

HOUSE BILL No. 2192

AN ACT concerning the secretary of health and environment; relating to solid and hazardous waste, Kansas storage tank act; creating the environmental stewardship fund; amending K.S.A. 65-34,119 and K.S.A. 2014 Supp. 65-34,117 and 65-34,131 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (a) There is hereby created in the state treasury the environmental stewardship fund. All moneys received pursuant to 65-34,117(b)(5) shall be deposited into the environmental stewardship fund.

(b) Fund expenditures from the environmental stewardship fund shall be used by the secretary of the department of health and environment for:

(1) The secretary of health and environment to take whatever emergency action necessary or appropriate in response to an environmental threat to public health or safety;

(2) state-led programs to investigate, monitor, remediate and perform long-term care actions;

(3) state matching funds and long-term care actions at federal remedial actions; and

(4) the administrative, personnel and contractual service expenses incurred in undertaking the provisions of this section.

(c) The secretary of the department of health and environment shall undertake cost recovery actions for expenditures from the environmental stewardship fund if a responsible party is identified.

(d) The environmental stewardship fund shall be used for the purposes set forth in this act and for no other governmental purposes. Moneys in the environmental stewardship fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and amendments thereto.

(e) All such expenditures from the environmental stewardship fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of health and environment or the secretary's designee.

New Sec. 2. (a) The secretary may provide for the reimbursement to eligible owners of underground storage tanks in accordance with the provisions of this section up to \$3,000,000 per state fiscal year and subject to the availability of moneys in the UST redevelopment fund. An owner of an underground storage tank shall be eligible for reimbursement under this section if the:

(1) Underground storage tank system is used for the storage of petroleum products for resale and is subject to the environmental assurance fee in accordance with provisions of K.S.A. 65-34,117, and amendments thereto;

(2) owner has been approved by the secretary and is not the United States government or any federal agency;

(3) owner replaces all components of a single-wall storage tank system with a secondary containment system that complies with K.S.A. 65-34,138, and amendments thereto, after August 8, 2005, and before June 30, 2020;

(4) owner is in substantial compliance with the Kansas storage tank act;

(5) owner provides 30-day notice and access to the department to perform an environmental assessment of the site:

(A) During replacement of the single-wall storage tank system with the secondary containment system installation, if done after July 1, 2015; and

(B) that determines that petroleum contamination exists and the owner applies to the underground fund to perform corrective action to address the contamination; and

(6) underground storage tank was registered with the department on or after May 1, 1981.

(b) Reimbursement pursuant to subsection (a) is subject to the following:

(1) For replacements undertaken after July 1, 2015, the storage tank owner must submit an application for reimbursement on forms supplied by the department and receive approval from the secretary of the proposed secondary containment system plan;

(2) upon approval of such plan, the owner shall obtain and submit to the secretary at least three bids from persons qualified to perform the

secondary containment system installation except that, the secretary may waive this requirement upon a showing that the owner has made a good faith effort, but has not been able to obtain three bids from qualified bidders;

(3) for replacements undertaken before July 1, 2015, the owner must submit an application for reimbursement on forms supplied by the department with proof of costs and receive approval from the secretary; and

(4) the secretary may, in the secretary's discretion, determine those costs which are allowable as secondary containment system installation costs.

(c) Applications for reimbursement must include documentation of the secondary containment system installation and expense. Proof of payment of all expenses for which reimbursement is requested must be provided. The department will review those expenses based on current industry costs and provide reimbursement of reasonable and necessary costs. The department shall reimburse an applicant for the approved cost of the secondary containment system not to exceed \$50,000 per facility.

(d) The secretary may adopt such rules and regulations deemed necessary to carry out the provisions of this section.

(e) The provisions of this section shall be part of and supplemental to the Kansas storage tank act.

Sec. 3. K.S.A. 2014 Supp. 65-34,117 is hereby amended to read as follows: 65-34,117. (a) There is hereby established on and after July 1, 1992, an environmental assurance fee of \$.01 on each gallon of petroleum product, other than aviation fuel, manufactured in or imported into this state. The environmental assurance fee shall be paid by the manufacturer, importer or distributor first selling, offering for sale, using or delivering petroleum products within this state. The environmental assurance fee shall be paid to the department of revenue at the same time and in the same manner as the inspection fee established pursuant to K.S.A. 55-426, and amendments thereto, is paid. The secretary of revenue shall remit the environmental assurance fees paid hereunder to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of ~~either the aboveground fund or~~ *the underground fund, the UST redevelopment fund or the environmental stewardship fund*, as provided by subsection (b). Exchanges of petroleum products on a gallon-for-gallon basis within a terminal and petroleum product which is subsequently exported from this state shall be exempt from this fee.

(b) Moneys collected from the environmental assurance fee imposed by this section shall be credited as follows:

(1) At any time when the unobligated principal balance of the underground fund is equal to \$2,000,000 or less, the moneys shall be credited to the underground fund until the unobligated principal balance of *the* underground fund equals or exceeds \$5,000,000.

(2) At any time when the unobligated principal balance of the aboveground fund is equal to \$500,000 or less and the moneys are not required to be credited to the underground fund under subsection (b)(1), such moneys shall be credited to the aboveground fund until the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000 or until subsection (b)(1) requires moneys to be credited to the underground fund, whichever occurs first. At any time when the unobligated principal balance of the aboveground fund exceeds \$1,500,000, the excess shall be transferred to the underground fund.

(3) At any time when the moneys cease to be credited to *the* aboveground fund before the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000, such moneys shall again be credited to the aboveground fund when the unobligated principal balance of the underground fund equals or exceeds \$5,000,000. Such moneys shall continue to be credited to the aboveground fund until the unobligated principal balance of the aboveground fund equals or exceeds \$1,500,000 or until subsection (b)(1) requires moneys to be credited to the underground fund, whichever occurs first.

(4) At any time when subsections (b)(1), (b)(2) and (b)(3) do not require moneys to be credited to either the underground fund or the aboveground fund, the excess shall be transferred to the UST redevel-

opment fund. If the unobligated principal balance of the UST redevelopment fund is equal to \$2,000,000 or less, the moneys shall be credited to the UST redevelopment fund until the unobligated principal balance of the UST redevelopment fund equals or exceeds \$5,000,000 or until subsections (b)(1), (b)(2) or (b)(3) require money.

(5) *At any time when subsections (b)(1), (b)(2), (b)(3) and (b)(4) do not require moneys to be credited to either the underground fund, the aboveground fund or the UST redevelopment fund, the money shall be credited to the environmental stewardship fund. If the unobligated principal balance of the environmental stewardship fund is equal to \$2,000,000 or less, the money shall be credited to the environmental stewardship fund until the unobligated principal balance of the environmental stewardship fund equals or exceeds \$5,000,000 or until subsections (b)(1), (b)(2), (b)(3) or (b)(4) require money.*

(c) *At any time when subsections (b)(1), (b)(2), (b)(3) and (b)(4) and (b)(5) do not require moneys to be credited to either the underground fund or the aboveground fund, the UST redevelopment fund or the environmental stewardship fund, no environmental assurance fees shall be levied unless and until such time as the unobligated principal balance in the underground fund is less than or equal to \$2,000,000 or the unobligated principal balance in the aboveground fund is less than or equal to \$500,000 or the unobligated principal balance in the UST redevelopment fund or environmental stewardship fund is less than or equal to \$2,000,000, in which case the collection of the environmental assurance fee will resume within 90 days following the end of the month in which such unobligated balance occurs. If no environmental assurance fees are being levied, the director of accounts and reports shall notify the secretary of revenue whenever the unobligated principal balance in the underground fund is \$2,000,000 or the unobligated principal balance in the aboveground fund is \$500,000 or the unobligated principal balance in the UST redevelopment fund or environmental stewardship fund is \$2,000,000, and the secretary of revenue shall then give notice to each person subject to the environmental assurance fee as to the imposition of the fee and the duration thereof.*

The director of accounts and reports shall cause to be published each month, in the second issue of the Kansas register published in such month, the amount of the unobligated principal balances in the underground fund and the aboveground fund on the last day of the preceding calendar month.

(d) Every manufacturer, importer or distributor of any petroleum product liable for the payment of environmental assurance fees as provided in this act, shall report in full and detail before the 25th day of every month to the secretary of revenue, on forms prepared and furnished by the secretary of revenue, and at the time of forwarding such report, shall compute and pay to the secretary of revenue the amount of fees due on all petroleum products subject to such fee during the preceding month.

(e) All fees imposed under the provisions of this section and not paid on or before the 25th day of the month succeeding the calendar month in which such petroleum products were subject to such fee shall be deemed delinquent and shall bear interest at the rate of 1% per month, or fraction thereof, from such due date until paid. In addition thereto, there is hereby imposed upon all amounts of such fees remaining due and unpaid after such due date a penalty in the amount of 5% thereof. Such penalty shall be added to and collected as a part of such fees by the secretary of revenue.

(f) The secretary of revenue is hereby authorized to adopt such rules and regulations as may be necessary to carry out the responsibilities of the secretary of revenue under this section.

Sec. 4. K.S.A. 65-34,119 is hereby amended to read as follows: 65-34,119. (a) Subject to the provisions of subsection (b), an owner or operator is entitled to reimbursement of reasonable costs of corrective action taken in response to a release from a petroleum storage tank if: (1) The owner or operator is not the United States government or any of its agencies; (2) the owner or operator is in substantial compliance, as provided in subsections (e) and (f); (3) the owner or operator undertakes corrective action, either through personnel of the owner or operator or

through response action contractors or subcontractors; and (4) the corrective action is not in response to a release from an aboveground storage tank described in ~~subsection (g) or (h)~~ of K.S.A. 65-34,103(g) or (h), and amendments thereto. If the release is from an underground petroleum storage tank, reimbursement shall be from the underground fund and, if the release is from an aboveground petroleum storage tank, reimbursement shall be from the aboveground ~~fund~~.

(b) Reimbursement pursuant to subsection (a) is subject to the following provisions:

(1) Except as provided in subsections (g) and (h), the owner or operator shall be liable for the first costs of corrective action taken in response to a release from any petroleum storage tank in an amount equal to \$3,000 plus \$500 for each such tank owned or operated by the owner or operator at the site of the release or \$100,000, whichever is less. *The first costs of corrective actions will be waived for any site where petroleum contamination is discovered and reported during the replacement of a single-wall underground storage tank from July 1, 2015, to June 30, 2020, if such single-wall underground storage tank system is replaced with a secondary containment system in accordance with provisions of K.S.A. 65-34,138, and amendments thereto;*

(2) the owner or operator must submit to and receive from the secretary approval of the proposed corrective action plan, together with projected costs of the corrective action;

(3) the secretary may, in the secretary's discretion, determine those costs which are allowable as corrective action costs and those which are attributable or ancillary to removal, replacement or retrofitting of storage tanks;

(4) the owner or operator, or agents thereof, shall keep and preserve suitable records demonstrating compliance with the approved corrective action plan and all invoices and financial records associated with costs for which reimbursement will be requested;

(5) within 30 days of receipt of a complete corrective action plan, or as soon as practicable thereafter, the secretary shall make a determination and provide written notice as to whether the owner or operator responsible for corrective action is eligible or ineligible for reimbursement of corrective action costs and, should the secretary determine the owner or operator is ineligible, the secretary shall include in the written notice an explanation setting forth in detail the reasons for the determination;

(6) the owner or operator shall submit to the secretary a written notice that corrective action has been completed within 30 days of completing corrective action;

(7) no later than 30 days from the submission of the notice as required by subsection (b)(6), the owner or operator must submit an application for reimbursement of corrective action costs in accordance with criteria established by the secretary, and the application for reimbursement must include the total amount of the corrective action costs and the amount of reimbursement sought. In no case shall the total amount of reimbursement exceed the lesser of the actual costs of the corrective action or the amount of the lowest bid submitted pursuant to K.S.A. 65-34,118, and amendments thereto, and approved by the secretary, less the appropriate deductible amount;

(8) interim payments shall be made to an owner or operator in accordance with the plan approved by the secretary pursuant to K.S.A. 65-34,118, and amendments thereto, except that the secretary, for good cause shown, may refuse to make interim payments or withhold the final payment until completion of the corrective action;

(9) the owner or operator shall be fully responsible for removal, replacement or retrofitting of petroleum storage tanks and the cost thereof, and costs attributable or ancillary thereto, shall not be reimbursable from the respective fund;

(10) the owner or operator shall provide evidence satisfactory to the secretary that corrective action costs equal to the appropriate deductible amount have been paid by the owner or operator, and such costs shall not be reimbursed to the owner or operator;

(11) with regard to an underground petroleum storage tank, the owner or operator submits to the secretary proof, satisfactory to the secretary, that: (A) Such owner or operator is unable to satisfy the criteria for self-insurance under the federal act; or (B) such owner or operator is

able to satisfy the criteria for self-insurance under the federal act but the release is from an underground petroleum storage tank not located at a facility engaged in production or refining of petroleum;

(12) with regard to an aboveground petroleum storage tank, the owner or operator submits to the secretary proof, satisfactory to the secretary, that the release is from an aboveground petroleum storage tank not located at a facility engaged in production or refining of petroleum; and

(13) the owner or operator shall be liable for all costs which are paid by or for which the owner or operator is entitled to reimbursement from insurance coverage, warranty coverage or any other source.

(c) For the purpose of determining an owner's or operator's eligibility for reimbursement and the applicable deductible of such owner or operator, the secretary shall consider all owners and operators owned or controlled by the same interests to be a single owner or operator, except that each state agency to which moneys are appropriated shall be considered individually as an owner or operator for such purpose.

(d) Notwithstanding the provisions of ~~subsection (e) of~~ K.S.A. 65-34,118(c), and amendments thereto, should the secretary find that any of the following situations exist, any or all owners or operators shall, in the discretion of the secretary, be liable for 100% of costs associated with corrective action necessary to protect health or the environment, if:

(1) The release was due to willful or wanton actions by the owner or operator;

(2) the owner or operator is in arrears for moneys owed, other than environmental assurance fees, to either the underground fund or the aboveground fund;

(3) the release was from a tank not registered with the department;

(4) the owner or operator fails to comply with any provision of the agreement specified in ~~subsection (e) of~~ K.S.A. 65-34,118(c), and amendments thereto;

(5) the owner or operator moves in any way to obstruct the efforts of the department or its contractors to investigate the presence or effects of a release or to effectuate corrective action;

(6) the owner or operator is not in substantial compliance with any provision of this act or rules and regulations promulgated hereunder; or

(7) the owner or operator allowed, failed to report or failed to take corrective action in response to such release, knowing or having reason to know of such release.

(e) Except as otherwise provided in subsections (f) and (g), an owner or operator is in substantial compliance with this act and the rules and regulations adopted hereunder, if:

(1) Each petroleum storage tank owned or operated by such owner or operator has been registered with the secretary, in accordance with the applicable laws of this state and any rules and regulations adopted thereunder;

(2) the owner or operator has entered into an agreement with the secretary, as provided in ~~subsection (e) of~~ K.S.A. 65-34,118(c), and amendments thereto;

(3) the owner or operator has complied with any applicable financial responsibility requirements imposed by the Kansas storage tank act and the rules and regulations adopted thereunder; and

(4) the owner or operator has otherwise made a good faith effort to comply with the federal act if applicable, this act, any other law of this state regulating petroleum storage tanks and all applicable rules and regulations adopted under any of them.

(f) An owner or operator shall be deemed to be in substantial compliance with this act with respect to the following tanks if such owner or operator has notified the department, on forms provided by the department, of the tank's existence, including age, size, type, location, associated equipment and uses:

(1) Any farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) any aboveground tank of less than 660 gallons capacity; and

(3) any tank used for storing heating oil for consumptive use on the single family residential premise where stored.

(g) (1) Except as provided by subsection (g)(2), a person who owns property where a petroleum storage tank is located shall not be required

to register such tank to be eligible for reimbursement from the respective fund of all costs of any necessary corrective action taken in response to a release from such tank and shall not be subject to the provisions of subsection (b)(1) if such person has at no time placed petroleum in such tank or withdrawn petroleum from such tank and such person:

(A) Submitted a corrective action plan prior to July 1, 1990, with respect to an underground petroleum storage tank, or prior to July 1, 1993, with respect to an aboveground petroleum storage tank;

(B) acquired such tank before December 22, 1988; or

(C) acquired such tank by intestate succession or testamentary disposition.

(2) A person shall not be eligible for reimbursement under subsection (g)(1) unless the owner or operator of the tank is unable or unwilling to perform corrective action or cannot be found, in which case the secretary may recover all reimbursement paid, and any related administrative and legal expenses, from the owner or operator as provided by ~~subsection (b) of K.S.A. 65-34,118(b)~~, and amendments thereto.

(h) An owner or operator shall be entitled, upon written notification to the secretary, to elect between the deductible provided by this section before July 1, 1992, and the deductible provided by this section on and after July 1, 1992, with respect to costs of corrective action taken on or after April 1, 1990, if such owner or operator has applied before July 1, 1992, for reimbursement of such costs from the respective fund. If an owner or operator or former owner or operator has paid a deductible that is greater than the deductible provided by this section on and after July 1, 1992, such owner or operator or former owner or operator may apply to the secretary for a refund of the difference in such deductibles. If the owner or operator or former owner or operator has died or no longer exists, no such refund shall be paid.

Sec. 5. K.S.A. 2014 Supp. 65-34,131 is hereby amended to read as follows: 65-34,131. (a) There is hereby established as a segregated fund in the state treasury the Kansas essential fuels supply trust fund. The Kansas essential fuels supply trust fund is hereby redesignated as the UST redevelopment fund. The UST redevelopment fund shall be administered by the secretary. Revenue from the following sources shall be deposited in the state treasury and credited to the UST redevelopment fund:

(1) The applicable proceeds of the environmental assurance fee imposed by K.S.A. 65-34,117, and amendments thereto; and

(2) interest attributable to investment of moneys in the UST redevelopment fund.

(b) The funds credited to the UST redevelopment fund may be expended to:

(1) Reimburse an eligible property owner in accordance with the provisions of K.S.A. 2014 Supp. 65-34,132, and amendments thereto, for allowable expenses for permanent closure of an abandoned underground storage tank;

(2) permit the secretary to conduct activities to permanently close an abandoned underground storage tank, if the underground storage tank owner or operator has not been identified or is unable or unwilling to perform permanent closure of the underground storage tank; ~~or~~

(3) *reimburse an eligible owner of an underground storage tank in accordance with the provisions of section 2, and amendments thereto, for allowable expenses for replacement and installation of all components of a single-wall underground storage tank system with a secondary containment system that complies with K.S.A. 65-34,138, and amendments thereto; or*

~~(3)~~(4) pay the administrative technical and legal costs incurred by the secretary in carrying out the provisions of *this section and* K.S.A. 2014 Supp. ~~65-34,131 and~~ 65-34,132, and amendments thereto, including the cost of any additional employees or increased general operating costs of the department attributable thereto, which costs shall not be payable from any moneys other than those credited to the UST redevelopment fund.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the above UST redevelopment fund interest earnings based on:

(1) The average daily balance of moneys in the UST redevelopment fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(d) All expenditures from the above UST redevelopment fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

(e) This section shall be part of and supplemental to the Kansas storage tank act.

Sec. 6. K.S.A. 65-34,119 and K.S.A. 2014 Supp. 65-34,117 and 65-34,131 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

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\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*