

SESSION OF 2006

SUPPLEMENTAL NOTE ON SENATE BILL NO. 362

As Amended by House Committee on
Environment

Brief*

SB 362 would amend three statutes that are a part of the act under which solid waste disposal areas are regulated.

The bill would create a new category of solid waste disposal area defined as an "industrial facility." The term would include all operations, processes, and structures involved in the manufacture or production of goods, commodities, materials, or other products located on or adjacent to an industrial site. An industrial facility would include all processes and applications generating industrial waste that may be disposed of at a solid waste disposal area.

Other provisions of the bill would clarify existing law with respect to requirements for financial assurances for closure and postclosure which must be in place as a condition of the granting of a permit from the Kansas Department of Health and Environment (KDHE). Current provisions of law outlining the types of financial assurances required for a permittee would apply to those permittees who own the land where a solid waste processing facility or disposal area is located. New provisions would provide more restrictive financial assurance requirements if the permittee does not own the land where the solid waste processing facility or disposal area is located. Those financial assurances for closure and postclosure care, when the permittee does not own the land, would include a trust fund, a surety bond guaranteeing payment, or an irrevocable letter of credit.

Another provision of the bill would provide that if the applicant does not own the land, then the applicant would be required to have a daily recorded easement to the landfill property and to have the authority to conduct certain landfill activities as outlined in the bill. The easement would run with the land if a transfer occurs and could only be vacated by the Secretary of KDHE.

*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>

Another provision of current law would be modified to clarify that industrial waste disposed of at a facility would not be required to pay the state's solid waste tipping fee if the facility is either operated by or for an industrial facility. Under current law industrial waste disposed of on the site of the permittee's disposal facility is not subject to the state's tipping fee.

Background

This bill was introduced at the request of a spokesperson from Sunflower Electric Power Corporation. At the hearing on the bill, a representative of Sunflower explained that new generating facilities would be built at the Holcomb facility in conjunction with a Colorado cooperative, and the intentions are for all facilities to have access jointly to the industrial waste disposal facility at the current Holcomb plant. The conferee explained that Sunflower had reorganized and created a subsidiary that has become the permittee of the facility. The conferee explained, with the reorganization, Sunflower is not technically in compliance with current state solid waste disposal law.

Also testifying and providing proposed amendments was a spokesperson from the Kansas Department of Health and Environment. The conferee explained that the agency was neutral on the bill, but did have suggested amendments. The conferee explained that existing law requires a permittee to own the land where the disposal facility is located. The agency suggested the amendments which made the financial assurance requirements for closure and postclosure costs more restrictive in those cases where the permittee does not own the land where the disposal area is located as well as other amendments included in the bill.

Appearing in opposition to the bill was a representative of the Kansas Chapter of the Sierra Club.

The House Committee on Environment amended the bill to establish the requirement of an easement if the landfill applicant does not own the land.

The fiscal note on the original bill indicates that the Department of Health and Environment believes the bill would not have a fiscal effect because no fees have ever been collected from the industrial facilities. Because of a corporate restructuring at one facility, the facility now appears to owe the tonnage fees. Under SB 362, the fees, estimated at \$100,000 per year, would not be paid. Similar revenue

losses could occur at other facilities that cease owning their landfills, or at newly permitted industrial landfills where the permit holder does not own the land where the landfill is located.