

SENATE BILL No. 240

By Senator Corbin

2-6

AN ACT concerning solid waste; creating the municipal solid waste landfill perpetual care trust fund; amending K.S.A. 2000 Supp. 65-3406 and repealing the existing section.

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

New Section 1. (a) There is hereby created in the state treasury the municipal solid waste landfill perpetual care trust fund.

(b) The secretary shall remit at least monthly to the state treasurer all moneys collected or received by the secretary from the following sources:

- (1) Landfill perpetual care fees paid pursuant to subsection (e);
- (2) landfill transfer fees paid pursuant to subsection (f);
- (3) gifts, grants, reimbursements or appropriations intended to be used for the purposes of the fund, but excluding federal grants and cooperative agreements; and
- (4) any other moneys provided by law.

Upon receipt thereof, the state treasurer shall deposit in the state treasury any amount remitted pursuant to this subsection and shall credit the entire amount to the municipal solid waste landfill perpetual care trust fund.

(c) Moneys in the municipal solid waste landfill perpetual care fund may be expended for closure, post-closure care and the remediation of immanent or actual releases to the environment at privately-owned municipal solid waste landfills when:

(1) A private owner is unwilling or unable to carry out necessary work and standard financial assurance mechanisms provided by the owner pursuant to subsection (h) of K.S.A. 65-3407, and amendments thereto, fail or provide inadequate resources to cover the costs of actions necessary to protect public health and safety or the environment; or

(2) public health and safety or environmental risks or damages occur after the private owner has been released from post-closure responsibility by the secretary.

(d) The secretary may utilize moneys from the fund for the following specific purposes at privately-owned municipal solid waste landfills:

- (1) Maintenance of closed landfills including, but not limited to, cap

1 repair, monitoring well repair or replacement, drainage system repairs,
2 vegetative cover maintenance or repair, security maintenance and repairs,
3 and leachate or gas monitoring system maintenance and repairs;

4 (2) the design and installation and operation of new or enhanced
5 monitoring systems for groundwater, surface water and landfill gas;

6 (3) routine long-term groundwater and gas monitoring in accordance
7 with post-closure plans approved by the secretary including field sampling
8 and laboratory analytical work;

9 (4) the design and implementation of corrective actions to contain or
10 clean-up contaminant releases from closed landfills;

11 (5) public education and communications regarding landfill condi-
12 tions, impacts and state actions; and

13 (6) administrative, technical and legal expenses incurred by the sec-
14 retary to carry out the provisions of this section.

15 (e) There is hereby imposed a state municipal solid waste landfill
16 perpetual care fee on every ton or equivalent volume of solid waste dis-
17 posed of in any privately-owned municipal solid waste landfill in this state.
18 The amount of such fee shall range from \$.50 to \$2.00 per ton based
19 upon specific landfill conditions and characteristics including, but not
20 limited to, local geology, design and construction methods, existing
21 groundwater contamination and compliance history. The secretary shall
22 adopt rules and regulations establishing a fee schedule for all operating
23 privately municipal solid waste landfills. The secretary shall classify every
24 privately-owned municipal solid waste landfill. The secretary shall classify
25 every private municipal solid waste landfill annually with respect to the
26 fee schedule and notify all private landfill owners of their classification
27 and fee rate on or before April 1 of every year. Such fee rates shall become
28 applicable on July 1.

29 (f) Annually, the secretary shall develop a cost estimate of the state-
30 wide liability for closure, post-closure and potential corrective measures
31 at privately-owned municipal solid waste landfills. This estimate shall be
32 used to establish a cap for the municipal solid waste perpetual care trust
33 fund. The cap shall be set at 25% of estimated statewide liability or the
34 sum of the calculated liability for the two landfills with the greatest esti-
35 mated liability, whichever is greatest. The secretary shall notify all pri-
36 vately-owned municipal solid waste landfill owners whenever the cap has
37 been reached and fee payments may be temporarily discontinued. When
38 fees are to be re-instituted because the liability estimate increases or
39 because money is expended from the fund, the secretary shall give private
40 landfill owners a minimum of six-months notice before the fee payments
41 resume.

42 (g) When a publicly-owned municipal solid waste landfill is purchased
43 by a private owner, that landfill immediately becomes subject to the pro-

1 visions of subsection (e). The purchaser shall pay a one-time lump sum
2 landfill transfer fee to qualify the site for eligibility under the privately-
3 owned municipal solid waste landfill perpetual care program. The sec-
4 retary shall adopt rules and regulations which establish transfer fees based
5 upon the amount of waste in the landfill and other facility characteristics
6 and conditions as listed in subsection (e). The secretary may allow this
7 transfer fee to be paid over a period of time not to exceed five years or
8 the estimated operating life of the landfill, whichever is less.

9 (h) When moneys from the municipal solid waste landfill perpetual
10 care trust fund are used to perform work at any closed privately-owned
11 municipal solid waste landfills because the financial assurance provided
12 by the private company failed or did not adequately meet all maintenance
13 or corrective action needs, and the private company was unwilling to
14 perform such action, the secretary may initiate cost recovery actions from
15 such private landfill owners, assigns and successors, and providers of a
16 failed financial assurance instrument. If such private landfill owners fails
17 to comply with the secretary's order to repay funds, the secretary may
18 initiate a civil action in district court to recover any expenditures from
19 the fund and administrative and legal expenses incurred to pursue such
20 action. Recovered moneys shall be remitted to the state treasurer, who
21 shall deposit the entire amount in the state treasury and credit it to the
22 municipal solid waste landfill perpetual care trust fund.

23 (i) The secretary shall prepare and deliver to the legislature on or
24 before the first day of each regular legislative session, a report which
25 summarizes all payments to the municipal solid waste landfill perpetual
26 care trust fund, expenditures from the fund, fund balance and the de-
27 partment's estimate of long-term private municipal solid waste landfill
28 liability.

29 (j) Expenditures from the municipal solid waste landfill perpetual
30 care trust fund shall be made in accordance with appropriations acts upon
31 warrants of the director of accounts and reports issued pursuant to vouch-
32 ers approved by the secretary or a person designated by the secretary.

33 (k) On or before the 10th day of the month, the director of accounts
34 and reports shall transfer from the state general fund to the municipal
35 solid waste landfill perpetual care trust fund interest earnings based on:

36 (1) The average daily balance of moneys in the municipal solid waste
37 landfill perpetual care trust fund for the preceding month; and

38 (2) the net earning rate of the pooled money investment portfolio for
39 the preceding month.

40 (l) The municipal solid waste landfill perpetual care trust fund shall
41 be used for the purposes set forth in this act and for no other govern-
42 mental purposes. It is the intent of the legislature that the fund shall
43 remain intact and inviolate for the purposes set forth in the act, and

1 moneys in the fund shall not be subject to the provisions of K.S.A. 75-
2 3725a and 75-3726a, and amendments thereto.

3 (m) As used in this section, “secretary” means the secretary of health
4 and environment.

5 Sec. 2. K.S.A. 2000 Supp. 65-3406 is hereby amended to read as
6 follows: 65-3406. (a) The secretary is authorized and directed to:

7 (1) Adopt such rules and regulations, standards and procedures rel-
8 ative to solid waste management as necessary to protect the public health
9 and environment, prevent public nuisances and enable the secretary to
10 carry out the purposes and provisions of this act.

11 (2) Report to the legislature on further assistance needed to admin-
12 ister the solid waste management program.

13 (3) Administer the solid waste management program pursuant to pro-
14 visions of this act.

15 (4) Cooperate with appropriate federal, state, interstate and local
16 units of government and with appropriate private organizations in carry-
17 ing out duties under this act.

18 (5) Develop a statewide solid waste management plan.

19 (6) Provide technical assistance, including the training of personnel
20 to cities, counties and other political subdivisions.

21 (7) Initiate, conduct and support research, demonstration projects
22 and investigations and coordinate all state agency research programs with
23 applicable federal programs pertaining to solid waste management
24 systems.

25 (8) Establish policies for effective solid waste management systems.

26 (9) Assist counties and groups of counties to establish and implement
27 solid waste planning and management.

28 (10) Authorize issuance of such permits and orders and conduct such
29 inspections as may be necessary to implement the provisions of this act
30 and the rules and regulations and standards adopted pursuant to this act.

31 (11) Conduct and contract for research and investigations in the over-
32 all area of solid waste storage, collection, transportation, processing, treat-
33 ment, recovery and disposal including, but not limited to, new and novel
34 procedures.

35 (12) Adopt rules and regulations for permitting of all solid waste dis-
36 posal areas, including those that are privately owned.

37 (13) Adopt rules and regulations establishing criteria for the location
38 of processing facilities and disposal areas for solid wastes.

39 (14) Adopt rules and regulations establishing appropriate measures
40 for monitoring solid waste disposal areas and processing facilities, both
41 during operation and after closure.

42 (15) Adopt rules and regulations requiring that, for such period of
43 time as the secretary shall specify, any assignment, sale, conveyance or

1 transfer of all or any part of the property upon which a permitted disposal
2 area for solid waste is or has been located shall be subject to such terms
3 and conditions as to the use of such property as the secretary shall specify
4 to protect human health and the environment.

5 (16) Adopt suitable measures, including rules and regulations if ap-
6 propriate, to encourage recovery and recycling of solid waste for reuse
7 whenever feasible.

8 (17) Adopt rules and regulations establishing standards for trans-
9 porters of solid waste.

10 (18) Adopt rules and regulations establishing minimum standards for
11 closing, termination, and long-term care of sites for the land disposal of
12 solid waste. In this subsection, "site" refers to a site for the land disposal
13 of solid waste which has a permit issued under K.S.A. 65-3407 and
14 amendments thereto. The owner of a site shall be responsible for the
15 long-term care of the site for *a minimum of 30 years* after the closing of
16 the site, ~~except the secretary may extend the long-term care responsibility~~
17 ~~of a particular site or sites as~~ *For municipal solid waste landfills only, the*
18 *secretary deems shall evaluate the need to extend the post-closure period*
19 *every five years following the date of closure. Based upon site specific*
20 *conditions including, but not limited to, local geology, design and con-*
21 *struction methods, operating practices, actual or potential contaminant*
22 *releases, and future maintenance requirements, the secretary may estab-*
23 *lish a new post-closure period not to exceed 30 years beyond the date of*
24 *the evaluation. For any solid waste disposal area, the secretary may eval-*
25 *uate the adequacy of the post-closure period at any time based upon*
26 *identified contaminant releases or structural failures of landfill systems to*
27 *promptly extend post-closure periods as necessary to protect the public*
28 *health and safety or the environment. Any person acquiring rights of*
29 *ownership, possession or operation in a permitted site or facility for the*
30 *land disposal of solid waste at any time after the site has begun to accept*
31 *waste and prior to closure shall be subject to all requirements of the*
32 *permit for the site or facility, including the requirements relating to long-*
33 *term care of the site or facility.*

34 (19) Enter into cooperative agreements with the secretary of com-
35 merce for the development and implementation of statewide market de-
36 velopment for recyclable materials.

37 (20) Adopt rules and regulations for the management of nonhazar-
38 dous special wastes.

39 (b) In adopting rules and regulations, the secretary shall allow the
40 exemption contained in subsection (f)(1) of 40 CFR 258.1 (October 9,
41 1991), as amended and in effect on the effective date of this act.

42 (c) (1) Any rules and regulations adopted by the secretary which es-
43 tablish standards for solid waste processing facilities or solid waste dis-

1 posal areas that are more stringent than the standards required by federal
2 law or applicable federal regulations on such date shall not become ef-
3 fective until 45 days after the beginning of the next ensuing session of
4 the legislature, which date shall be specifically provided in such rule and
5 regulation.

6 (2) The provisions of subsection (c)(1) shall not apply to rules and
7 regulations adopted before January 1, 1995, which establish standards for
8 location, design and operation of solid waste processing facilities and dis-
9 posal areas.

10 (d) Any solid waste disposal area which qualifies for the exemption
11 provided for by subsection (b) and which successfully demonstrates that
12 naturally occurring geological conditions provide sufficient protection
13 against groundwater contamination shall not be required to construct a
14 landfill liner or leachate collection system. The secretary shall adopt rules
15 and regulations which establish criteria for performing this demonstration
16 and standards for liner and leachate collection systems for exempt landfills
17 which fail the demonstration. Solid waste disposal areas which qualify for
18 the exemption provided for by subsection (b) may be designed with
19 trenches or units which have straight vertical walls. All solid waste disposal
20 areas which qualify for the exemption provided for by subsection (b) shall
21 be required to comply with all applicable rules and regulations adopted
22 by the secretary and approved by the U.S. environmental protection
23 agency, including location restrictions, operating requirements and clo-
24 sure standards for municipal solid waste landfills. Operating requirements
25 include, but are not limited to, hazardous waste screening, daily cover,
26 intermediate cover, disease vector control, gas monitoring and manage-
27 ment, air emissions, survey controls, compaction, recordkeeping and
28 groundwater monitoring.

29 The identification of groundwater contamination caused by disposal
30 activities at a solid waste disposal area which has qualified for the exemp-
31 tion provided for by subsection (b) shall result in:

32 (1) The loss of such exemption; and

33 (2) the application of all corrective action and design requirements
34 specified in federal laws and regulations, or in equivalent rules and reg-
35 ulations adopted by the secretary and approved by the U.S. environmental
36 protection agency, to such disposal area.

37 Sec. 3. K.S.A. 2000 Supp. 65-3406 is hereby repealed.

38 Sec. 4. This act shall take effect and be in force from and after its
39 publication in the statute book.

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