

SESSION OF 2020

SUPPLEMENTAL NOTE ON SENATE BILL NO. 153

As Amended by Senate Committee on
Agriculture and Natural Resources

Brief*

SB 153, as amended, would establish definitions relating to the release of certain water and soil pollutants. 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 exclude from the definition of “release” releases that occur as part of normal agricultural activities.

The bill would require the Secretary of Health and Environment (Secretary) to:

- Adopt rules and regulations to respond to and report the release of a pollutant (release);
- Establish a 24-hour statewide telephone number for individuals to provide notice of the release;
- Set minimum reportable quantities;
- Require the individual responsible for the release to clean up the release; and
- Provide for cleanup of the release if the individual responsible cannot be identified within a reasonable period of time.

The bill would also permit the 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>

- Provide assistance to state agencies, local governments, and others for the cleanup of and response to a release;
- Take action necessary for the cleanup of a release if the individual responsible for the release fails to take reasonable action to clean up the release; and
- Perform cleanup of a release if it poses an emergency.

The bill would require an individual responsible for a release to be responsible for the cleanup of that release. Such 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. Such individual would be required to repay cleanup costs incurred by the KDHE. The bill would require the Kansas Attorney General to bring action for repayment of costs for a cleanup against individuals responsible for a release who fail to submit payments promptly to the KDHE after a release.

The bill would permit 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 must 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.

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.

Background

The bill was introduced in the 2019 Legislative Session by the Senate Committee on Agriculture and Natural Resources.

In the Senate Committee hearing on February 19, 2019, a representative of the KDHE testified as a proponent. The representative testified the bill would develop a penalty matrix for the most egregious cases (rare) but that generally for first incidents, the KDHE would suggest education and would not impose such a penalty. He testified the KDHE would establish reportable quantities in rules and regulations. A representative of the Kansas Grain and Feed Association, Kansas Agribusiness Retailers Association, and Renew Kansas Association; a representative of the Kansas Petroleum Marketers and Convenience Stores of Kansas; and a representative of ONEOK, Inc. also testified as proponents. Representatives of the CHS McPherson Refinery, the Kansas Cooperative Council, and Kansas City Power and Light / Westar (Evergy) provided written-only proponent testimony. A representative of the Kansas Livestock Association testified as an opponent, expressing concerns with the definition of "pollutant." No neutral testimony was provided.

The 2019 Senate Committee did not take final action on the bill in the 2019 Session.

In the Senate Committee hearing on January 29, 2020, a representative of the KDHE testified as a proponent. The representative testified the KDHE worked with stakeholders during the 2019 Interim to create amendments to the bill. He testified those amendments included removing agricultural activities from situations that would trigger the notice and penalty requirements and lowering the penalties for

violations. Representatives of ONEOK, Inc. and the Kansas Agribusiness Retailers Association, Kansas Grain and Feed Association, and Renew Kansas Association also testified as proponents. A representative of the Kansas Livestock Association testified as an opponent. No neutral testimony was provided.

The 2020 Senate Committee amended the bill to exclude animal or crop waste or manure on an agricultural operation or in an agricultural facility from the definition of "pollutant." The 2020 Committee also amended the bill to exclude certain emissions, discharges, spillages, leakages, pumping, pouring, emptying, escaping, or dumping of a pollutant as part of normal agricultural activities from the definition of "release." The 2020 Committee also amended the bill to reduce from \$10,000 to \$5,000 the penalty for violations and change the penalty for continuing violations from \$10,000 per day to a maximum of \$15,000.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the KDHE indicates enactment of the bill would not have a fiscal effect on expenditures and the agency does not anticipate significant penalties to be imposed.