

HOUSE BILL No. 2168

AN ACT concerning certain communities within superfund sites; providing for relocation and other assistance.

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

Section 1. As used in this act:

(a) "Affected community" means a community, located in Cherokee county and within the boundaries of a superfund site, which the secretary of health and environment determines has lost a substantial portion of the infrastructure necessary for individuals to live within the community due to government financed programs of relocation of individuals, businesses and nonprofit organizations within such superfund site. "Affected community" includes any area surrounding such community where residents of the area have lost essential services due to the community's loss of infrastructure.

(b) "Infrastructure" means basic facilities, services and installations needed for the functioning of a community, including, but not limited to, water service, fire protection, law enforcement services and retail establishments which sell groceries, toiletries and other basic necessities.

(c) "Person" means an individual or other legal entity.

(d) "Superfund site" means property which is listed on the national priorities list of superfund sites established under the comprehensive environmental response, compensation, and liability act (CERCLA), 42 U.S.C.A. 9601 et seq., as amended October 17, 1986.

(e) "Trust" means the trust created by section 2, and amendments thereto.

Sec. 2. (a) A state public trust shall be created to administer relocation assistance pursuant to this act and to acquire, hold and dispose of property as specified in this act.

(b) The trust shall have five trustees appointed by the governor, subject to confirmation by the senate as provided by K.S.A. 75-4315b and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed as trustee shall exercise any power, duty or function as a trustee until confirmed by the senate. The terms of trustees first appointed shall be as follows: One trustee shall serve for a term expiring the first March 15 following appointment, one for a term expiring the second March 15 following appointment, one for a term expiring the third March 15 following appointment and two for terms expiring the fourth March 15 following appointment. Thereafter, trustees shall be appointed for terms of four years and until their successors are appointed and confirmed. Whenever a vacancy on the trust occurs, the governor shall fill the vacancy by appointment and the appointee shall hold office for the unexpired term. Each trustee shall hold office until a successor has been appointed and confirmed. A trustee may be removed only for cause.

(c) The trustees, who shall be deemed public officers, shall be paid amounts provided by subsection (e) of K.S.A. 75-3223, and amendments thereto, from funds of the trust.

(d) Every person becoming a trustee first shall take the oath of office required of a state elected official. The oath of office shall be administered by a person authorized to administer oaths in the state of Kansas and shall be filed with the secretary of state.

(e) Every officer and employee who handles funds of the trust shall furnish bond or other good and sufficient security in an amount and upon such terms as established by the state committee on surety bonds and insurance pursuant to K.S.A. 75-4101 et seq., and amendments thereto, but in no event shall any bond or other security be required of a trustee. The cost of the bond shall be paid from funds of the trust.

(f) The trustees shall adopt bylaws for the administration and regulation of the affairs of the trust. All such bylaws shall be submitted in writing to the governor and must be approved by the governor before taking effect.

(g) The trustees shall cause an audit to be made of the financial statements of the trust within 30 days after the close of each fiscal year of the trust. The expense of the audit shall be paid from funds of the trust. The trust annually shall file with the governor and the legislature copies of financial documents and reports sufficient to demonstrate the fiscal activity of the trust, including, but not limited to, budgets, financial reports and audits. Amendments to the adopted budget shall be approved by the

trustees of the trust and recorded as such in the official minutes of the trust.

(h) Meetings of the trustees shall be subject to the open meetings law. Records of the trust and minutes of meetings of the trust shall be written and kept in a place, the location of which shall be recorded in the office of the secretary of state, and shall be subject to the Kansas open records act. The trust shall file a monthly report of all expenditures with the governor, the speaker of the house of representatives and the president of the senate.

(i) Any real or personal property may be acquired and held in the name of the trust. When acquired, any conveyance, assignment or other transfer shall be made in the name of the trust by the chairperson of the trust, attested by the secretary of the trust, with the seal of the trust affixed thereto.

(j) Any conveyance, assignment or other transfer of any estate in real property, executed by a trust, must be acknowledged by the president or chairperson of the trust subscribing the name of the trust thereto, which acknowledgment shall be in substantially the form provided in the uniform law on notarial acts. Any instrument of conveyance, assignment or other transfer executed in the name of the trust pursuant to this act and bearing a signature which purports to be the signature of the chairperson of the trust, shall be deemed prima facie evidence that the conveyance, assignment or other transfer is the act of the trust and the trustees thereof, that it was duly executed and signed by the chairperson of the trust who was a trustee of the trust and that the instrument conforms in all respects to the requirements of law, and such conveyance, assignment or other transfer shall be admissible in evidence without further proof of execution.

(k) The trust shall not engage in any activity or transaction that is not expressly authorized by this act.

(l) No trustee shall be charged personally with any liability whatsoever by reason of any act or omission in the performance of the trust or in the operation of the trust property but any act, liability for any omission or obligation of a trustee or trustees, in the execution of the trust, or in the operation of the trust property, shall extend to the whole of the trust, or so much thereof as may be necessary to discharge such liability or obligation, and not otherwise.

(m) Moneys from grants made to the trust pursuant to this act shall be used only for the purposes provided by this act, including payment of the costs of the department of health and environment in implementing and administering this act.

Sec. 3. The secretary of health and environment is hereby authorized to make grants to the trust to be used to provide relocation assistance and to purchase property as provided in section 4, and amendments thereto, to persons relocating from an affected community and assistance to public school districts as provided in section 5, and amendments thereto.

Sec. 4. (a) (1) For individuals who have rented and resided in their homes in the affected community continuously since March 13, 2006, and who can produce a valid rental contract or other proof of rental arrangement, the trust shall provide relocation assistance in an amount equal to the average cost of 12-months' rent for comparable housing elsewhere in the county where the affected community is located. The trust, in its discretion, may provide such assistance in periodic payments and not in a single lump sum. In addition, such individuals may receive not more than \$1,000 for moving expenses.

(2) For other individuals who are renting and residing in their homes in the affected community and who can produce a valid rental contract or other proof of rental arrangement, the trust, in its discretion, may provide relocation assistance and moving expenses in amounts not exceeding those authorized in subsection (a)(1).

(b) (1) Subject to the provisions of subsection (g), for individuals who have owned and resided in their homes in the affected community continuously since March 13, 2006, the trust shall purchase their homes, including the land on which their homes are located, for an amount equal to the average cost of comparable housing elsewhere in the county where

the affected community is located. In addition, such individuals may receive not more than \$1,000 for moving expenses.

(2) Subject to the provisions of subsection (g), for other individuals who own and reside in their homes in the affected community, the trust, in its discretion, may purchase their homes, including the land on which their homes are located, for an amount equal to the price paid for the home plus 5% per year, un compounded, since the year of purchase and moving expenses in amounts not exceeding those authorized in subsection (b)(1).

(c) (1) Subject to the provisions of subsection (h), for persons who have rented the premises of and operated their businesses or nonprofit organizations in the affected community continuously since March 13, 2006, and who can produce a valid rental contract or other proof of rental arrangement, the trust shall provide relocation assistance in an amount equal to the average cost of 12-months' rent for comparable premises elsewhere in the county where the affected community is located. The trust, in its discretion, may provide such assistance in periodic payments rather than in a single lump sum. In addition, such persons may receive not more than \$2,000 for moving expenses.

(2) Subject to the provisions of subsection (h), for other persons who are renting the premises of and operating their businesses or nonprofit organizations in the affected community and who can produce a valid rental contract or other proof of rental arrangement, the trust, in its discretion, may provide relocation assistance and moving expenses in amounts not exceeding those authorized in subsection (c)(1).

(d) (1) Subject to the provisions of subsections (g) and (h), for persons who have owned the premises of and operated their businesses or nonprofit organizations in the affected community continuously since March 13, 2006, the trust shall purchase the premises, including the land on which the premises are located, for an amount equal to the average cost of comparable commercial property elsewhere in the county where the affected community is located. In addition, such persons may receive not more than \$2,000 for moving expenses.

(2) Subject to the provisions of subsections (g) and (h), for other persons who own the premises of and operate their businesses or nonprofit organizations in the affected community, the trust, in its discretion, may purchase the premises, including the land on which the premises are located, for an amount equal to the price the owner paid for the premises plus 5% per year, un compounded, since the year of purchase and moving expenses in amounts not exceeding those authorized in subsection (d)(1).

(e) Subject to the provisions of subsections (g) and (h), for persons who own rental property in the affected community, the trust, in its discretion, may purchase the rental property for: (A) An amount equal to the average cost of comparable rental property elsewhere in the county, if the person has owned such property continuously since March 13, 2006; or (B) an amount equal to the price paid plus 5% per year, un compounded, since the year of purchase, if the person has not owned such property continuously since March 13, 2006.

(f) Subject to the provisions of subsection (h), in addition to the purchase of property as otherwise authorized by this act, the trust, in its discretion, may purchase other real property within the affected community to prevent future construction on such property for an amount not exceeding the price the owner paid for such property plus 5% per year, un compounded, since the year of purchase.

(g) If a home or the premises of a business or nonprofit organization is a movable structure and the trust grants relocation assistance to the owner pursuant to this section, the trust, in its discretion, may pay the cost of relocating such structure in lieu of other assistance authorized in this section if the cost of relocating the structure does not exceed the amount of such other assistance.

(h) A person shall not be eligible for assistance pursuant to this act with respect to property used for mining or for removal, storage or sale of mined materials or mine waste or byproducts.

(i) Payments made pursuant to the provisions of this act may be made to any eligible person but not more than one payment shall be made with regard to any single dwelling or commercial or nonprofit premises, except that, if the dwelling or premises are rented, one payment may be made to a renter and one payment may be made to an owner.

(j) Participation in the assistance program provided for by this act shall be voluntary. No person shall be required to relocate or sell property under the provisions of this act.

(k) Real property acquired by the trust pursuant to the relocation assistance provisions of this act may be utilized or disposed of in accordance with law, in the manner that the trust determines will best serve the state of Kansas and public interest.

(l) The use of moneys pursuant to this section shall not be subject to the uniform relocation assistance and real property acquisition policies act of 1970(42 U.S.C. 4601 et seq.).

Sec. 5. In addition to the relocation assistance pursuant to section 4, and amendments thereto, the trust may provide grants to public school districts which are located within the boundaries of a federal superfund site and are adversely impacted by relocations pursuant to this act.

Sec. 6. (a) The trust may seek and expend funds from any other source, whether public or private, to further the purposes of this act.

(b) The trust shall establish appropriate procedures for applications for relocation assistance pursuant to this act and shall set a deadline for submission of the initial application for such assistance. Such procedures may include a requirement that any person receiving assistance pursuant to this section must agree to move to property on which there is no mining waste and which is not prone to subsidence.

(c) Any assistance pursuant to this act shall be contingent upon availability of funds for that purpose.

Sec. 7. (a) Nothing in this act shall create any property right or right in action. The courts shall have no jurisdiction to entertain any action against the trust, the secretary or department of health and environment or the state of Kansas, or any officer or agent thereof, founded on a claim that the claimant should have received different or better treatment pursuant to this act.

(b) Determinations made by the trust pursuant to the assistance program provided for by this act, including, but not limited to, determinations as to what constitutes the average rental cost of comparable housing, the average cost of comparable properties, the eligibility of any person for assistance and the determination of the proper amount of such assistance, if any, shall be committed to the sole discretion of the trust based on the information available to it and shall not be subject to judicial review.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.