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MEMORANDUM

To: Chairman Hedke and Members of the Committee on Energy and Environment
From: Matt Sterling, Assistant Revisor of Statutes
Date: 02/16/2015
Subject: House Bill 2193

HB 2193 would create the risk management program for low-risk contaminated sites. For a site to be eligible to participate in the program, the secretary of the Kansas Department of Health and Environment would determine that the site was subject to an agreement or order under the authority of the secretary's bureau of environmental remediation and posed a low risk to human health and the environment. The site would become ineligible for the program if the site conditions changed and increased the risk posed by the site.

The bill would create the risk management fund that would receive moneys collected from each applicant's one-time payment of \$2,500 and any gifts, grants, reimbursements or appropriations intended to be used for the fund that were received by the secretary. Funding requirements for the risk management plan payment would be based on the size and risk of the site, amount of contaminated groundwater, toxicity and mobility of the contaminants, frequency of long term care activities and oversight costs. The moneys in the fund could be used for the costs for: Review of risk management applications; oversight of risk management plan requirements; implementation of the risk management plan upon failure of the participant; activities performed by the secretary to address threats related to properties subject to plans; development, operation, and maintenance of the plan tracking system; and administration and enforcement of the act.

A risk management plan would end if the secretary determined that the plan was no longer necessary. Any person could submit a request to the secretary for approval to terminate a plan. The secretary would then review the request and provide a decision on the request within 120 days. The secretary would be required to provide a written explanation for any denial. A risk management plan could be transferred to another person upon approval by the secretary and modified by mutual written agreement by the person and the secretary. The secretary would not acquire any liability by virtue of approving a risk management plan or by approving expiration of all or a portion of a risk management plan.

A risk management plan could require: Prompt notification to the secretary of any change in the use or transfer of property subject to a plan; maintenance of protective structures or remedial systems at the site; the secretary be given access to the property to inspect and monitor the plan activities; restrictions, prohibitions, and zoning requirements placed on property in the

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site by a local or state government; and any other obligations the secretary determines are necessary.

If the secretary determined that an approved risk management plan was not being implemented as written or that property subject to a plan presented a hazard to human health or the environment, the secretary could: Issue an order directing the participant to take corrective steps, issue an order retracting the approval of the plan and require the participant to implement remediation of the site, assess an administrative penalty of up to \$500 per day for failure to comply with the plan, and perform actions required by the plan and recover any costs incurred, and enjoin the participant from taking any actions established in the plan.

The participant would provide written notification to all property owners and occupants within the site and provide proof of such notification to the secretary before the secretary would approve the plan. The secretary could choose whether to initiate and participate in public meetings to discuss the pending risk management plan. Orders and decisions concerning the risk management program made by the secretary would be subject to the provisions of the Kansas administrative procedure act and the Kansas judicial review act. The secretary would have the authority to adopt rules and regulations to implement the provisions of the act.