

SESSION OF 2016

SUPPLEMENTAL NOTE ON SENATE BILL NO. 365

As Amended by Senate Committee on
Commerce

Brief*

SB 365, as amended, would establish the Contaminated Property Redevelopment Act, which would allow a purchaser of real property acquired after July 1, 2016, to be released from environmental liability for pre-existing contamination. The bill also would create a redevelopment program for municipalities.

A purchaser, as defined by the bill, would be allowed to apply to the Kansas Department of Health and Environment (KDHE) for a Certificate of Environmental Liability Release (CELR) by providing the following documentation:

- Phase I or Phase II environmental reports completed within industry standards;
- Environmental assessment reports completed within industry standards; or
- Other reports requested by KDHE.

Within 15 business days after receiving the purchaser's documentation, KDHE would be required to make the following findings:

- The property is contaminated, not including radon, lead-based paint, or asbestos;

*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>

- The purchaser is not responsible for the contamination;
- The property is:
 - Not owned by the purchaser;
 - Owned by the purchaser and was acquired through seizure, condemnation, foreclosure, or default; or
 - Owned by the State or any political or taxing subdivision;
- If the purchaser is a current owner, the purchaser could not have foreseen the threat of contamination and failed to take steps to prevent the contamination;
- There is no relationship between the purchaser and the party responsible for the contamination, other than the real property transaction; and
- The property has met the following conditions:
 - The purchaser has not caused or exacerbated and will not exacerbate the contamination;
 - The purchaser agrees to disclose the CELR to subsequent purchasers until the property may be used for any use;
 - The purchaser agrees to grant access for future environmental investigation and remediation by KDHE; and
 - The purchaser agrees to provide KDHE with notice within 30 days of any transfer or sale of the property covered by the CELR

Property would not be eligible for a CELR if:

- The contamination is subject to regulation under the Kansas Nuclear Energy Development and Radiation Control Act;

- The property is the source of contamination and eligible for cleanup under the Kansas Storage Tank Act or the Kansas Drycleaner Environmental Response Act, unless the site has been enrolled in the applicable cleanup program;
- The property is the source of contamination and is either on the list of federal Superfund sites or proposed to be listed;
- The purchaser agrees for the contaminated property to be investigated or remediated; or
- The purchaser has provided indemnification or release of environmental liability to another party.

A CELR, which would not be transferable, would not relieve the purchaser of the requirements or duties of an applicable environmental use control agreement or risk management plan. A person may request KDHE to modify a CELR. If KDHE denies a request, a written justification would be sent to the person within 30 days.

A CELR would be revoked or made void if the purchaser:

- Failed to grant access to the property, as required by the bill;
- Exacerbated the contamination or interfered with KDHE's approved remedy for the property; or
- Acquired liability for the contamination through contract, law, or other mechanism.

If fraudulent information was provided to KDHE, the Secretary would be permitted to modify or revoke a CELR, including an order to cleanup the site and an administrative penalty of up to \$500 per day. A purchaser would be required to pay a fee, which would not exceed \$2,000 and

would be set by KDHE by rules and regulations. A refund would be issued, less the amount expended to process the application, if KDHE did not issue a CELR. Persons adversely affected by any decision would have 15 days to request a hearing, which would be conducted in accordance with the Kansas Administrative Procedure Act. KDHE would not acquire liability under the provisions of the bill.

The bill would establish the Contaminated Property Redevelopment Fund, which would be administered by the Secretary of Health and Environment. The Fund would receive moneys from fees for CELR applications, federal Brownfields program; gifts, grants, reimbursements, appropriations, interest, penalties, and repayment of Brownfields loans. The Fund, pursuant to appropriation acts, would be used for the administration of the bill and grants and loans to municipalities for brownfield projects.

Background

The bill was introduced by the Senate Committee on Commerce at the request of Senator Wilborn and KDHE. During the Senate Committee hearing, Senator Wilborn and the Director of the Bureau of Environmental Remediation, KDHE, spoke in favor of the bill. Additional testimony was provided by the Kansas Bankers Association, various agricultural associations, the League of Kansas Municipalities, and engineers. KDHE has observed contaminated properties become abandoned. Proponents contend private investors, lending institutions, and local governments will be more inclined to take ownership of contaminated properties for sale or redevelopment if environmental liability is released.

There was no neutral or opponent testimony.

The Senate Committee amended the bill to:

- Allow property enrolled in either the Storage Tank or Drycleaner Environmental programs to be eligible for a CELR; and
- Specify the loans and grants to municipalities are for Brownfield projects.

According to the fiscal note prepared by the Division of the Budget, in consultation with KDHE, the bill, as introduced, would require an additional \$10,000 from the State General Fund in FY 2017 for the promulgation of rules and regulations and program design. KDHE would plan to implement the bill in FY 2018.