

SESSION OF 2021

SUPPLEMENTAL NOTE ON SENATE BILL NO. 172

As Amended by House Committee of the Whole

Brief*

SB 172, as amended, would amend the Kansas Criminal Code regarding crimes involving property by eliminating the crime of tampering with a pipeline and establishing four new crimes: trespassing on a critical infrastructure facility (CIF), aggravated trespassing on a CIF, criminal damage to a CIF, and aggravated criminal damage to a CIF. The bill would also allow a judge to order restitution for property damage to any victim of the four new crimes.

The bill would also make technical changes.

Right to Peacefully Protest

The bill would include a “whereas” clause stating its provisions protect the right to peacefully protest for all Kansans and citizens of the four sovereign nations within the state’s borders while also protecting the critical infrastructure located within the state.

Definition of Critical Infrastructure Facility

The bill would define a CIF, as used in the bill, as any:

- Petroleum or alumina refinery;
- Electric generation facility, substation, switching station, electrical control center, electric distribution

*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.kslegislature.org>

or transmission lines, or associated equipment infrastructure;

- Chemical, polymer, or rubber manufacturing facility;
- Water supply diversion, production, treatment, storage, or distribution facilities and appurtenances, including, but not limited to, underground pipelines and a wastewater treatment plant or pump station;
- Natural gas compressor station;
- Liquid natural gas or propane terminal or storage facility;
- Facility that is used for wireline, broadband, or wireless telecommunications or video services infrastructure, including backup power supplies and cable television headend;
- Port, railroad switching yard, railroad tracks, trucking terminal, or other freight transportation facility;
- Gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas, propane, or natural gas liquids;
- Transmission facility used by a federally licensed radio or television station;
- Steelmaking facility that uses an electric arc furnace to make steel;
- Facility identified and regulated by the U.S. Department of Homeland Security Chemical Facility Anti-Terrorism Standards program, facility operated by the Office of Laboratory Services under the supervision of the Secretary of Health

and Environment, or the National Bio and Agro-Defense Facility or Biosecurity Research Institute at Kansas State University;

- Dam that is regulated as a hazard class B or class C dam by the state or federal government;
- Natural gas distribution utility facility, or natural gas transmission facility, including, but not limited to, pipeline interconnections, a city gate or town border station, metering station, belowground or aboveground piping, a regular station, or a natural gas storage facility;
- Crude oil, including Y-grade or natural gas liquids, or refined products storage and distribution facility, including, but not limited to, valve sites, pipeline interconnections, pump station, metering station, belowground or aboveground pipeline or piping, and truck loading or offloading facility; or
- Portion of any belowground or aboveground oil, gas, hazardous liquid, or chemical pipeline, tank, railroad facility, or any other storage facility that is enclosed by a fence or other physical barrier or is clearly marked with signs prohibiting trespassing, that are obviously designed to exclude intruders.

Crimes Related to Critical Infrastructure Facilities

The bill would eliminate the crime of tampering with a pipeline and create four new crimes.

Trespassing on a Critical Infrastructure Facility

Under the bill, trespassing on a CIF would mean, without consent of the owner or the owner's agent, knowingly entering or remaining in:

- A CIF; or
- Any property containing a CIF, if such property is completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders or is clearly marked with a sign or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization.

The bill would classify trespassing on a CIF as a class A nonperson misdemeanor.

Aggravated Trespassing on a Critical Infrastructure Facility

Under the bill, aggravated trespassing on a CIF would be, with the intent to damage, destroy, or tamper with a CIF or impede or inhibit operations of the facility, knowingly entering or remaining in:

- A CIF; or
- Any property containing a critical infrastructure facility, if such property is completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders or is clearly marked with a sign or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization.

The bill would classify aggravated trespassing on a CIF as a severity level 7 nonperson felony.

Criminal Damage to a Critical Infrastructure Facility

Under the bill, criminal damage to a CIF would be knowingly damaging, destroying, or tampering with a CIF. The

bill would classify criminal damage to a CIF as a severity level 6 nonperson felony.

Aggravated Criminal Damage to a Critical Infrastructure Facility

Under the bill, aggravated criminal damage to a CIF would be knowingly damaging, destroying, or tampering with a CIF with the intent to impede or inhibit operations of the facility. The bill would classify aggravated criminal damage to a CIF as a severity level 5 nonperson felony.

Damages

The bill would declare nothing in the bill would prevent an owner or operator of a CIF that has been damaged from pursuing any other remedy in law or equity and a person who commits these crimes may also be prosecuted for, convicted of, and punished for any other offense regarding crimes involving property (current law) or criminal trespass on a nuclear generating facility (current law).

The bill would allow a judge to order restitution for damages associated with these crimes.

Background

The bill was introduced by the Senate Committee on Utilities at the request of the American Fuel and Petrochemicals Manufacturers (AFPM).

Senate Committee on Utilities

In the Senate Committee hearing, representatives from the AFPM, American Petroleum Institute, WaterOne, and the Wichita Regional Chamber of Commerce provided **proponent** testimony. The proponents generally stated the

bill would create a legal framework protecting CIFs. They stated CIFs represent a sensitive target for crime due to their importance in everyday life.

Written-only **proponent** testimony was provided by representatives of Evergy, Fuel True, ITC Great Plains, Kansas Electric Cooperatives, Kansas Electric Power Cooperatives, Kansas Municipal Utilities, Midwest Energy, Renew Kansas Biofuels Association, and Sunflower Electric Power Corporation.

Neutral testimony was provided by representatives of the Kansas Association of Criminal Defense Lawyers and the Kansas Corporation Commission (KCC). Neutral conferees stated clarification was needed on certain aspects of the bill regarding the definitions section and ensuring only those convicted of crimes were responsible for restitution.

Written-only neutral testimony was provided by a private citizen.

Opponent testimony was provided by representatives of Kansas Interfaith Action and the Sierra Club, and a private citizen. Opponents stated the actions the bill would criminalize are already crimes regarding property and the creation of these crimes could have adverse action against free speech.

The Senate Committee adopted amendments to:

- Update the definition of a CIF regarding a facility that is used for wireline, broadband, or wireless telecommunications infrastructure, including backup power supplies by adding “and cable television headend”;
- Modify the definition of a CIF regarding water intake structure, water treatment facility, wastewater treatment plant, or pump station by removing “water intake structure, water treatment

facility” and adding “water diversion, production, treatment, storage and distribution facilities and appurtenances, including, but not limited to, underground pipelines” (Requested by WaterOne);

- Clarify that nothing in the bill would prevent an owner or operator of a CIF that has been damaged from pursuing any other remedy in law or equity; and
- Remove portions of the bill relating to restitution and insert the crimes created in the bill to current restitution statutes and clarify only those convicted of a crime may be ordered by a judge to pay restitution (requested by the Kansas Association of Criminal Defense Lawyers).

House Committee on Judiciary

In the House Committee hearing on March 17, 2021, representatives of AFPM and ONEOK testified as **proponents** of the bill. Written-only proponent testimony was provided by representatives of the American Petroleum Institute, AT&T Kansas, Renew Kansas Biofuels Association, WaterOne, and the Wichita Regional Chamber of Commerce. A representative of Evergy, Kansas Electric Cooperatives, Kansas Electric Power Cooperative, Kansas Municipal Utilities, ITC Great Plains, Midwest Energy, and Sunflower Electric Power Corporation also provided written-only proponent testimony.

Written-only neutral testimony was provided by a representative of the KCC.

Representatives of the Kansas Interfaith Coalition, Kansas Sierra Club, Loud Light Civic Action, and Sisters of Charity of Leavenworth and three citizens testified as **opponents** of the bill. Written-only **opponent** testimony was provided by Representative Haswood, Representative

Victors, a representative of the Climate + Energy Project, and two private citizens. No other testimony was provided.

On March 23, 2021, the House Committee amended the bill to remove vandalizing and defacing from the list of conduct that would constitute a crime under the bill, to modify the definition of CIF, and to remove a reference to the new crimes created by the bill from the definition of “racketeering activity” found in the Kansas Racketeer Influenced and Corrupt Organizations Act.

House Committee of the Whole

On March 29, 2021, the House Committee of the Whole amended the bill to add a “whereas” clause regarding the right to peacefully protest.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Office of Judicial Administration (OJA) states the bill could increase the number of cases filed in district court because it would create new crimes, which could result in more time spent by court employees and judges processing and hearing cases. In addition, the OJA states because of the new crimes established in the bill, there could be additional supervision of offenders required to be performed by court service officers. The OJA stated a fiscal effect cannot be estimated. The OJA estimates enactment of the bill could result in the collection of docket and supervision fees and fines assessed in cases filed under the bill’s provisions.

The Kansas Sentencing Commission (KSC) states the bill could have an effect on prison admissions and beds. The KSC does not have enough information to determine what that effect would be, but any effect would be negligible. The Department of Corrections states the bill would have a

negligible fiscal effect on agency operations. Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*. Both the League of Kansas Municipalities and the Kansas Association of Counties state any fiscal effect resulting from the bill would be negligible to local governments.

Critical infrastructure facility; utilities; crimes