

Approved: March 31, 2009

Date

MINUTES OF THE HOUSE AGRICULTURE AND NATURAL RESOURCES BUDGET  
COMMITTEE

The meeting was called to order by Chairman John Faber at 1:30 p.m. on March 18, 2009, in Room 431-N of the Capitol.

All members were present.

Committee staff present:

Kristen Kellems, Office of the Revisor of Statutes  
Heather O'Hara, Legislative Research  
Diane Brian, Committee Assistant

Conferees appearing before the Committee:

John W. Mitchell, Director, KDHE Division of Environment  
Pat Kuester, Chief Fiscal Officer, KDHE

Others attending: See attached list.

Attachments:

Attachment 1 Overview of **HB 2383**  
Attachment 2 Fiscal Notes  
Attachment 3 Testimony provided by John Mitchell, Director, KDHE Division of Environment

**HB 2383 - Transferring moneys from certain fee funds to the state general fund.**

Kristie Kellems, Office of the Revisor of Statutes, explained sections of **HB 2383** (Attachment 1) which will require that the fines and penalties collected pursuant to several programs run by the Kansas Health and Environment be deposited into the state general funds.

Pat Kuester, Chief Fiscal Officer, KDHE, reviewed the fiscal note (Attachment 2). She stated that the fiscal note submitted to the committee was in error. There are no fees deposited in the Solid & Hazardous Waste Fee Fund, as these fees are deposited in the Water Plan Fund and the monies shown in the Water Quality and Water Supply funds go to the Water Plan Fund.

John Mitchell, Director, KDHE Division of Environment, presented neutral testimony on **HB 2383** (Attachment 3). Director John Mitchell, basically supported the deposit of recovered civil penalties into the state general fund, however, he had concerns regarding the wording of the bill and sought clarification.

Kristen Kellems, Office of the Revisors, indicated that her interpretation of the bill was that fines and penalties would be deposited into the state general fund.

The hearing was closed on **HB 2383**.

Discussion by the committee on **HB 2383**.

- Reasoning for transferring fees from the programs into the state general fund.
- Clarification of fines or civil penalties (actual moneys paid)
- Change in wording of bill, to make clear the actual intent, which is to transfer moneys received from fines and civil penalties to the state general fund.

Representative Faber, asked Kristen Kellems, to develop a balloon amendment to clarify the legislative intent.

The next meeting is scheduled for March 19, 2009.

The meeting was adjourned at 02:05 p.m.

HOUSE AGRICULTURE AND NATURAL RESOURCES BUDGET COMMITTEE  
GUEST LIST

DATE: March 18, 2009

NAME	REPRESENTING
Aaron Dunkel	KDHE
Pat Weston	KDHE
Shari Just Albrecht	KDHE
Tom Palao	PMCA OF KS
John Mitchell	KDHE

**MARY ANN TORRENCE**, ATTORNEY  
REVISOR OF STATUTES  
**JAMES A. WILSON III**, ATTORNEY  
FIRST ASSISTANT REVISOR  
**GORDON L. SELF**, ATTORNEY  
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES  
KANSAS LEGISLATURE

Legal Consultation—  
Legislative Committees and Legislators  
Legislative Bill Drafting  
Legislative Committee Staff  
Secretary—  
Legislative Coordinating Council  
Kansas Commission on  
Interstate Cooperation  
Kansas Statutes Annotated  
Editing and Publication  
Legislative Information System

TO: House Committee on Agriculture and Natural Resources Budget  
FROM: Kristen Kellems, Assistant Revisor of Statutes  
RE: House Bill No. 2383  
DATE: March 18, 2009

House Bill No. 2383 was introduced to the Committee on Appropriations by Representative Powell. House Bill No. 2383 requires that fines and penalties collected pursuant to several programs run by the Kansas Health and Environment be deposited into the state general fund. The major statutory changes are as follows:

- Section one amends K.S.A. 65-3024 by requiring that certain moneys received for fines and penalties for violations of the Kansas air quality act be deposited into the state general fund instead of the air quality fee fund.
- Section two amends K.S.A. 2008 Supp. 65-3424g by requiring that certain moneys received for fines and penalties for violations of the waste tire management act be deposited into the state general fund instead of the waste tire management fund.
- Section three amends K.S.A. 2008 Supp. 65-34,114 by requiring that certain moneys received for fines and penalties for violations of permitting requirements under the Kansas storage tank act be deposited into the state general fund instead of the underground petroleum storage tank release trust fund.
- Section four amends K.S.A. 65-34,146 by requiring that certain moneys received for fines and penalties imposed under the Kansas drycleaner environmental response act be deposited into the state general fund instead of the drycleaning facility release trust fund.
- Section five amends K.S.A. 2008 Supp. 82a-952 by requiring that all moneys collected from penalties for violations of certain statutes relating to water quality and waste disposal be deposited into the state general fund instead of the water plan fund.

HOUSE AG & NATURAL RESOURCES BUDGET  
DATE: 3/18/09  
ATTACHMENT: \

March 18, 2009

The Honorable Larry Powell, Chairperson  
House Committee on Agriculture and Natural Resources  
Statehouse, Room 142-W  
Topeka, Kansas 66612

Dear Representative Powell:

SUBJECT: Fiscal Note for HB 2383 by House Committee on Appropriations

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2383 is respectfully submitted to your committee.

HB 2383 would amend current law regarding the disposition of fee revenue for fines and penalties assessed by the Kansas Department of Health and Environment (KDHE). The bill would require that all revenue from fines and penalties be deposited in the State General Fund rather than the following KDHE fee funds: the Air Quality Fee Fund, the Waste Tire Management Fund, the Solid Waste Management Fund, the Underground Petroleum Storage Tank Release Trust Fund, and the Drycleaning Facility Release Trust Fund. In addition, the bill would require that fines and penalties assessed through enforcement actions associated with violations of state water quality and public water supply laws be deposited in the State General Fund instead of the State Water Plan Fund.

The Kansas Department of Health and Environment indicates that the following amounts assessed for fines and penalties were deposited in agency fee funds in FY 2008:

Air Quality Fee Fund	\$474,584
Solid & Hazardous Waste Fee Funds	173,755
Underground Storage Tank Trust Fund	9,000
Drycleaning Facility Trust Fund	2,700
Water Quality and Water Supply funds	<u>27,000</u>
Total	\$687,039

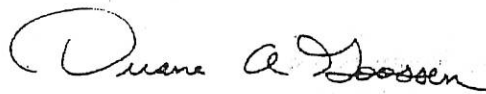
Based on this information, the Division of the Budget estimates that approximately \$687,039 would be deposited in the State General Fund rather than the fee funds. The following information should be noted: the exact amount for solid and hazardous waste enforcement

HOUSE AG & NATURAL RESOURCES BUDGET  
DATE: 3/18/09  
ATTACHMENT: 2

The Honorable Larry Powell, Chairperson  
March 18, 2009  
Page 2—2383

actions is incomplete for FY 2008 because several enforcement actions are still under negotiation. KDHE does not have an estimate for fines related to violations of the required \$0.25 per tire excise tax payments on waste tires that would be reported to the Department of Revenue and deposited to the Waste Tire Management Fund. There were no penalty-related deposits in the fund in FY 2008. It is estimated that revenue to the State Water Plan Fund would be reduced by \$27,000.

Sincerely,



Duane A. Goossen  
Director of the Budget

cc: Pat Kuester, KDHE  
Kim Christiansen, Water Office



*Kathleen Sebelius, Governor  
Roderick L. Bremby, Secretary*

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

[www.kdheks.gov](http://www.kdheks.gov)

## **Testimony on House Bill 2383**

**Presented to  
House Agriculture and Natural Resources Budget Subcommittee  
by  
John W. Mitchell  
Director, KDHE Division of Environment**

**March 18, 2009**

Chairman Faber, members of the Subcommittee, I am here to provide neutral testimony on HB 2383, which would redirect civil penalties recovered for violations of environmental laws from funding sources used to operate the programs to the state general fund.

Generally speaking, the Kansas Department of Health and Environment (KDHE) supports the deposit of recovered civil penalties into the state general fund. However, with respect to the civil penalties identified in HB 2383, the department would note the following concerns:

With the proposed deletion of the words "civil penalties" and the retention of the phrase "moneys paid under any agreement, stipulation or settlement" from the statutes listed in the bill, we interpret the proposed amendments to mean that the penalties the department collects in settlement of enforcement actions may be deposited in the appropriate program fee fund rather than in the state general fund because the amount collected is designated in the settlement agreement.

With respect to the Bureau of Air and Radiation and its participation with the Environmental Protection Agency in joint enforcement actions that may involve an owner or operator with environmental violations at several facilities in different states, the department believes that HB 2383 would allow it to deposit the penalties collected in such settlement agreements in the air quality fee fund. If this is not a correct interpretation of the intended effect of HB 2383, then the Bureau of Air and Radiation will lose the benefit of some rather large settlements that it uses to manage the air quality program. The bureau would likely be placed in the position of having to raise emission fees within the 2010 fiscal year in order to fully fund the air quality program.

Similarly, for supplemental enforcement projects, which are settlement agreements negotiated with violators responding to an enforcement order, the department interprets any payments made, for example to the Green Schools initiative of the Kansas Association for Conservation and Environmental Education, may be directed to the designated enforcement project rather than to the state general fund.

The department also notes that it has authority to assess civil penalties for the violation of subsurface hydrocarbon storage act violations in K.S.A. 55-1,119 but the statute provides no direction as to the deposit of the civil penalties collected thereunder.

I appreciate the opportunity to provide these comments and will stand for questions at the appropriate time.

HOUSE AG & NATURAL RESOURCES BUDGET  
DATE: 3/18/09  
ATTACHMENT: 3