection.
- (4) In addition thereto, the commission shall at all times maintain an account showing each piece of ~~the machinery or~~ equipment, the title to which is vested in it, ***and any infrastructure, the title of which may be vested solely in the commission or jointly with the district, and*** the amount paid thereon by any soil and water conservation district, and the amount remaining to be amortized.

Section 4. KRS 262.610 is amended to read as follows:

- (1) The Soil and Water Conservation Commission as referred to in KRS Chapter 146, subject to the supervision of the commissioner for natural resources, to the restrictions provided in KRS 262.610 to 262.660, and to the requirements of KRS Chapters 42 and 45A, is hereby authorized to acquire and to make available, or to assist in acquiring or making available to soil and water conservation districts, heavy or specialized ~~the machinery or~~ equipment ***or infrastructure*** which an individual district cannot itself economically obtain.
- (2) When the commission acquires or makes available to any district the ~~the machinery or~~ equipment ***or infrastructure*** above referred to, it shall require said district to fully amortize, in the form of rentals ***or payments***, to the Division of Conservation, as referred to in KRS Chapter 146, any amount so expended by the commission for such assistance. The amount and method of amortization for each piece of heavy ~~or specialized machinery or~~ equipment ***or infrastructure*** shall be determined by the commission, subject to approval of the commissioner of natural resources. ***The amount and method of amortization for each piece of heavy or specialized equipment shall be determined*** ~~on the basis of a rental to be charged by the district to the user of such machinery or~~ equipment sufficient (a) to fully amortize to the division the capital outlay for the machinery itself over the period of its reasonably anticipated full usefulness; (b) to cover the cost of operation, maintenance and repairs; (c) to pay the usual cost of providing an operator; (d) to compensate the district for the usual costs of transportation from one job to another.
- (3) In giving effect to all of the foregoing, the commission shall estimate the amount of time such equipment would ordinarily be idle.

Section 5. KRS 262.640 is amended to read as follows:

The amount paid by any ~~such~~ district to the division for amortization ***of a loan or for payment on a lease*** ~~purposes~~ shall be made monthly ~~when the machinery is in use~~. This amount shall be credited to a revolving fund and the costs of any new ~~the machinery or~~ equipment ***or infrastructure*** shall be charged to the same account. Neither the appropriation herein made nor the revolving fund shall be used for any purpose other than to make available to soil and water conservation districts the ~~the machinery and~~ equipment ***or infrastructure*** of the type referred to in KRS 262.610.

Section 6. KRS 262.650 is amended to read as follows:

Any two (2) or more soil and water conservation districts may combine with each other for the purpose of obtaining and using the specialized ~~the machinery or~~ equipment ***or infrastructure*** referred to in KRS 262.610, upon the terms and conditions set forth in KRS 262.610 to 262.660.

Section 7. KRS 262.748 is amended to read as follows:

- (1) Upon determination by the board of directors of a watershed conservancy district that the improvement, continuing operation, or maintenance of a watershed project is necessary, the board of directors may adopt a resolution which shall set out: (a) a list of the benefited lands located in the flood plain, as determined by the board of directors, giving the acreage of such lands and the names of the owners thereof as defined by KRS 262.010(7)~~((6))~~ with a classification of such lands or parts thereof into classes in order that assessments may be made according to direct benefits, and (b) the annual assessments to be levied upon the lands set out in the resolution on the basis of a certain amount per acre according to benefits received, not to exceed in any one year a sum per acre specified in the resolution.
- (2) The board of directors shall cause due notice of the resolution to be given to all the owners of benefited lands, as determined by the board. Said notice shall set out the time and place of a meeting of the board of directors of the watershed conservancy district at which owners of benefited lands who may be liable for the annual assessments may be heard.
- (3) At the hearing upon the resolution, owners of benefited lands may voice their views concerning the proposal as to whether it should be undertaken, and the scope thereof, or the degree of benefit received by their lands. The board shall prepare a record summarizing the proceedings. If the board of directors determines as a result of the hearing that the proposal should be carried out as planned, it may make such changes or revisions in the resolution as it deems proper and shall give due notice of an election to be held at which benefited landowners may vote on the question of annual special assessments to defray the cost. The notice of the election shall include the text of the resolution of the board in its final form. The board of directors may give due notice as provided in KRS 262.010(4).
- (4) The board of directors shall prepare the following question to be presented to the voters: "Should the assessment for improvement, continuing operation, or maintenance proposed by resolution of the..... Watershed Conservancy District be adopted?" Voters shall be instructed to vote "yes" or "no" on the proposition. Only owners of benefited land as set out in the resolution shall be eligible to vote. The board of directors may provide for a meeting of the landowners at which the vote may be cast, in which case qualified voters may vote by absentee vote. The board shall appoint a polling superintendent and other necessary election officers, giving representation to the opponents of the question as well as to proponents.
- (5) If a majority of those voting upon the proposition favor the assessment the board shall give due notice of the vote. Any owner of property to be benefited by the project may, within forty (40) days after publication of such notice, file an action in the Circuit Court of the county in which his lands are located seeking relief by declaratory judgment or injunction. If a suit is filed, the county attorney shall represent the board of directors in upholding the validity of the proposed assessment. After the lapse of time specified herein all actions by owners of properties to be benefited shall be forever barred.
- (6) If no suit is filed and no injunction issued within the time allowed in subsection (5) of this section, the board of directors shall levy annual assessments effective only upon the benefited properties and based on the acreage thereof. The annual assessment shall be made by the board of directors at the same time and in the same manner as provided in KRS 262.765 for taxes generally and shall be collected as provided in KRS 262.770. The assessments shall constitute liens against the land benefited and shall attach to the land, taking precedence over all other liens except state, county and municipal taxes and prior improvement assessments.

Section 8. KRS 262.778 is amended to read as follows:

- (1) Upon determination by the board of directors of a watershed conservancy district that a watershed project is necessary, and upon approval of the plans for same by the board of supervisors, the board of directors shall adopt a resolution which shall set out:
  - (a) A description of the project in general terms;
  - (b) A list of the benefited lands located in the flood plain, as determined by the board of directors, giving the acreage of such lands and the names of the owners thereof as defined by KRS 262.010(7)~~((6))~~ with a classification of such lands or parts thereof into classes in order that assessments may be made according to direct benefits;
  - (c) The total cost of the project; and
  - (d) The fact that the cost shall be met by a bond issue payable solely from annual assessments to be levied upon the lands set out in the resolution on the basis of a certain amount per acre according to benefits

received, not to exceed in any one year a sum per acre specified in the resolution, with the annual assessments to extend over a period of years specified in the resolution not to exceed thirty (30) years.

- (2) The board of directors shall cause due notice of the resolution to be given to all the owners of benefited lands, as determined by the board. Said notice shall set out the time and place of a meeting of the board of directors of the watershed conservancy district at which owners of benefited lands who may be liable for the annual assessments may be heard.
- (3) At the hearing upon the resolution, owners of benefited lands may voice their views concerning the proposed project as to whether said project should be undertaken, and the scope thereof, or the propriety of placing their lands in the project area or the degree of benefit received by their lands. The board shall prepare a record summarizing the proceedings. If the board of directors determines as a result of the hearing that the project should be carried out as planned, it may make such changes or revisions in the resolution as it deems proper and shall give due notice of an election to be held at which benefited landowners may vote on the question of annual special assessments to defray the cost of the project. The notice of the election shall include the text of the resolution of the board in its final form. The board of directors may give due notice as provided in KRS 262.010(4).
- (4) The board of directors shall prepare to be presented to the voters the question: "Should the assessment proposed by resolution of the .... Watershed Conservancy District be adopted?". Voters shall be instructed to vote "yes" or "no." Only owners of benefited land as set out in the resolution shall be eligible to vote. The board of directors may provide for a meeting of the landowners at which the vote may be cast, in which case qualified voters may vote by absentee vote. The board shall appoint a polling superintendent and other necessary election officers, giving representation to the opponents of the question as well as to proponents.
- (5) If a majority of those voting upon the proposition favor the assessment, the board shall give due notice of the vote and the fact that bonds will forthwith be issued payable from special assessments. Any owner of property to be benefited by the project may, within forty (40) days after publication of such notice, file an action in the Circuit Court of the county in which his lands are located seeking relief by declaratory judgment or injunction. If a suit is filed, the county attorney should represent the board of directors in upholding the validity of the proposed bond issue. After the lapse of time specified herein, all actions by owners of properties to be benefited shall be forever barred.
- (6) If no suit is filed and no injunction issued within the time allowed in subsection (5) of this section, the board of directors shall by resolution authorize the issuance of bonds designated "watershed project assessment bonds," determining the principal amount thereof and establishing the denominations and maturity dates thereof and shall levy an annual assessment effective only upon the benefited properties and based on the acreage thereof. The annual rate of such assessments shall be fixed when other taxes of the district are levied and shall be sufficient in each year to provide for the payment of such bonds and interest coupons as they mature and sufficient to provide a fund equal to twenty percent (20%) of the average annual principal and interest requirements, the same to constitute a "debt service reserve" as a precaution against possible default by failure to collect annual levies. The bonds shall state on their face that they do not constitute a debt of the district but are payable solely from collection of special assessments made upon benefited lands lying in the watershed conservancy district.

**Approved March 21, 2007.**