

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 19, 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:

Others attending: See attached list.

Attachments:

Attachment 1 Balloon amendment for HB 2383

Chairman Faber requested explanation of the balloon amendment on HB 2383 from Revisor Kellems (Attachment 1).

Revisor Kellems went over the balloon amendment with the Committee. The main purpose of the balloon was to clarify the penalties and fees which would be transferred to the State General Fund, and to eliminate Section 6 which would have put the Water Fund fees into the State General Fund.

In response to Committee questions, Aaron Dunkel, Deputy Secretary of KDHE, stated that the amounts received from the EPA for fines and/or penalties are generally a reimbursement for the additional staff time required for testing, interviews and reports. The exact amount was unknown at this time.

Representative Powell, moved to pass the balloon amendment on HB 2383. The motion was seconded by Representative Carlin. Motion carried.

Representative Powell, moved to pass HB 2383 favorably as amended. The motion was seconded by Representative Lukert. Motion carried.

The meeting was adjourned at 01:45 p.m. The next meeting will be "on call of the Chair".

HOUSE AGRICULTURE AND NATURAL RESOURCES BUDGET COMMITTEE
GUEST LIST

DATE: March 19, 2009

NAME	REPRESENTING
Matt Casey	GBA
Berend Koops	Hein Law Firm
Shari Just absuls	KDHE
Pat Kuester	KDHE
Aaron Dunkel	KDHE

HOUSE BILL No. 2383

By Committee on Appropriations

3-13

Proposed Amendment
Prepared by: Kristen Kellems
Revisor of Statutes Office
March 18, 2009

9 AN ACT concerning fines and penalties; amending K.S.A. 65-3024 and
10 65-34,146 and K.S.A. 2008 Supp. ~~65-3424g, 65-34,114 and 82a-952~~
11 and repealing the existing sections.
12

65-3424g and

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

14 Section 1. K.S.A. 65-3024 is hereby amended to read as follows: 65-
15 3024. (a) The secretary may fix, charge and collect annual emissions fees
16 in amounts necessary to pay the direct and indirect costs of administering
17 the provisions of the Kansas air quality act. The secretary shall adopt rules
18 and regulations fixing such fees and shall periodically increase or decrease
19 such fees consistent with the need to cover the direct and indirect costs
20 of administering the program. To the extent possible, annual emission
21 fees shall be based upon actual emissions determined pursuant to rules
22 and regulations adopted by the secretary. For purposes of determining
23 emission fees for a facility, emissions of any single regulated pollutant in
24 excess of 4,000 tons per year shall not be included in the calculation when
25 determining the total emissions from the facility.

26 (b) There is hereby established in the state treasury the air quality
27 fee fund. Revenue from the following sources shall be deposited in the
28 state treasury and credited to the fund:

- 29 (1) Fees collected under subsection (a);
- 30 (2) any moneys recovered by the state under the provisions of this
31 act, including administrative expenses, ~~civil penalties~~ and moneys paid
32 under any agreement, stipulation or settlement; and

33 (3) interest attributable to investment of moneys in the fund.

34 (c) Moneys deposited in the fund shall be expended only for the purpose
35 of administering the Kansas air quality act, including funding of a
36 technical and environmental compliance assistance program, and for no
37 other governmental purposes.

38 (d) On or before the 10th of each month, the director of accounts
39 and reports shall transfer from the state general fund to the air quality
40 fee fund interest earnings based on:

- 41 (1) The average daily balance of moneys in the air quality fee fund
42 for the preceding month; and
- 43 (2) the net earnings rate of the pooled money investment portfolio

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1 for the preceding month.

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

civil

6 (f) *All moneys received for fines or penalties for violation of the Kan-
7 sas air quality act shall be remitted to the state treasurer in accordance
8 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
9 receipt of each such remittance, the state treasurer shall deposit the entire
10 amount in the state treasury to the credit of the state general fund.*

11 Sec. 2. K.S.A. 2008 Supp. 65-3424g is hereby amended to read as
12 follows: 65-3424g. (a) There is hereby established in the state treasury
13 the waste tire management fund.

14 (b) Money from the following sources shall be credited to the waste
15 tire management fund:

16 (1) Revenue collected from the excise tax by K.S.A. 65-3424d, and
17 amendments thereto;

18 (2) permit application and renewal fees provided for by K.S.A. 65-
19 3424b, and amendments thereto;

20 (3) interest provided for by subsection (f);

21 (4) additional sources of funding such as reimbursements and appro-
22 priations intended to be used for the purposes of the fund;

23 (5) any recoveries from abatement and enforcement actions provided
24 for by K.S.A. 65-3424k, and amendments thereto; and

25 (6) any other moneys provided by law.

26 (c) Moneys in the waste tire management fund shall be used only for
27 the purpose of:

28 (1) Paying compensation and other expenses of employing personnel
29 to carry out the duties of the secretary pursuant to K.S.A. 65-3424 through
30 65-3424h, and amendments thereto, but not more than \$250,000;

31 (2) action by the department to implement interim measures to min-
32 imize nuisances or risks to public health or the environment that are or
33 could be created by waste tire accumulations, until the responsible party
34 can fully abate the site or until a state clean-up occurs pursuant to K.S.A.
35 65-3424k, and amendments thereto;

36 (3) action by the department to pay for the removal and disposal or
37 on-site stabilization of waste tires which have been illegally accumulated
38 or illegally managed, when the responsible party is unknown or unwilling
39 or unable to perform the necessary corrective action;

40 (4) the costs of using contractors to provide: (A) Public education
41 regarding proper management of waste tires; (B) technical training of
42 persons on the requirements of solid waste laws and rules and regulations
43 relating to waste tires; and (C) services described in subsection (i) of

1 K.S.A. 65-3424k, and amendments thereto;
 2 (5) grants to public or private entities for up to 50% of the cost to
 3 start-up or enhance projects to recycle waste tires or recover energy
 4 through waste tire combustion; and

5 (6) grants to local units of government to pay up to 50% of the costs
 6 to purchase tire derived products made from recycled waste tires. As used
 7 in this section, "tire derived products" means athletic field surfacing, play-
 8 ground cover, horticulture products and molded or extruded rubber prod-
 9 ucts made from recycled waste tires. The provisions of this paragraph
 10 shall expire on June 30, 2010.

11 (d) All grant applications received for waste tire recycling grants shall
 12 be reviewed by the solid waste grants advisory committee established
 13 pursuant to K.S.A. 65-3426, and amendments thereto. Waste tire recy-
 14 cling grants shall be subject to the requirements set forth in subsection
 15 (g) of K.S.A. 65-3415, and amendments thereto, related to the misuse of
 16 grant funds with the exception that any grant funds recovered by the
 17 secretary shall be deposited to the waste tire management fund. Waste
 18 tire management funds shall be used only for waste tire recycling grants.
 19 Waste tire grants shall not be awarded, nor shall waste tire funds be
 20 disbursed to a grant recipient, if the department determines that the grant
 21 applicant or recipient is operating in substantial violation of applicable
 22 environmental laws or regulations administered by the department.

23 (e) All expenditures from the waste tire management fund shall be
 24 made in accordance with appropriations acts upon warrants of the direc-
 25 tor of accounts and reports issued pursuant to vouchers approved by the
 26 secretary.

27 (f) On or before the 10th of each month, the director of accounts and
 28 reports shall transfer from the state general fund to the waste tire man-
 29 agement fund interest earnings based on: (1) The average daily balance
 30 of moneys in the waste tire management fund for the preceding month;
 31 and (2) the net earnings rate for the pooled money investment portfolio
 32 for the preceding month.

33 (g) *All moneys received for fines and penalties for violations of K.S.A.*
 34 *65-3424 through 65-3424i, and amendments thereto, shall be remitted to*
 35 *the state treasurer in accordance with the provisions of K.S.A. 75-4215,*
 36 *and amendments thereto. Upon receipt of each such remittance, the state*
 37 *treasurer shall deposit the entire amount in the state treasury to the credit*
 38 *of the state general fund.*

39 Sec. 3. K.S.A. 2008 Supp. 65-34,114 is hereby amended to read as
 40 follows: 65-34,114. (a) There is hereby established as a segregated fund
 41 in the state treasury the underground petroleum storage tank release trust
 42 fund, which shall be a continuation of the petroleum storage tank release
 43 trust fund. The underground fund shall be administered by the secretary.

civil

1 Revenue from the following sources shall be deposited in the state treasury and credited to the underground fund:

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3 (1) The applicable proceeds of the environmental assurance fee imposed by this act;

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5 (2) any moneys recovered by the state under the provisions of this act relating to underground storage tanks, including administrative expenses, ~~civil penalties~~ and moneys paid under an agreement, stipulation or settlement;

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9 (3) interest attributable to investment of moneys in the underground fund;

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11 (4) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for the purposes of the underground fund, but excluding federal grants and cooperative agreements; and

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13 (5) amounts transferred to the underground fund by the plan adopted pursuant to K.S.A. 65-34,126 and amendments thereto, as provided by K.S.A. 65-34,126 and amendments thereto.

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15 (b) The underground fund shall be administered so as to assist owners and operators of underground petroleum storage tanks in providing evidence of financial responsibility for corrective action required by a release from any such tank. Moneys deposited in the underground fund may be expended for the purpose of reimbursing owners and operators and such others as provided by this act for the costs of corrective action and for transfers to the plan adopted pursuant to K.S.A. 65-34,126 and amendments thereto, as provided by K.S.A. 65-34,126 and amendments thereto subject to the conditions and limitations prescribed by this act, but moneys in the underground fund shall not otherwise be used for compensating third parties for bodily injury or property damage caused by a release from an underground petroleum storage tank, other than property damage included in a corrective action plan approved by the secretary. In addition, moneys credited to the underground fund may be expended for the following purposes:

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32 (1) To permit the secretary to take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or potential release from an underground petroleum storage tank;

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37 (2) to permit the secretary to take corrective action where the release or potential release presents an actual or potential threat to human health or the environment, if the owner or operator has not been identified or is unable or unwilling to perform corrective action, including but not limited to providing for alternative water supplies;

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42 (3) payment of the state's share of the federal leaking underground storage tank trust fund cleanup costs, as required by the resource con-

1 servation and recovery act, 42 U.S.C. § 6991b(h)(7)(B);

2 (4) payment of the administrative, technical and legal costs incurred
3 by the secretary in carrying out the provisions of K.S.A. 65-34,114 through
4 65-34,124, and amendments thereto, with respect to underground storage
5 tanks, including the cost of any additional employees or increased general
6 operating costs of the department attributable thereto, which costs shall
7 not be payable from any moneys other than those credited to the under-
8 ground fund;

9 (5) reimbursement of persons as authorized by subsection (g) of
10 K.S.A. 65-34,119 and amendments thereto;

11 (6) payment of refunds as authorized by subsection (h) of K.S.A. 65-
12 34,119 and amendments thereto; and

13 (7) payment of the administrative, technical and legal costs incurred
14 by the secretary in carrying out the provisions of K.S.A. 65-34,104 through
15 65-34,113, and amendments thereto, with respect to underground storage
16 tanks, providing additional enforcement, reporting and operator training
17 required by the energy policy act of 2005, including the cost of any ad-
18 ditional employees, contracting or increased general operating costs of
19 the department attributable thereto, which costs shall not be payable from
20 any moneys other than those credited to the underground fund.

21 (c) The underground fund shall be used for the purposes set forth in
22 this act and for no other governmental purposes. It is the intent of the
23 legislature that the underground fund shall remain intact and inviolate
24 for the purposes set forth in this act, and moneys in the underground
25 fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a
26 and 75-3726a, and amendments thereto.

27 (d) Neither the state of Kansas nor the underground fund shall be
28 liable to an owner or operator for the loss of business, damages or taking
29 of property associated with any corrective or enforcement action taken
30 pursuant to this act.

31 (e) On or before the 10th of each month, the director of accounts
32 and reports shall transfer from the state general fund to the underground
33 fund interest earnings based on:

34 (1) The average daily balance of moneys in the underground fund for
35 the preceding month; and

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

38 (f) All expenditures from the underground fund shall be made in
39 accordance with appropriation acts upon warrants of the director of ac-
40 counts and reports issued pursuant to vouchers approved by the secretary
41 for the purposes set forth in this section.

42 (g) *All moneys received for fines or penalties imposed for violation of*
43 *permit requirements under the Kansas storage tank act shall be remitted*

civil

1 to the state treasurer in accordance with the provisions of K.S.A. 75-4215,
2 and amendments thereto. Upon receipt of each such remittance, the state
3 treasurer shall deposit the entire amount in the state treasury to the credit
4 of the state general fund.

5 Sec. 4. K.S.A. 65-34,146 is hereby amended to read as follows: 65-
6 34,146. (a) There is hereby established in the state treasury the dryclean-
7 ing facility release trust fund. The fund shall be administered by the
8 secretary. Moneys from the following sources shall be remitted to the
9 state treasurer, in accordance with the provisions of K.S.A. 75-4215, and
10 amendments thereto. Upon receipt of each such remittance, the state
11 treasurer shall deposit the entire amount in the state treasury to the credit
12 of the fund:

13 (1) Any proceeds from the taxes and fees imposed by this act;

14 (2) any interest attributable to investment of moneys in the dryclean-
15 ing facility release trust fund;

16 (3) moneys recovered by the state under the provisions of this act,
17 including any moneys paid under an agreement with the secretary ~~or as~~
18 ~~civil penalties~~; and

19 (4) moneys received by the secretary in the form of gifts, grants, re-
20 imbursements or appropriations from any source intended to be used for
21 the purposes of this act.

22 (b) Moneys in the fund may be expended for only the following pur-
23 poses and for no other governmental purpose:

24 (1) The direct costs of administration and enforcement of this act;
25 and

26 (2) the costs of corrective action as provided in K.S.A. 65-34,148, and
27 amendments thereto.

28 (c) It is the intent of the legislature that the fund shall remain intact
29 and inviolate for the purposes set forth in this act, and moneys in the
30 fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a
31 and 75-3726a, and amendments thereto.

32 (d) On or before the 10th day of each month, the director of accounts
33 and reports shall transfer from the state general fund to the drycleaning
34 facility release trust fund interest earnings based on: (1) The average daily
35 balance of moneys in the drycleaning facility release trust fund for the
36 preceding month; and (2) the net earnings rate for the pooled money
37 investment portfolio for the preceding month.

38 (e) All expenditures from the drycleaning facility release trust fund
39 shall be made in accordance with appropriation acts upon warrants of the
40 director of the accounts and reports issued pursuant to vouchers approved
41 by the secretary for the purposes set forth in this section.

42 (f) All moneys received for fines ~~or penalties~~ imposed under the Kan-
43 ~~sas drycleaner environmental response act~~ shall be remitted to the state

civil

1 *treasurer in accordance with the provisions of K.S.A. 75-4215, and*
2 *amendments thereto. Upon receipt of each such remittance, the state trea-*
3 *surer shall deposit the entire amount in the state treasury to the credit of*
4 *the state general fund.*

5 ~~Sec. 5. K.S.A. 2008 Supp. 82a-952 is hereby amended to read as~~
6 ~~follows: 82a-952. On and after July 1, 1989, all moneys collected from~~
7 ~~penalties imposed pursuant to K.S.A. 65-170d, 65-171s, 65-3419 or 65-~~
8 ~~3446, and amendments thereto, shall be remitted to the state treasurer~~
9 ~~in accordance with the provisions of K.S.A. 75-4215, and amendments~~
10 ~~thereto. Upon receipt of each such remittance, the state treasurer shall~~
11 ~~deposit the entire amount in the state treasury to the credit of the state~~
12 ~~water plan fund created by K.S.A. 82a-951, and amendments thereto~~
13 ~~general fund.~~

14 Sec. 6. K.S.A. 65-3024 and 65-34,146 and K.S.A. 2008 Supp. 65-
15 ~~3424g, 65-34,114 and 82a-952~~ are hereby repealed.

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

And by renumbering the remaining sections accordingly

3424g and