

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2155

As Recommended by House Committee on
Agriculture

Brief*

HB 2155 would replace and update current law regarding soil and water pollutant releases and cleanup. The bill would also make technical amendments.

Definitions

The bill would establish the following definitions relating to the release of certain water and soil pollutants: “cleanup,” “cleanup costs,” “emergency,” “person,” “pollutant,” and “release.

The bill would exclude from the definition of “pollutant” any animal or crop waste or manure on an agricultural operation or in an agricultural facility. The bill would also exclude from the definition of “release” the releases that occur as part of normal agricultural activities or when done in compliance with the conditions of a federal or state permit or in accordance with the product label.

Pollution Release and Cleanup

The bill would require, for the purpose of preventing water and soil pollution detrimental to the public health or environment, the Secretary of Health and Environment (Secretary) to:

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Adopt rules and regulations that, in the Secretary's judgment, are necessary to respond to and report the release of a pollutant (release);
- Designate a 24-hour statewide telephone number for individuals to provide notice of any release;
- Provide minimum reportable quantities;
- Order a person who is responsible for a release to clean up such release; and
- Provide for cleanup of a release if the individual responsible cannot be identified within a reasonable period of time.

The bill would also permit the Secretary to:

- Provide technical guidance, oversight, and assistance to other state agencies, political subdivisions of the State, and other persons for the cleanup of and response to a release;
- Take necessary action for the cleanup of a release if the individual responsible for the release fails to take reasonable action required by the Secretary to clean up the release; and
- Perform cleanup of a release if it poses an emergency.

Cleanup Responsibilities

The bill would require an individual responsible for a release to be responsible for the cleanup of the release. The individual would be required to provide notice to the Kansas Department of Health and Environment (KDHE) if the release exceeds the minimum reportable quantities set by the Secretary. The individual would be required to repay cleanup costs incurred by the KDHE upon reasonably detailed notice by the Secretary or the Secretary's designee.

Costs and Penalties

The bill would require the Attorney General, in the district court of the county where the costs were incurred, to bring action for repayment of costs for a cleanup against individuals responsible for a release who fail to submit payments to KDHE promptly after giving notice.

The bill would allow the Secretary to impose a penalty, not to exceed \$5,000, on an individual who violates any provision of the bill or any regulations adopted by the Secretary. For continuing violations, the maximum penalty would not exceed \$15,000.

The bill would permit the Secretary to impose a penalty only after notice of the violation and an opportunity for a hearing has been issued in writing to the individual who committed the violation. The bill would require any request for a hearing to be in writing and directed to and filed with the Secretary within 15 days after service of the order. Any hearing would be conducted in accordance with the Kansas Administrative Procedure Act.

Funds

The bill would require the Secretary to remit moneys received to the State Treasurer who, upon receipt of the funds, would deposit the entirety of the funds to the credit of the existing Emergency Response Activities Account in the National Resources Damages Trust Fund. The bill would repeal the Pollutant Discharge Cleanup Fund statute.

Background

The bill was introduced by the House Committee on Agriculture at the request of Representative Rahjes.

[*Note*: The bill contains provisions similar to 2019 SB 153, as amended by the Senate Committee on Agriculture and Natural Resources.]

House Committee on Agriculture

In the House Committee hearing, the Director of the Bureau of Environmental Remediation, KDHE, provided **proponent** testimony that indicated the bill balances the need to ensure a clean and healthy environment for Kansans while allowing for reasonable requirements on industry during response to a release. Other **proponent** testimony was provided by representatives of the Kansas Agribusiness Retailers Association, Kansas Grain and Feed Association, Kansas Livestock Association, ONEOK, and Renew Kansas Biofuels Association.

Written-only **proponent** testimony was provided by a representative of the Kansas Cooperative Council.

Written-only neutral testimony was provided by a representative of the Kansas Independent Oil and Gas Association, indicating there is a memorandum of understanding between KDHE and the Kansas Corporation Commission (KCC) giving the KCC jurisdiction over spills related to oil and gas exploration and production activities.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, KDHE indicates enactment of the bill would require additional expenditures of \$30,000 from the Natural Resources Damages Trust Fund (Fund) offset by an equal amount in revenue to the the Fund from penalties. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

pollutant; releases; minimum reportable quantities