

SESSION OF 2002

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2830

As Amended by House Committee on
Environment

Brief*

HB 2830 would establish a process where owners of environmentally contaminated property could apply to the Kansas Department of Health and Environment (KDHE) for approval of an "environmental use control" to prohibit or restrict use of properties that are contaminated or that have been or currently are subject to environmental remediation activities. Under the bill "environmental use control" would mean a restriction, prohibition or control of one or more uses of, or activities on, a specific property to ensure future protection of public health and the environment when environmental contamination remains on the property following the appropriate remedial activities as directed by KDHE. The bill would establish that any environmental use control created pursuant to the bill would run with the property and is binding on the owner and subsequent owners, lessees, and other users of the land. For this reason, the bill would require that environmental use control orders be filed in the office of the county register of deeds in the county where the property is located.

The bill would require applicants to pay an initial nonrefundable fee of \$1,000. Additional fees could be assessed if the initial fee is not adequate to cover the cost of agency oversight. KDHE would ensure that the environmentally controlled property is being used only for the purposes permitted by the terms of the environmental use control agreement and is not being used in a manner that is prohibited or restricted by the terms of the agreement. In addition, under the bill, KDHE could require financial assurance from property owners regarding the long-term maintenance costs for protective structures. The assurance could be provided through such things as insurance, bond, letter of credit, or other demonstration of financial assurance.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.accesskansas.org/legislature/>

The bill would authorize KDHE to grant an environmental use control in perpetuity, or for a specified period. Use restrictions could include disturbing soil surfaces, berms, or drainage structures; excavating, dredging, or digging; drilling or using water wells; using the site for residential, commercial, agricultural, or industrial purposes; storing equipment or materials; or planting or allowing the growth of undesirable vegetation. An environmental use control could be removed should the owner be able to demonstrate to KDHE that the original risk to health or the environment no longer exists. If KDHE determines that environmental use control orders are not being properly implemented and a threat exists to public health or the environment, the agency could retract the approval of the remedial action, require the owner to take over the cleanup, have the district or county attorney file an action to force compliance, or file a court order against the owner.

The bill also would create the Environmental Use Control Fund. Money derived from the fees would be deposited into the Fund. Money in the fund would be used for administration and enforcement of the provisions of the bill. KDHE would be authorized to develop rules and regulations to administer the provisions of the legislation.

Further, the bill would require KDHE to develop and maintain an environmental use control tracking system and annually publish a summary of approved environmental use control agreements in the *Kansas Register*. The KDHE tracking system data would contain the following:

- ! Name of property;
- ! Address of the property, including the city and county;
- ! Legal description of the property;
- ! Description of the environmental use control;
- ! Duration of the environmental use control;
- ! Description of the type of environmental contamination which caused the environmental use control to be placed on the property;
and

! Data organized in a manner in order to view the data by city or county.

Background

The bill was introduced at the request of a spokesperson for KDHE. At the hearing on the bill, the only conferee was a representative of KDHE who told the Committee that the bill provides property owners and developers with a method of selecting less costly and time consuming clean-up solutions by establishing limits for the future use of the property. The Committee was told that if a land development was intended for commercial or industrial use, a less restrictive clean-up standard may be used where future residential use is not intended.

The Committee amended the bill to clarify the filing be done with the register of deeds rather than the county clerk; to make it clear that county and district attorneys may, rather than be directed, to file actions to enforce the provisions of the bill; to eliminate language placing court cases involving the substance of the bill in priority over any other cases before the court; to provide that the tracking system be organized to view the data by city or by county; and to require that the tracking system contain a description of the type of environmental contamination which caused the environmental use control to be placed on the property.

The fiscal note on the original bill indicates that KDHE believes that no additional staff or operating expenditures would be required since the fee fund would cover the cost of reviewing applications, tracking, and monitoring of the program. The agency is unable to estimate the number of property owners that would be eligible for environmental use controls. The Office of Judicial Administrator is unable to estimate the number of court cases that would be filed as a result of this bill; however, judicial resources may need to be shifted to these cases which would be given priority status over other cases. (This provision was amended out of the bill.) Any amounts resulting from the passage of this bill would be in addition to those recommended in *The FY 2003 Governor's Budget Report*.