

SESSION OF 2006

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2703

As Amended by House Committee on
Utilities

Brief*

The bill would enact the Nuclear Generating Facility Security Guard Act which, among other things, would create a new crime of trespass on a nuclear generating facility. In addition, the bill would provide that armed nuclear security guards are justified in using physical force, up to and including deadly force, under certain circumstances.

The bill would define an "armed nuclear security guard" as a guard working at a nuclear generating facility, who is employed as part of the security plan approved by the Nuclear Regulatory Commission, and who meets the Commission's requirements for carrying a firearm. A guard who meets those requirements could use physical force if the guard reasonably believes that level of force is necessary to prevent or stop the commission or an attempt to commit criminal damage to property, criminal use of weapons, or criminal trespass on a nuclear generating facility, as those crimes are defined in existing law and by the bill. Those guards also could use physical force, up to and including deadly force, if the guard reasonably believes that level of force is necessary to prevent the commission of manslaughter, first or second degree murder, aggravated assault, kidnapping, aggravated kidnapping, aggravated burglary, arson, aggravated arson, or aggravated robbery. Use of deadly force by a guard also would be justified in self defense or to defend another from the use or imminent use of deadly physical force.

An armed nuclear security guard could threaten to use physical or deadly force if necessary in self defense or in order to defend others from the potential use of physical or deadly force.

Neither the guard, the guard's employer, nor the owner of the nuclear generating facility would be civilly liable for the conduct of an armed nuclear security guard whose use of physical or deadly force was justified under the Act.

*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>

Armed nuclear security guards would be able to detain any person suspected of or attempting to commit any of the crimes for which the use of physical or deadly force would be justified by the Act. The detention would have to be conducted in a reasonable manner, for a reasonable time, and for the purpose of summoning a law enforcement officer. The reasonable belief that the person detained was attempting to commit one of the enumerated crimes would be a defense to a civil or criminal action against the guard for false arrest, false or unlawful imprisonment, or wrongful detention. The defense provided in the Act also would accrue to the guard's employer or the owner of the nuclear facility where the guard was employed.

Criminal trespass on a nuclear generating facility would be knowingly either:

- Entering or remaining unlawfully in or on a nuclear generating facility; or
- Entering or remaining unlawfully within a structure or fenced yard of a nuclear generating facility.

The crime would be a severity level 6, person felony.

The bill would define a "nuclear generating facility" as an electric generating facility, and the property on which the facility is located, that is owned by one or more electric utilities and that uses a nuclear reactor to produce electricity. A "structure or fenced yard" would be defined by the bill to be any structure, fenced yard, wall, building or other similar barrier, or combination of those elements, that surrounds a nuclear generating facility and upon which is posted signs indicating that it is a felony to trespass.

Background

The bill was introduced by the Joint Committee on Kansas Security after a closed-door discussion of a vulnerability assessment and security matters at the Wolf Creek Nuclear Generating Station. At the hearing before the House Utilities Committee, the bill was supported by Representative Mario Goico, Chairman of the Joint Committee on Kansas Security and a representative of the Wolf Creek Nuclear Operating Corporation. No opponents of the bill presented testimony to the House Committee.

The House Committee amended the bill to extend protection from criminal and civil liability created by the bill to guards' employers and to owners of a nuclear facility.

The fiscal note prepared by the Division of the Budget for the bill states that the Kansas Sentencing Commission believes the passage of HB 2703 would have a negligible effect on prison admissions, prison bed space, and its operating expenditures. The fiscal note also states that the Kansas Department of Corrections believes the bill would have no fiscal effect on its operating expenditures. According to the Division of the Budget, both agencies believe that the new felony for trespassing would not require additional funding. The House Committee amendment would not appear to materially change the Division's assessment of the bill's fiscal impact.