

As Amended by House Committee

Session of 2009

HOUSE BILL No. 2383

By Committee on Appropriations

3-13

10 AN ACT concerning fines and penalties; amending K.S.A. 65-3024 and
11 65-34,146 and K.S.A. 2008 Supp. 65-3424g; **and** 65-34,114 ~~and 82a-~~
12 ~~952~~ and repealing the existing sections.
13

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

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

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

30 (1) Fees collected under subsection (a);

31 (2) any moneys recovered by the state under the provisions of this
32 act, including administrative expenses, ~~civil penalties~~ and moneys paid
33 under any agreement, stipulation or settlement; and

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

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

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

42 (1) The average daily balance of moneys in the air quality fee fund
43 for the preceding month; and

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

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

7 (f) *All moneys received for fines or **civil** penalties for violation of the*
8 *Kansas air quality act shall be remitted to the state treasurer in accord-*
9 *ance with the provisions of K.S.A. 75-4215, and amendments thereto.*
10 *Upon receipt of each such remittance, the state treasurer shall deposit the*
11 *entire amount in the state treasury to the credit of the state general fund.*
12

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

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

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

20 (2) permit application and renewal fees provided for by K.S.A. 65-
21 3424b, and amendments thereto;

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

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

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

27 (6) any other moneys provided by law.

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

30 (1) Paying compensation and other expenses of employing personnel
31 to carry out the duties of the secretary pursuant to K.S.A. 65-3424 through
32 65-3424h, and amendments thereto, but not more than \$250,000;

33 (2) action by the department to implement interim measures to min-
34 imize nuisances or risks to public health or the environment that are or
35 could be created by waste tire accumulations, until the responsible party
36 can fully abate the site or until a state clean-up occurs pursuant to K.S.A.
37 65-3424k, and amendments thereto;

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

42 (4) the costs of using contractors to provide: (A) Public education
43 regarding proper management of waste tires; (B) technical training of

1 persons on the requirements of solid waste laws and rules and regulations
2 relating to waste tires; and (C) services described in subsection (i) of
3 K.S.A. 65-3424k, and amendments thereto;

4 (5) grants to public or private entities for up to 50% of the cost to
5 start-up or enhance projects to recycle waste tires or recover energy
6 through waste tire combustion; and

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

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

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

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

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

41 Sec. 3. K.S.A. 2008 Supp. 65-34,114 is hereby amended to read as
42 follows: 65-34,114. (a) There is hereby established as a segregated fund
43 in the state treasury the underground petroleum storage tank release trust

1 fund, which shall be a continuation of the petroleum storage tank release
2 trust fund. The underground fund shall be administered by the secretary.
3 Revenue from the following sources shall be deposited in the state treas-
4 ury and credited to the underground fund:

5 (1) The applicable proceeds of the environmental assurance fee im-
6 posed by this act;

7 (2) any moneys recovered by the state under the provisions of this
8 act relating to underground storage tanks, including administrative ex-
9 penses, ~~civil penalties~~ and moneys paid under an agreement, stipulation
10 or settlement;

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

13 (4) moneys received by the secretary in the form of gifts, grants, re-
14 imbursements or appropriations from any source intended to be used for
15 the purposes of the underground fund, but excluding federal grants and
16 cooperative agreements; and

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

20 (b) The underground fund shall be administered so as to assist owners
21 and operators of underground petroleum storage tanks in providing evi-
22 dence of financial responsibility for corrective action required by a release
23 from any such tank. Moneys deposited in the underground fund may be
24 expended for the purpose of reimbursing owners and operators and such
25 others as provided by this act for the costs of corrective action and for
26 transfers to the plan adopted pursuant to K.S.A. 65-34,126 and amend-
27 ments thereto, as provided by K.S.A. 65-34,126 and amendments thereto
28 subject to the conditions and limitations prescribed by this act, but mon-
29 eys in the underground fund shall not otherwise be used for compensating
30 third parties for bodily injury or property damage caused by a release
31 from an underground petroleum storage tank, other than property dam-
32 age included in a corrective action plan approved by the secretary. In
33 addition, moneys credited to the underground fund may be expended for
34 the following purposes:

35 (1) To permit the secretary to take whatever emergency action is
36 necessary or appropriate to assure that the public health or safety is not
37 threatened whenever there is a release or potential release from an un-
38 derground petroleum storage tank;

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

- 1 (3) payment of the state's share of the federal leaking underground
2 storage tank trust fund cleanup costs, as required by the resource con-
3 servation and recovery act, 42 U.S.C. § 6991b(h)(7)(B);
- 4 (4) payment of the administrative, technical and legal costs incurred
5 by the secretary in carrying out the provisions of K.S.A. 65-34,114 through
6 65-34,124, and amendments thereto, with respect to underground storage
7 tanks, including the cost of any additional employees or increased general
8 operating costs of the department attributable thereto, which costs shall
9 not be payable from any moneys other than those credited to the under-
10 ground fund;
- 11 (5) reimbursement of persons as authorized by subsection (g) of
12 K.S.A. 65-34,119 and amendments thereto;
- 13 (6) payment of refunds as authorized by subsection (h) of K.S.A. 65-
14 34,119 and amendments thereto; and
- 15 (7) payment of the administrative, technical and legal costs incurred
16 by the secretary in carrying out the provisions of K.S.A. 65-34,104 through
17 65-34,113, and amendments thereto, with respect to underground storage
18 tanks, providing additional enforcement, reporting and operator training
19 required by the energy policy act of 2005, including the cost of any ad-
20 ditional employees, contracting or increased general operating costs of
21 the department attributable thereto, which costs shall not be payable from
22 any moneys other than those credited to the underground fund.
- 23 (c) The underground fund shall be used for the purposes set forth in
24 this act and for no other governmental purposes. It is the intent of the
25 legislature that the underground fund shall remain intact and inviolate
26 for the purposes set forth in this act, and moneys in the underground
27 fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a
28 and 75-3726a, and amendments thereto.
- 29 (d) Neither the state of Kansas nor the underground fund shall be
30 liable to an owner or operator for the loss of business, damages or taking
31 of property associated with any corrective or enforcement action taken
32 pursuant to this act.
- 33 (e) On or before the 10th of each month, the director of accounts
34 and reports shall transfer from the state general fund to the underground
35 fund interest earnings based on:
- 36 (1) The average daily balance of moneys in the underground fund for
37 the preceding month; and
- 38 (2) the net earnings rate of the pooled money investment portfolio
39 for the preceding month.
- 40 (f) All expenditures from the underground fund shall be made in
41 accordance with appropriation acts upon warrants of the director of ac-
42 counts and reports issued pursuant to vouchers approved by the secretary
43 for the purposes set forth in this section.

1 (g) *All moneys received for fines or **civil** penalties imposed for vio-*
2 *lation of permit requirements under the Kansas storage tank act shall be*
3 *remitted to the state treasurer in accordance with the provisions of K.S.A.*
4 *75-4215, and amendments thereto. Upon receipt of each such remittance,*
5 *the state treasurer shall deposit the entire amount in the state treasury to*
6 *the credit of the state general fund.*

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

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

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

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

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

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

26 (1) The direct costs of administration and enforcement of this act;
27 and

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

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

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

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

1 (f) *All moneys received for fines or **civil** penalties imposed under the*
2 *Kansas drycleaner environmental response act shall be remitted to the*
3 *state treasurer in accordance with the provisions of K.S.A. 75-4215, and*
4 *amendments thereto. Upon receipt of each such remittance, the state trea-*
5 *surer shall deposit the entire amount in the state treasury to the credit of*
6 *the state general fund.*

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

16 ~~Sec. 6. 5.~~ K.S.A. 65-3024 and 65-34,146 and K.S.A. 2008 Supp. 65-
17 3424g, ~~and 65-34,114 and 82a-952~~ are hereby repealed.

18 ~~Sec. 7. 6.~~ This act shall take effect and be in force from and after its
19 publication in the statute book.