

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Charlie L. Angell at
Chairperson

8:00 a.m./~~p.m.~~ on Tuesday, January 24, 1984 in room 123-S of the Capitol.

All members were present ~~XXXX~~

Committee staff present:

Ramon Powers, Research Department
Don Hayward, Revisor's Office
LaVonne Mumert, Secretary to the Committee

Conferees appearing before the committee:

Joe Harkins, Kansas Water Office
Deb Miller, Governor's Office
JoAnn Klesath, Kansas Association of Public Employees
Bill Henry, Kansas Engineering Society
Chris McKenzie, League of Kansas Municipalities

Senator Kerr moved that the minutes of the January 20, 1984 meeting be approved. Senator Werts seconded the motion, and the motion carried.

S.B. 501 - Reclassification Kansas Water Office positions; termination of certain employees

Joe Harkins testified in support of the bill. He said the bill is necessary for the purpose of creating flexibility in the Kansas Water Office needed to respond to the ever-changing responsibilities in the development of the State Water Plan. Of the 24 1/2 positions in the Water Office, nine are directly involved in developing the State Water Plan. Mr. Harkins said the Plan is a continuous process and will be constantly updated which may require bringing new types of talent to the Water Office. He noted that changes are very difficult to accomplish in the classified civil service system. Mr. Harkins feels the necessity to make those changes is essential. He told the Committee the term of the Director of the Water Office is for four years, overlapping by two years the gubernatorial elections. Mr. Harkins said he supports this legislation reluctantly in the sense that he has a personal strong commitment to the classified civil service concept, but he has concluded this is a situation where it is appropriate to use the unclassified service alternative.

Deb Miller stated that the Governor supports S.B. 501 and thinks it is necessary in order to have the State Water Plan completed in the scheduled time-frame.

JoAnn Klesath testified in opposition to the bill. They are concerned about a precedent being set and the potential of returning to a "spoils system". She distributed copies of K.S.A. 79-2949d through 75-2949f (Attachment 1). Ms. Klesath read some of the grounds for dismissal: inefficiency, incompetency, negligence, etc. She emphasized the importance of due process. She answered questions from Committee members.

Bill Henry summarized his written testimony (Attachment 2). He said the Engineering Society finds itself in somewhat of a reluctant position. They share the criticism that the Water Office has not carried out its responsibilities during the past several years, but they do not feel that declassification is the answer to the problem. Mr. Henry said he feels the problem of poor management has been eliminated by appointing Mr. Harkins as Director of the Water Office. It is the opinion of the Engineering Society that insufficient funding has been another problem. Mr. Henry also expressed concerns of patronage politics.

S.B. 497 - Water appropriation rights conditioned to minimum streamflow requirements

Chris McKenzie provided written testimony (Attachment 3). He said his organization neither supports nor opposes the bill, but does have some concerns about it.

Mr. Harkins reviewed his written statement (Attachment 4). As a result of discussions between the Water Office and the Division of Water Resources, they propose that the bill be amended as follows: lines 24 through 27 read: "priation right applied for after the effective date of this act, that such right shall be subject to any minimum desirable streamflow requirements identified and established pursuant to law on or before July 1, 1990 for the source of water

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources,

room 123-S, Statehouse, at 8:00 a.m. ~~XXX~~ on Tuesday, January 24, 1984.

to which"; and that Section 2 be deleted. He explained that July 1, 1990 is a reasonable period of time within which to develop minimum streamflow standards and that after this period of time, the bill would essentially have no effect. Mr. Harkins stated that the suggested amendments would also mean that there would be no significant fiscal impact.

Senator Werts moved that the bill be amended as proposed by Mr. Harkins. Senator Kerr seconded the motion, and the motion carried. Senator Rehorn moved that the bill be recommended favorable, as amended, for passage. Senator Hess seconded the motion, and the motion carried 11-0.

The meeting was adjourned at 8:57 a.m. by the Chairman. The next meeting of the Committee will be at 8:00 a.m. on January 25, 1984.

Senate Energy & Natural Resources

Jan. 24, 1984

<u>Name</u>	<u>Organization</u>
JoAnn Klesath	KAPE
Joe HARKINS	KWO
Jerry Dwyall	KWO
CHARLES AVENIER	Goistellou / KWO
Richard D. Kready	KPL / Gas Service
Ed Reznick	Ks LWUs
Bill Anderson	Water Dist # 1 of Jo Co
Glen E. Kirk	U.S. Bureau of Reclamation
Kim Austin-Smith	City of Topeka - Water Dept.
Mary Fund	Ks. Rural Center
Ed Reznick	Ks. Rural Center
Tom Stuey	KWO
Bill Henry	Ks. Engineering Society
John Campbell	Ks. A. H.

APPENDIX

PRINCIPAL STATUTES CONCERNING DISMISSAL, SUSPENSION, OR DEMOTION OF A PERMANENT EMPLOYEE, AND CONCERNING APPEALS FROM SUCH ACTIONS

In this Appendix are reproduced K.S.A. 75-2949 through 75-2949f which detail the procedures for dismissing, suspending, or demoting an employee with permanent status, and the procedure for handling appeals from such actions.

To make the material as usable as possible, the sections of law are not reproduced in the order in which they appear in the law books, but in the following "topical" order:

First, the sections dealing with grounds for dismissal, suspension, and demotion of a permanent employee, and the special procedures for such actions when the grounds are deficiencies in work performance. Next, the procedures for proposing dismissal, suspension, or demotion, for giving the employee the opportunity to be heard, and the procedure for the employee to appeal to the civil service board. Finally, the sections of the statutes regarding conduct of hearings by the civil service board.

At the beginning of each section is language by which the section can be cited in correspondence.

K.S.A. 75-2949d; stating the two major categories of grounds for dismissal, demotion, or suspension of a permanent employee:

(a) A permanent employee in the classified service under the Kansas civil service act may be dismissed, demoted or suspended because of deficiencies in work performance as provided in K.S.A. 75-2949e or because of personal conduct detrimental to the state service as provided in K.S.A. 75-2949f or because of both such reasons. In all such cases, the provisions of K.S.A. 1982 Supp. 75-2949, and amendments thereto, shall apply.

(b) This section and K.S.A. 1982 Supp. 75-2949e and 75-2949f shall be part of and supplemental to the Kansas civil service act.

K.S.A. 75-2949e; grounds for dismissal, demotion, or suspension of a permanent employee for deficiencies in work performance; evaluations and counseling:

(a) Grounds for dismissal, demotion or suspension of a permanent employee for deficiencies in work performance include, but are not limited to, the following:

(1) Inefficiency or incompetency in the performance of duties, or inability to perform the duties;

(2) negligence in the performance of duties;

(3) careless, negligent or improper use of state property;

(4) failure to maintain satisfactory and har-

monious relationships with the public and fellow employees;

(5) habitual or flagrant improper use of leave privileges;

(6) a habitual pattern of failure to report for duty at the assigned time and place or to remain on duty; and

(7) failure to obtain or maintain a current license or certificate or other authorization required to practice a trade, conduct a business or practice a profession.

(b) Unless the appointing authority determines that the good of the service will best be served by proceeding directly to the procedure prescribed in K.S.A. 1982 Supp. 75-2949, and amendments thereto, the appointing authority may propose dismissal, demotion or suspension of a permanent employee for deficiencies in work performance only after the employee has received two performance evaluations in the 90 calendar days immediately preceding the effective date of the proposed dismissal, demotion or suspension. These performance evaluations shall be spaced at least 30 calendar days apart. The appointing authority may propose dismissal if the two evaluations were "unsatisfactory". The appointing authority may propose suspension or demotion if the two evaluations were "unsatisfactory" or "below standard".

(c) If the appointing authority proposes to dismiss, demote or suspend a permanent em-

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ployee for deficiencies in work performance without the two evaluations described by subsection (b) and if the employee appeals the action to the state civil service board, the board shall require the appointing authority to show that the employee was adequately counseled concerning the nature of the deficiencies in work performance and concerning what was expected of the employee in correcting the deficiencies.

K.S.A. 75-2949f; grounds for dismissal, demotion, or suspension of a permanent employee for personal conduct detrimental to the state service:

Grounds for dismissal, demotion or suspension of a permanent employee for personal conduct detrimental to the state service include, but are not limited to, the following:

(a) Gross misconduct or conduct unbecoming a state officer or employee;

(b) conviction of a criminal act;

(c) immoral conduct;

(d) willful abuse or misappropriation of state funds, materials, property or equipment;

(e) making a false statement of material fact in the employee's application for employment or position description;

(f) participation in any action that would in any way seriously disrupt or disturb the normal operation of the agency, institution, department or any other segment of state government;

(g) trespassing on the property of any state official or employee for the purpose of harassing or forcing dialogue or discussion from the occupants or owners of such property;

(h) willful damage to or destruction of state property;

(i) willful endangerment of the lives or property of others, or both;

(j) possession of unauthorized firearms or other lethal weapons while on the job;

(k) performing duties in a brutal manner, or mistreating or abusing a patient or resident or other person in the employee's care;

(l) refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination);

(m) being under the influence of alcohol or drugs while on the job;

(n) knowingly releasing confidential information from official records;

(o) use of the employee's state position, use of the employee's time on the state job, or use of state property or facilities by the employee in connection with a political campaign; and

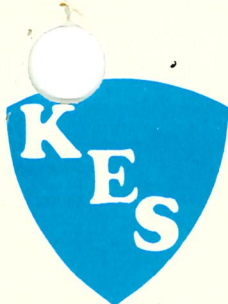
(p) exhibiting other personal conduct detri-

mental to state service which could cause undue disruption of work or endanger the safety of persons or property of others, as may be determined by the appointing authority.

K.S.A. 1982 Supp. 75-2949; written proposal to dismiss, demote or suspend a permanent employee; opportunity for employee to reply to proposal; extension of time for reply; possible relief of employee from duties or change of duties pending decision on proposed action; written notice of decision; withdrawal or modification of action; appeal to civil service board; determination of qualifications of employee proposed to be demoted; status of employee after demotion; relief of employee from duties or change of duties in situation where appointing authority needs time to conduct an investigation before proposing dismissal, demotion or suspension, or in situation where immediate removal from job is needed to avoid disruption of work, for protection of persons or property, or for similar reasons:

(a) An appointing authority may dismiss or demote any permanent employee in the classified service when the appointing authority considers that the good of the service will be served thereby, and for disciplinary purposes may suspend without pay a permanent classified employee for a period not to exceed 30 calendar days, but no permanent employee in the classified service shall be dismissed, demoted or suspended for political, religious, racial or other nonmerit reasons.

(b) Prior to dismissal, demotion or suspension of a permanent employee in the classified service, the appointing authority shall furnish the employee by certified mail, return receipt requested, or by personal delivery, a statement in writing specifically setting forth the reasons therefor. A copy of such statement shall be furnished immediately to the director. This statement shall contain notice of the proposed dismissal, demotion or suspension and shall specify the proposed effective date thereof. Except as otherwise provided in the Kansas civil service act, a proposed suspension, demotion, or dismissal shall become effective no less than three calendar days nor more than 10 calendar days following the date the notice of such proposed suspension, demotion, or dismissal is personally delivered to the employee or deposited with the post office as certified mail. If in the opinion of the appointing authority conditions warrant, the appointing authority may relieve the employee of duties or change the duties of the employee during such period. If the employee is re-



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216 West Seventh, P.O. Box 477
Topeka, Kansas 66601 (913) 233-1867

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William M. Henry
Executive Vice President

Testimony before the Senate Energy and Natural Resources Committee, January 24, 1984.

I am Bill Henry, Executive Vice President of the Kansas Engineering Society, and I appear today on behalf of the Society in opposition to S.B. 501.

The members of the Engineering Society work often with the state agencies which deal with water, and as a result have the opportunity to see the agencies in action on a daily basis and in a variety of situations.

The Kansas Water Office, as this committee knows, is the planning agency that deals with water in Kansas. That planning purpose has always been the mission of the Water Office since it has been organized, regardless of what the title of the organization has been.

We concur with the criticism of other parties, including members of this committee, that the agency in recent years has not performed that function to our satisfaction or to the satisfaction of others interested in the water planning in our State.

But we feel declassification of the professional staff of this organization is not the answer to our dissatisfaction.

We submit that the problems that have occurred in the past with the accomplishment of the office's mission were due in part to poor management, lack of adequate funding and conflicts in direction among those interested in water policy in this State.

The management problem, I believe, was eliminated with the appointment of Joe Harkins as Director of the Water Office.

However, we still feel the department has insufficient funding to utilize or contract with consultants or other outside experts who may be needed to update our water planning. We would recommend that instead of passing S.B. 501 that this Legislature appropriate whatever amount is necessary for the Director to obtain the consulting expertise he needs.

Continuity is a key aspect of planning—we all know the frustration of trying to re-invent the so-called wheel. The classified service provides this continuity. We feel the chief problem has been that we have changed our direction to often in the past; one year we ask the

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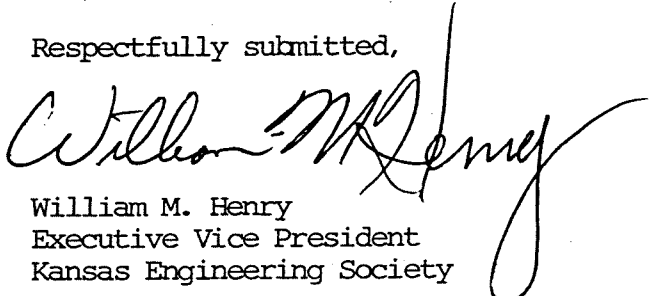
Water Office to take one direction only to change that direction midway after the staff has been working in preparing an answer to the original question. And then we grow disappointed when the final product does not answer our most recent query.

Of course sometimes professionals worry too much and perhaps have a touch of paranoia when it comes to politics. But we have had good evidence in the past to fear the politicizing of important jobs that are necessary for the performance of good government.

KES has faith in the current Director of the Kansas Water Office and we do not doubt that he would select staff based upon qualifications and professionalism, not political-connections. Unfortunately, we have no guarantee as to how long Mr. Harkins will remain in his position and as we look to the future we wonder what type of planning might be provided by patronage personnel and how objective their planning might be.

Also, we do not know how many professional persons, be they Licensed Engineers or planners, will be attracted to these positions if they know they will be subject to the unclassified whims of a change in administration in the future. With these thoughts in mind the Kansas Engineering Society respectfully submits that this committee carefully consider S.B. 501 and the broad step in declassification of state personnel if entails.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William M. Henry", with a long, sweeping flourish extending to the right.

William M. Henry
Executive Vice President
Kansas Engineering Society

WMH:mg



League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: Senate Energy and Natural Resources Committee
 FROM: League of Kansas Municipalities
 DATE: January 24, 1984
 RE: Senate Bill 497

Summary of Testimony

Although the League has not yet had the opportunity to adopt a formal position on SB 497, contacts between League staff and city officials indicate: (1) general support for minimum streamflow planning efforts; (2) concern that the open-ended nature of Section 1 of the bill could impose unspecified conditions on rights obtained for municipal water supply purposes between 1984 and 1988 that might render the rights less valuable at some indefinite time in the future; (3) there are questions about whether the purposes of Section 1 could be accomplished with the proposed amendment to K.S.A. 1983 Supp. 82a-711 contained in Section 2 of the bill while removing the uncertainty and indefiniteness caused by Section 1; and (4) general support for amendments to Section 1 to remove the possibility of there being a perpetual cloud on water rights obtained between 1984 and 1988.

Testimony

While the Governing Body and the Special Committee on Water Policy of the League of Kansas Municipalities have not yet had the opportunity to meet and adopt a formal position on SB 497, the League staff respectfully offers the following observations and comments on the bill based on preliminary discussions with officials in League member cities:

1. The League appreciates and generally supports the minimum desirable streamflow planning efforts of the Kansas Water Office and the Kansas Water Authority over the past year. Efforts to determine and adopt minimum desirable streamflow standards should continue in the years to come.
2. Notwithstanding our general support, the League staff wishes to register some preliminary concerns about SB 497:
 - (a) SB 497 really places the regulatory decisionmaking process concerning minimum desirable streamflows ahead of the planning process. This is a criticism local officials frequently hear about local decisionmaking and planning. For example, citizens may voice concerns about zoning decisions being made before a valid comprehensive plan can be developed or updated. Only if there is a reasonable concern that the minimum desirable streamflow requirements to be established in the future will be rendered meaningless by overappropriation of a river before the requirements can be established in law should the retroactive provisions of SB 497 receive your support. Such a decision is similar in some respects to a

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decision at the local level to impose limitations on the granting of rezoning applications until an adequate plan can be developed;

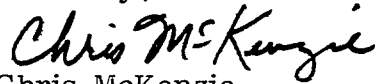
- (b) Some local officials who have commented to us on SB 497 have expressed concern about the still open-ended and indefinite nature of the conditions imposed in Section 1. In discussing this issue with certain individuals I have drawn an analogy between Section 1 and the decision of a local to grant a request for rezoning of a piece of property subject to certain indefinite conditions, e.g., a future change in the text of the city's zoning ordinance. It is conceivable that the imposition of certain conditions would render that rezoned property less valuable for the purpose for which it was rezoned. In such an instance, the city should not be surprised to find itself a defendant in a lawsuit in which the property owner challenges the governing body's action as an unconstitutional "taking" of his property without just compensation. Cities which make similar investments in the development of municipal water supplies under water rights applied for or granted between January 1, 1984 and July 1, 1988 would face similar uncertainties and potential loss of property rights;
- (c) The League staff endorses Mr. Lee Wright's suggestion to this Committee last week that the words "or granted" in line 24 be removed to eliminate the potential discrimination problems he described; and
- (d) The proposed amendment to K.S.A. Supp. 82a-711 contained in Section 2 offers another approach to addressing the same problem addressed by Section 1. The removal of the word "established" in line 46 would appear to allow the chief engineer to make a case-by-case determination of whether a proposed use would prejudicially and unreasonably affect the public interest because it would impair even recommended (as opposed to "established") minimum desirable streamflows. This change clearly gives the chief engineer additional discretion to protect minimum desirable streamflows before the legislature can act to establish them. The major disadvantage to this approach, however, would appear to be the degree to which the exercise of that discretion may be subject to legal challenge.
3. One final comment. Section 1 refers to minimum desirable streamflow requirements "identified and established pursuant to law..." I understand the Committee has before it SB 510 that would allow the adoption of the elements of the state water plan, including the element setting minimum desirable streamflows, by concurrent resolution. At the risk of raising what might be misinterpreted as a straw man, I would ask whether the establishment of minimum desirable streamflow requirements by concurrent resolution constitutes establishment "pursuant to law" as that term is used in Section 1? More importantly, would the setting of such requirements in that manner comport with our constitution? I raise these questions at the same time the League staff supports the procedure for adopting and amending the state water plan set forth in SB 510.

Memorandum to Senate Energy
and Natural Resources Committee
January 24, 1984
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In conclusion, in the absence of any formal position on SB 497, the League staff respectfully urges your consideration of some of the ways mentioned above for eliminating some of the uncertainty caused by Section 1 of the bill. In addition, we would recommend fixing a point certain in Section 1 after which the state may not retroactively impose minimum desirable streamflow conditions on water right holders unless future legislative action is taken. Such an amendment, we believe, would remove the possibility of a perpetual cloud being imposed on water rights obtained between January 1, 1984 and July 1, 1988.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Chris McKenzie". The signature is written in a cursive, slightly slanted style.

Chris McKenzie
Attorney/Director of Research

JOINT STATEMENT BY THE KANSAS WATER OFFICE
AND THE DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE

PRESENTED BY JOE HARKINS, DIRECTOR
KANSAS WATER OFFICE

TO SENATE ENERGY & NATURAL RESOURCES COMMITTEE

JANUARY 24, 1984

SENATE BILL 497 CONCERNING CONDITIONING WATER APPROPRIATION
RIGHTS TO MINIMUM DESIRABLE STREAMFLOW REQUIREMENTS

Thank you, Mr. Chairman and Committee members, for this opportunity to appear here today.

During your hearing on January 17, 1984, the Kansas Water Office and the Division of Water Resources raised several concerns about Senate Bill 497. One major concern was that the retroactive effect of the bill be eliminated as much as possible.

Since that Committee meeting, I met with Mr. Pope from the Division of Water Resources and discussed Senate Bill 497 at great length. Attached to this statement is a balloon draft of proposed amendments to Senate Bill 497 which both the Kansas Water Office and the Division of Water Resources are willing to support.

The proposed amendments would make every appropriation right applied for after the effective date of this Act, upon publication in the Kansas Register, subject to any minimum desirable streamflows designated by the legislature on or before July 1, 1990.

This will give my office adequate time to formulate and propose such minimum desirable streamflow designations, and hopefully have them passed on by the legislature. It should also allow a few years of actual operation of these streamflows to determine whether any errors were made and therefore

Joe Harkins

changes could be made to any minimum streamflows that were designated, up until July 1, 1990. Such changes would still revert back to a priority date of the effective date of this bill.

At this time, I would be happy to answer any questions you might have concerning the attached proposed amendments.

Attachment

SENATE BILL No. 497

By Committee on Energy and Natural Resources

1-10

0016 AN ACT amending the Kansas water appropriation act; condi-
0017 tioning water appropriation rights to minimum desirable
0018 streamflow requirements; amending K.S.A. 1983 Supp. 82a-
0019 711 and repealing the existing section.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 New Section 1. In addition to any other limitation or condi-
0022 tion prescribed by law or rule and regulation of the chief engi-
0023 neer, it shall be an express condition of each and every appro-
0024 priation right applied for or granted after January 1, 1984, and
0025 before July 1, 1988, that such right shall be subject to any
0026 minimum desirable streamflow requirements identified and es-
0027 tablished pursuant to law for the source of water supply to which
0028 such right applies.

delete
after the effective date of this act

on or before July 1, 1990

0029 Sec. 2. K.S.A. 1983 Supp. 82a-711 is hereby amended to read
0030 as follows: 82a-711. If a proposed use neither will impair a use
0031 under an existing water right nor prejudicially and unreasonably
0032 affect the public interest, the chief engineer shall approve all
0033 applications for such use made in good faith in proper form
0034 which contemplate the utilization of water for beneficial pur-
0035 pose, within reasonable limitations except that the chief engi-
0036 neer shall not approve any application submitted for the pro-
0037 posed use of fresh water in any case where other waters are
0038 available for such proposed use and the use thereof is technolo-
0039 gically and economically feasible. Otherwise the chief engineer
0040 shall make an order rejecting such application or requiring its
0041 modification to conform to the public interest to the end that the
0042 highest public benefit and maximum economical development
0043 may result from the use of such water. In ascertaining whether a
0044 proposed use will prejudicially and unreasonably affect the

0045 public interest, the chief engineer shall take into consideration
0046 ~~established~~ minimum desirable streamflow requirements, the
0047 area, safe yield and recharge rate of the appropriate water sup-
0048 ply, the priority of existing claims of all persons to use the water
0049 of the appropriate water supply, the amount of each such claim to
0050 use water from the appropriate water supply, and all other
0051 matters pertaining to such question. With regard to whether a
0052 proposed use will impair a use under an existing water right,
0053 impairment shall include the unreasonable raising or lowering of
0054 the static water level or the unreasonable increase or decrease of
0055 the streamflow or the unreasonable deterioration of the water
0056 quality at the water user's point of diversion beyond a reasonable
0057 economic limit. Any person aggrieved by any order or decision
0058 by the chief engineer relating to that person's application for a
0059 permit to appropriate water may appeal to the district court in the
0060 manner prescribed by K.S.A. 1980 ~~Supp.~~ 82a-724 and amend-
0061 *ments thereto.*

established

0062 Sec. 3. K.S.A. 1983 Supp. 82a-711 is hereby repealed.

0063 Sec. 4. This act shall take effect and be in force from and
0064 after its publication in the Kansas register.