

HOUSE BILL No. 2192

By Committee on Energy and Environment

1-29

1 AN ACT concerning the secretary of health and environment; relating to
2 solid and hazardous waste, Kansas storage tank act; creating the
3 environmental stewardship fund; amending K.S.A. 65-34,119 and
4 K.S.A. 2014 Supp. 65-34,117 and 65-34,131 and repealing the existing
5 sections.
6

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

8 New Section 1. (a) There is hereby created in the state treasury the
9 environmental stewardship fund. All moneys received pursuant to 65-
10 34,117(b)(5) shall be deposited into the environmental stewardship fund.

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

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

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

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

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

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

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

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

34 New Sec. 2. (a) The secretary may provide for the reimbursement to
35 eligible owners of underground storage tanks in accordance with the
36 provisions of this section up to \$3,000,000 per state fiscal year and subject

1 to the availability of moneys in the UST redevelopment fund. An owner of
2 an underground storage tank shall be eligible for reimbursement under this
3 section if the:

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

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

10 (3) owner replaces all components of a single-wall storage tank
11 system with a secondary containment system that complies with K.S.A.
12 65-34,138, and amendments thereto, after August 8, 2005, and before June
13 30, 2020;

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

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

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

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

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

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

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

32 (2) upon approval of such plan, the owner shall obtain and submit to
33 the secretary at least three bids from persons qualified to perform the
34 secondary containment system installation except that, the secretary may
35 waive this requirement upon a showing that the owner has made a good
36 faith effort, but has not been able to obtain three bids from qualified
37 bidders;

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

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

1 costs.

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

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

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

13 Sec. 3. K.S.A. 2014 Supp. 65-34,117 is hereby amended to read as
14 follows: 65-34,117. (a) There is hereby established on and after July 1,
15 1992, an environmental assurance fee of \$.01 on each gallon of petroleum
16 product, other than aviation fuel, manufactured in or imported into this
17 state. The environmental assurance fee shall be paid by the manufacturer,
18 importer or distributor first selling, offering for sale, using or delivering
19 petroleum products within this state. The environmental assurance fee
20 shall be paid to the department of revenue at the same time and in the same
21 manner as the inspection fee established pursuant to K.S.A. 55-426, and
22 amendments thereto, is paid. The secretary of revenue shall remit the
23 environmental assurance fees paid hereunder to the state treasurer in
24 accordance with the provisions of K.S.A. 75-4215, and amendments
25 thereto. Upon receipt of each such remittance, the state treasurer shall
26 deposit the entire amount in the state treasury to the credit of ~~either~~ the
27 aboveground fund ~~or~~, *the underground fund, the UST redevelopment fund*
28 *or the environmental stewardship fund*, as provided by subsection (b).
29 Exchanges of petroleum products on a gallon-for-gallon basis within a
30 terminal and petroleum product which is subsequently exported from this
31 state shall be exempt from this fee.

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

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

38 (2) At any time when the unobligated principal balance of the
39 aboveground fund is equal to \$500,000 or less and the moneys are not
40 required to be credited to the underground fund under subsection (b)(1),
41 such moneys shall be credited to the aboveground fund until the
42 unobligated principal balance of the aboveground fund equals or exceeds
43 \$1,500,000 or until subsection (b)(1) requires moneys to be credited to the

1 underground fund, whichever occurs first. At any time when the
2 unobligated principal balance of the aboveground fund exceeds
3 \$1,500,000, the excess shall be transferred to the underground fund.

4 (3) At any time when the moneys cease to be credited to *the*
5 aboveground fund before the unobligated principal balance of the
6 aboveground fund equals or exceeds \$1,500,000, such moneys shall again
7 be credited to the aboveground fund when the unobligated principal
8 balance of the underground fund equals or exceeds \$5,000,000. Such
9 moneys shall continue to be credited to the aboveground fund until the
10 unobligated principal balance of the aboveground fund equals or exceeds
11 \$1,500,000 or until subsection (b)(1) requires moneys to be credited to the
12 underground fund, whichever occurs first.

13 (4) At any time when subsections (b)(1), (b)(2) and (b)(3) do not
14 require moneys to be credited to either the underground fund or the
15 aboveground fund, the excess shall be transferred to the UST
16 redevelopment fund. If the unobligated principal balance of the UST
17 redevelopment fund is equal to \$2,000,000 or less, the moneys shall be
18 credited to the UST redevelopment fund until the unobligated principal
19 balance of the UST redevelopment fund equals or exceeds \$5,000,000 or
20 until subsections (b)(1), (b)(2) or (b)(3) require money.

21 (5) *At any time when subsections (b)(1), (b)(2), (b)(3) and (b)(4) do*
22 *not require moneys to be credited to either the underground fund, the*
23 *aboveground fund or the UST redevelopment fund, the money shall be*
24 *credited to the environmental stewardship fund. If the unobligated*
25 *principal balance of the environmental stewardship fund is equal to*
26 *\$2,000,000 or less, the money shall be credited to the environmental*
27 *stewardship fund until the unobligated principal balance of the*
28 *environmental stewardship fund equals or exceeds \$5,000,000 or until*
29 *subsections (b)(1), (b)(2), (b)(3) or (b)(4) require money.*

30 (c) At any time when subsections (b)(1), (b)(2), (b)(3)~~and~~, (b)(4)
31 *and (b)(5) do not require moneys to be credited to either the underground*
32 *fund*~~or~~, *the aboveground fund, the UST redevelopment fund or the*
33 *environmental stewardship fund, no environmental assurance fees shall be*
34 *levied unless and until such time as the unobligated principal balance in*
35 *the underground fund is less than or equal to \$2,000,000 or the*
36 *unobligated principal balance in the aboveground fund is less than or equal*
37 *to \$500,000 or the unobligated principal balance in the UST*
38 *redevelopment fund or environmental stewardship fund is less than or*
39 *equal to \$2,000,000, in which case the collection of the environmental*
40 *assurance fee will resume within 90 days following the end of the month*
41 *in which such unobligated balance occurs. If no environmental assurance*
42 *fees are being levied, the director of accounts and reports shall notify the*
43 *secretary of revenue whenever the unobligated principal balance in the*

1 underground fund is \$2,000,000 or the unobligated principal balance in the
2 aboveground fund is \$500,000 *or the unobligated principal balance in the*
3 *UST redevelopment fund or environmental stewardship fund is \$2,000,000,*
4 and the secretary of revenue shall then give notice to each person subject
5 to the environmental assurance fee as to the imposition of the fee and the
6 duration thereof.

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

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

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

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

29 Sec. 4. K.S.A. 65-34,119 is hereby amended to read as follows: 65-
30 34,119. (a) Subject to the provisions of subsection (b), an owner or
31 operator is entitled to reimbursement of reasonable costs of corrective
32 action taken in response to a release from a petroleum storage tank if: (1)
33 The owner or operator is not the United States government or any of its
34 agencies; (2) the owner or operator is in substantial compliance, as
35 provided in subsections (e) and (f); (3) the owner or operator undertakes
36 corrective action, either through personnel of the owner or operator or
37 through response action contractors or subcontractors; and (4) the
38 corrective action is not in response to a release from an aboveground
39 storage tank described in ~~subsection (g) or (h)~~ of K.S.A. 65-34,103(g) *or*
40 *(h)*, and amendments thereto. If the release is from an underground
41 petroleum storage tank, reimbursement shall be from the underground
42 fund and, if the release is from an aboveground petroleum storage tank,
43 reimbursement shall be from the aboveground ~~fund~~ *fund*.

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

3 (1) Except as provided in subsections (g) and (h), the owner or
4 operator shall be liable for the first costs of corrective action taken in
5 response to a release from any petroleum storage tank in an amount equal
6 to \$3,000 plus \$500 for each such tank owned or operated by the owner or
7 operator at the site of the release or \$100,000, whichever is less. *The first*
8 *costs of corrective actions will be waived for any site where petroleum*
9 *contamination is discovered and reported during the replacement of a*
10 *single-wall underground storage tank from July 1, 2015, to June 30, 2020,*
11 *if such single-wall underground storage tank system is replaced with a*
12 *secondary containment system in accordance with provisions of K.S.A. 65-*
13 *34,138, and amendments thereto;*

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

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

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

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

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

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

1 deductible amount;

2 (8) interim payments shall be made to an owner or operator in
3 accordance with the plan approved by the secretary pursuant to K.S.A. 65-
4 34,118, and amendments thereto, except that the secretary, for good cause
5 shown, may refuse to make interim payments or withhold the final
6 payment until completion of the corrective action;

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

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

15 (11) with regard to an underground petroleum storage tank, the owner
16 or operator submits to the secretary proof, satisfactory to the secretary,
17 that: (A) such owner or operator is unable to satisfy the criteria for self-
18 insurance under the federal act; or (B) such owner or operator is able to
19 satisfy the criteria for self-insurance under the federal act but the release is
20 from an underground petroleum storage tank not located at a facility
21 engaged in production or refining of petroleum;

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

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

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

35 (d) Notwithstanding the provisions of ~~subsection (c)~~ of K.S.A. 65-
36 34,118(c), and amendments thereto, should the secretary find that any of
37 the following situations exist, any or all owners or operators shall, in the
38 discretion of the secretary, be liable for 100% of costs associated with
39 corrective action necessary to protect health or the environment, if:

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

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

1 aboveground fund;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41 (g) (1) Except as provided by subsection (g)(2), a person who owns
42 property where a petroleum storage tank is located shall not be required to
43 register such tank to be eligible for reimbursement from the respective

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

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

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

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

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

17 (h) An owner or operator shall be entitled, upon written notification
18 to the secretary, to elect between the deductible provided by this section
19 before July 1, 1992, and the deductible provided by this section on and
20 after July 1, 1992, with respect to costs of corrective action taken on or
21 after April 1, 1990, if such owner or operator has applied before July 1,
22 1992, for reimbursement of such costs from the respective fund. If an
23 owner or operator or former owner or operator has paid a deductible that is
24 greater than the deductible provided by this section on and after July 1,
25 1992, such owner or operator or former owner or operator may apply to
26 the secretary for a refund of the difference in such deductibles. If the
27 owner or operator or former owner or operator has died or no longer
28 exists, no such refund shall be paid.

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

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

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

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

42 (1) Reimburse an eligible property owner in accordance with the
43 provisions of K.S.A. 2014 Supp. 65-34,132, and amendments thereto, for

1 allowable expenses for permanent closure of an abandoned underground
2 storage tank;

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

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

13 ~~(3) (4)~~ pay the administrative technical and legal costs incurred by the
14 secretary in carrying out the provisions of *this section and* K.S.A. 2014
15 Supp. ~~65-34,131 and~~ 65-34,132, and amendments thereto, including the
16 cost of any additional employees or increased general operating costs of
17 the department attributable thereto, which costs shall not be payable from
18 any moneys other than those credited to the UST redevelopment fund.

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

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

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

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

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

32 Sec. 6. K.S.A. 65-34,119 and K.S.A. 2014 Supp. 65-34,117 and 65-
33 34,131 are hereby repealed.

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