

Approved March 19, 1986

Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Ron Fox at  
Chairperson

3:30 a.m./p.m. on March 6, 1986 in room 526-S of the Capitol.

All members were present except:

All members were present.

Committee staff present:

Ramon Powers, Legislative Research Department  
Gloria Timmer, Fiscal Staff, Legislative Research  
Theresa Kiernan, Revisor of Statutes' Office  
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

No conferees.

The meeting was called to order by Chairman Ron Fox. The first item taken up was House Bill 2782--Posting of park or recreational area regulations. Chairman Fox noted that this bill had been requested by the Shawnee County Park Department and the entire Shawnee County Delegation endorsed it. At the time of hearing, the bill was amended, but no action taken. Representative Acheson moved, seconded by Representative Barr, to pass House Bill 2782 favorably as amended. Representative Ott made a substitute motion to restrict this bill to Shawnee County. Representative Spaniol seconded. The motion carried. Representative Acheson moved to pass House Bill 2782 favorably as amended. Representative Barr seconded. The motion carried.

The minutes of February 24 were approved as corrected and adopted. There were no objections to the minutes of February 27 and they were adopted.

House Bill 3078--Regulation of oil and gas activities by corporation commission to prevent water pollution. Staff explained proposed technical amendments that had been requested on March 5. (Attachment 1) Representative Fry, seconded by Representative Sutter, moved to adopt the proposed amendments. The motion carried. Staff noted that a section of the bill relative to an advisory committee in which the Department of Health and Environment was included, had not been amended. It was deemed important not to change the membership of that committee.

Representative Shore made a motion to amend House Bill 3078 on page 13, line 485, by striking "Kansas water office" and inserting "Chief Engineer, Division of Water Resources." Representative Guldner seconded. The motion carried.

Representative Grotewiel, seconded by Representative Sutter, made a motion to amend House Bill 3078 on page 14, line 522 by striking "federal clean water pollution control act" and inserting "clean water act." Also on line 523 by striking "1972" and inserting "1981." The motion carried. Representative Grotewiel moved, seconded by Representative Patrick, to have staff reinsert the language on page 17, lines 611 through and including 621 in the way they deem best. The motion carried.

A balloon copy of House Bill 3078 was passed out, showing more amendments proposed by Representative Grotewiel. (Attachment 2) He moved that the language in New Section 39 on pages 23 and 24 be stricken. Representative Webb seconded. Following discussion, a vote was taken. The motion carried. Representative Grotewiel explained the other proposed amendments in the balloon, which would allow the Corporation Commission to deal with drilling, production, treatment, and all preventative measures. Once a well has been plugged and is abandoned, the Department of Health and Environment would have regulatory authority to deal with ground water and surface water protection. Lengthy discussion followed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
room 526-S, Statehouse, at 3:30 ~~xx~~/p.m. on March 6, 1986

Representative Patterson moved that House Bill 3078 be passed favorably as amended. Representative Spaniol seconded. During discussion, Representative Grotewiel noted that he could not support the bill without his amendments which would clearly separate the areas of responsibilities under the Corporation Commission and the Department of Health and Environment. A vote was taken and the motion carried.

Copies of Proposed Substitute for House Bill 2703--State water plan; agricultural conservation were distributed to the committee. (Attachment 3) Representative Ott, chairman of the subcommittee which studied this bill, made a motion that the committee adopt the Proposed Substitute for House Bill 2703 as the subcommittee report. Representative Fry seconded. Representative Ott went through the bill step-by-step, noting how the conservation plans would work. Questions and discussion took place during this time. Representative Barr made a motion to amend Proposed Substitute for House Bill 2703 on page 8, section 4 (i) by adding after "feasible manner": "in the public interest." Also on page 2, after section (8), by adding a section (9) and putting "for the good of the public interest." She felt this was needed to provide checks and balances. Representative Charlton seconded. Following discussion, a vote was taken and the motion carried. Representative Shore, seconded by Representative Grotewiel, moved to introduce and pass out Proposed Substitute for House Bill 2703 favorably as amended.

House Bill 2721--State water plan storage act. Representative Patterson passed out copies of an amendment. (Attachment 4) He made a motion, seconded by Representative Charlton, on page 8, line 278, to put a period after "year", striking the semicolon and the word "and." Also to strike the next three sentences. He explained that this would eliminate the \$.025 depreciation reserve for water, and that even this reduction would encourage sales and bring more money into the state general fund. Representative Ott made a conceptual substitute motion dealing with the pricing formula which was incorporated in page 7 of the bill. Representative Patrick seconded. Representative Ott noted that he wanted to incorporate Representative Patterson's original motion in his motion. Representative Patrick accepted that as part of his second, noting that the \$.025 had not raised the amount of money that had been expected when it was enacted two years earlier. Discussion dealing with pricing formula, development fund, and pooled money fund followed.

Staff reviewed a memorandum from the Kansas Legislative Research Department, dated March 3, 1986, which gave background information and details of the State Water Marketing Program. (Attachment 5) Clark Duffy, Assistant Director of the Kansas Water Office, distributed a handout prepared by his office on March 6, 1986, as a clarification and supplement to what staff had described regarding the financial administration of this program. (Attachment 6) Lengthy discussion followed. A vote was taken on Representative Ott's substitute motion to amend House Bill 2721. The Chair was in doubt on the voice vote; by show of hands, 8 were in favor and 9 opposed. The motion failed.

Representative Grotewiel made a motion to adopt Representative Patterson's proposed amendment to strike language dealing with \$.025 depreciation reserve for water. On a voice vote, the motion lost.

Turning back to the bill, Representative Patrick moved that House Bill 2721 be amended back to current law, keeping the interest in the state general fund. Representative Charlton made a substitute motion to pass House Bill 2721 out favorably with no amendments. Representative Webb seconded. Following discussion, a vote was taken. Chair was in doubt on the voice vote; by show of hands, 8 were in favor and 9 opposed. The motion failed.

Representative Ott made a substitute amendment, proposing to delete the new language on page 7, lines 253, 254, and 255. Representative Patrick seconded. The motion carried. Representative Ott moved that House Bill 2721

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
room 526-S, Statehouse, at 3:30 ~~a.m.~~ p.m. on March 6, 1986

be passed out favorably as amended. Representative Charlton seconded. The motion carried.

The meeting was adjourned at 6:10 p.m.

Date: March 6, 1986

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
TREVA POTTER	NORTHERN NAT. GAS	TOPEKA	357 <del>378</del> 5121
WALTER DUNN	EKO6A	✓	2725674
Maki Mlinar	KCC	"	2936
Jim Moline	KCC	"	2549
B. J. Sabol	KDH+E	"	862-9360
Larry Knochie	KDH+E	"	862-9360
Bill Anderson	Water Dist #1 of Jo Co	Mission	
Ed Reinert	League Women Voters	Topeka	2736099
Lela E. Rolf	DWR-KSBA	Topeka	296-3717
Jan Johnson	Budget Division	Topeka	2436
Judy Duwall	KCC	"	3185
Pat Casey	KDH+E	"	862-9360
Marsha Marshall	KNEC	"	232-6709
David R. Mitchell	KCC	"	296-3361
Rich McKeep	K.L.A.	Topeka	232-9558
Jelly Smith	LAWSON	Wichita	261-5157
Don Schwank	KSDGR	Topeka	232-7772
Rick Kready	KPL Gas Service	"	296-6474

## Proposed Amendment to House Bill No. 3078

Be amended:

On page 10, in line 360, before the period, by inserting "created by K.S.A. 55-143, and amendments thereto"; in line 376, by striking all following "sections"; by striking all in line 377; in line 378, by striking all before the semicolon;

On page 19, in line 703, before "Leaving", by inserting "(a)";

On page 20, in line 718, by striking "New Sec. 31." and inserting "(b)"; in line 719, by striking "act" and inserting "section";

By renumbering sections 32 to 39, inclusive as sections 31 to 38, inclusive;

On page 24, following line 872, by inserting the following section:

"Sec. 39. K.S.A. 55-143 is hereby amended to read as follows: 55-143. (a) There is hereby created in the state treasury the conservation fee fund. All deposits credited to ~~said~~ such fund shall be for the use of the state corporation commission in administering the provisions of ~~K.S.A. 55-128 to 55-142, inclusive, 55-161, this act, and amendments thereto, and~~ K.S.A. 55-601 to 55-613, inclusive, 55-701 to 55-713, inclusive, 55-901 and 55-902, and K.S.A. 55-1201 to 55-1206, inclusive, and ~~all acts amendatory of any of such statutes or supplemental to any of such statutes~~ amendments thereto. All expenditures from the conservation fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the state corporation commission or by a person or persons designated by the chairperson. The corporation commission, with the approval of the director of accounts and reports, shall formulate a system of accounting procedures to account for the money credited to the conservation fee fund pursuant to this act

Attachment 1

section.

(b) -- On the effective date of this act the director of accounts and reports shall transfer all moneys in the oil proration fees fund, the oil well plugging fee fund, the abandoned well plugging fund and the natural gas conservation fee fund to the conservation fee fund created by this section. After such transfer, the oil proration fees fund, the oil well plugging fee fund, the abandoned well plugging fund and the natural gas conservation fee fund are hereby abolished. All liabilities of the funds abolished by this section are hereby imposed on the conservation fee fund created by this section. "

By renumbering sections accordingly;

Also on page 24, in line 874, following "55-142," by inserting "55-143,";

In the title, in line 18, following "K.S.A.", by inserting "55-143,";

And the bill be passed as amended.

\_\_\_\_\_  
Chairperson

# HOUSE BILL No. 3078

By Committee on Energy and Natural Resources

2-26

0016 AN ACT concerning oil and gas; relating to the protection of  
 0017 water from pollution; prescribing certain powers and duties to  
 0018 the state corporation commission; amending K.S.A. 55-150,  
 0019 55-151, 55-152, 55-155, 55-158, 55-159, 55-160, 55-161, 55-162,  
 0020 55-164, 55-901, 55-903, 55-904, 55-1003, 55-1004, 55-1006 and  
 0021 65-171d and repealing the existing sections; also repealing  
 0022 K.S.A. 55-121, 55-128c, 55-128d, 55-129, 55-131, 55-132a, 55-  
 0023 55-132b, 55-139, 55-140a, 55-140b, 55-141, 55-141a and 55-142  
 0024 and K.S.A. 1985 Supp. 55-140.

0025 *Be it enacted by the Legislature of the State of Kansas:*

0026 New Section 1. (a) The state corporation commission shall  
 0027 have the ~~exclusive jurisdiction and authority~~ to regulate oil and  
 0028 gas activities which shall include all practices involved in the  
 0029 exploration for oil and gas and the drilling, production, treat-  
 0030 ment, abandonment and post-abandonment of oil and gas wells.

power

0031 (b) All powers, duties and functions of the Kansas depart-  
 0032 ment of health and environment relating to the ~~protection of~~  
 0033 ~~surface water and groundwater from pollution by oil and gas~~  
 0034 ~~activities~~ are hereby transferred to and conferred and imposed  
 0035 upon the state corporation commission.

drilling, production, treatment, abandonment and post-abandonment of oil and gas wells

0036 (c) The state corporation commission shall be the successor  
 0037 in every way to the powers, duties and functions of the Kansas  
 0038 department of health and environment relating to the ~~protection~~  
 0039 ~~of surface water and groundwater from pollution by oil and gas~~

drilling, production, treatment, abandonment and post-abandonment of oil and gas wells

0040 ~~activities~~. Every act performed in the exercise of such powers,  
 0041 duties and functions by or under the authority of the state  
 0042 corporation commission shall be deemed to have the same force  
 0043 and effect as if performed by the Kansas department of health  
 0044 and environment.

0045 (d) Whenever the Kansas department of health and environ-

046 for words of like effect, or the bureau of oil field and  
 047 environmental geology of the department of health and environ-  
 048 ment, or words of like effect, is referred to or designated by a  
 049 statute, contract or other document relating to the ~~protection of~~  
 050 ~~surface water and groundwater from pollution by oil and gas~~  
 051 ~~activities~~, such reference shall be deemed to apply to the state  
 052 corporation commission.

drilling, production, treatment, abandonment and post-abandonment of  
 oil and gas wells

053 (e) All rules and regulations of the secretary of health and  
 054 environment which are administered by the bureau of oil field  
 055 and environmental geology of the department of health and  
 056 environment and relate to the ~~protection of surface water and~~  
 057 ~~groundwater from pollution by oil and gas activities~~ in existence  
 058 on the effective date of this act shall continue to be effective and  
 059 shall be deemed to be the duly adopted rules and regulations of  
 060 the state corporation commission until revised, amended, re-  
 061 voked or nullified pursuant to law.

drilling, production, treatment, abandonment and post-abandonment of  
 oil and gas wells

062 (f) All orders and directives of the Kansas department of  
 063 health and environment issued by the bureau of oil field and  
 064 environmental geology of the department of health and environ-  
 065 ment relating to the protection of surface water and groundwater  
 066 from pollution by oil and gas activities in existence on the  
 067 effective date of this act shall continue to be effective and shall  
 068 be deemed to be orders and directives of the state corporation  
 069 commission until revised, amended, revoked or nullified pursu-  
 070 ant to law.

071 New Sec. 2. The state corporation commission shall succeed  
 072 to all property and records of the Kansas department of health  
 073 and environment which were used for, or pertained to, the  
 074 performance of the powers, duties and functions transferred  
 075 pursuant to this act. On the effective date of this act, the balance  
 076 of all funds appropriated and reappropriated to the Kansas de-  
 077 partment of health and environment for the activities of the  
 078 bureau of oil field and environmental geology of the Kansas  
 079 department of health and environment relating to the ~~protection~~  
 080 ~~of surface water and groundwater from pollution by oil and gas~~

drilling, production, treatment, abandonment and post-abandonment of  
 oil and gas wells

081 ~~es~~ are hereby transferred to the state corporation com-  
 082 mission and shall be used only for the purposes for which the



083 a appropriation was originally made. Any conflict as to the proper  
084 disposition of such property or records or the unexpended bal-  
085 ances of any appropriation or reappropriation arising under this  
086 section shall be resolved by the governor, and the decision of the  
087 governor shall be final.

088 New Sec. 3. On the effective date of this act, liability for all  
089 accrued compensation or salaries of officers and employees who,  
090 immediately prior to such date, were engaged in the perform-  
091 ance of powers, duties and functions transferred by this act shall  
092 be assumed and paid by the state corporation commission.

093 New Sec. 4. Whenever any conflict arises as to the disposi-  
094 tion of any power, duty or function as a result of any transfer  
095 made by this act, or under authority of this act, such conflict shall  
096 be resolved by the governor, and the decision of the governor  
097 shall be final.

098 New Sec. 5. (a) No suit, action or other proceeding, judicial  
099 or administrative, lawfully commenced by or against the Kansas  
100 department of health and environment or by or against any  
101 officer or employee of the department acting in the official  
102 capacity of such officer or employee or in relation to the dis-  
103 charge of official duties, shall abate by reason of the transfer of  
104 powers, duties and functions effected under the provisions of  
105 this act. The court may allow any such suit, action or proceeding  
106 to be maintained by or against the state corporation commission.

107 (b) No criminal action commenced or which could have been  
108 commenced by the state shall abate by the taking of effect of this  
109 act.

110 New Sec. 6. On the effective date of this act, all officers and  
111 employees who were engaged immediately prior to the effective  
112 date of this act in the performance of powers, duties and func-  
113 tions which are transferred pursuant to the provisions of this act,  
114 and who in the opinion of the state corporation commission are  
115 necessary to perform such powers, duties and functions, shall be  
116 transferred to and shall become officers and employees of the  
117 corporation commission. Any such officer or employee shall  
118 retain all retirement benefits and all rights of civil service which  
119 have accrued to or vested in such officer or employee prior to the

0120 tive date of this act. The service of each such officer or  
0121 employee so transferred shall be deemed to have been continu-  
0122 ous. All transfers and any abolishments of personnel in the  
0123 classified service under the Kansas civil service act shall be in  
0124 accordance with civil service laws and rules and regulations  
0125 adopted thereunder.

0126 Sec. 7. K.S.A. 55-150 is hereby amended to read as follows:  
0127 55-150. As used in this act unless the context requires a different  
0128 meaning:

0129 (a) "Commission" means the state corporation commission;

0130 (b) "contractor" means any person who acts as agent for an  
0131 operator as a drilling, plugging, service rig or seismograph con-  
0132 tractor in such operator's oil and gas operations;

0133 (c) "fresh water" means water containing not more than 1,000  
0134 milligrams per liter, total dissolved solids;

0135 (d) "operator" means a person who is responsible for the  
0136 physical operation and control of a well;

0137 (e) "person" means any natural person, partnership, govern-  
0138 mental or political subdivision, firm, association, corporation or  
0139 any other legal entity;

0140 (f) "rig" means any crane machine used for drilling or plug-  
0141 ging wells;

0142 ~~(g) "secretary" means the secretary of the department of~~  
0143 ~~health and environment;~~

0144 ~~(h)(g)~~ (g) "usable water" means water containing not more than  
0145 10,000 milligrams per liter, total dissolved solids;

0146 ~~(i)(h)~~ (h) "well" means a hole drilled for the purpose of:

0147 (1) Producing oil or gas;

0148 (2) injecting fluid, air or gas in the ground in connection with  
0149 the exploration for or production of oil or gas;

0150 (3) obtaining geological information in connection with the  
0151 exploration for or production of oil or gas by taking cores or  
0152 through seismic operations; or

0153 (4) disposing of fluids produced in connection with the ex-  
0154 ploration for or production of oil or gas.

0155 Sec. 8. K.S.A. 55-151 is hereby amended to read as follows:  
0156 55-151. Prior to the drilling of any well, every operator shall file

(a)

01 application of intent to drill with the commission. Such  
 0158 application shall be accompanied by a fee of \$40 and shall  
 0159 include such information as required by the commission and  
 0160 shall be on a form prescribed by the commission. No change in  
 0161 the use of a well shall be made without express approval of the  
 0162 commission. No fee shall be required to accompany any appli-  
 0163 cation of intent to drill a well for the sole purpose of obtaining  
 0164 geologic information by taking cores or through seismic opera-  
 0165 tions or for any application for change in use of a well. No  
 0166 drilling shall be commenced until the authorized agents of the  
 0167 commission and secretary have approved the application. The  
 0168 secretary's agent, in giving approval, shall determine that the  
 0169 proposed construction of the well will protect all usable waters.  
 0170 Such approval of the commission shall include the amount of  
 0171 pipe necessary to protect all usable water, plugging require-  
 0172 ments upon abandonment and such other requirements deemed  
 0173 appropriate by the commission. On and after July 1, 1983, the  
 0174 requirement that the application of intent to drill be accompa-  
 0175 nied by a fee of \$40 shall expire and no such fee shall be  
 0176 collected on and after such date. The commission may refuse to  
 0177 process any application submitted pursuant to this section unless  
 0178 the applicant has been in compliance with all rules and regula-  
 0179 tions adopted pursuant to this act.

0180 Sec. 9. K.S.A. 55-152 is hereby amended to read as follows:  
 0181 55-152. (a) The commission, by November 1, 1982, shall adopt  
 0182 such rules and regulations necessary for the implementation of  
 0183 this act including provisions for the construction, operation and  
 0184 abandonment of any well and the protection of the usable water  
 0185 of this state from any actual or potential pollution from any well.  
 0186 No rules and regulations promulgated pursuant to this section  
 0187 shall be adopted by the commission until recommendations have  
 0188 been received from the advisory committee established by  
 0189 K.S.A. 55-153, and amendments thereto. In the event the secre-  
 0190 tary finds that such rules and regulations are not in accordance  
 0191 with the secretary's recommendations, the secretary shall submit  
 0192 the joint committee on administrative rules and regulations a  
 0193 report specifying therein the differences between such rules and

(b) The commission shall send to the secretary of the department of health and environment copies of all notifications of intents to drill for wells located:

(1) Within a two mile radius of a public water supply well;

(2) within a two mile radius of listed groundwater contamination areas; and

(3) within intensive groundwater use control areas established by the chief engineer of the division of water resources of the state board of agriculture.

regulations and such recommendations.

0195 (b) The commission annually shall review current drilling  
0196 methods, geologic formation standards, plugging techniques and  
0197 casing and cementing standards and materials. Based on such  
0198 review, the commission ~~shall~~, if necessary, *shall* amend its rules  
0199 and regulations to reflect any changes to be made in such  
0200 methods, standards, techniques and materials from the previous  
0201 year.

0202 Sec. 10. K.S.A. 55-155 is hereby amended to read as follows:  
0203 55-155. (a) Operators and contractors shall be licensed by the  
0204 commission pursuant to this section.

0205 (b) Every operator and contractor shall file an application or a  
0206 renewal application with the commission. Application and re-  
0207 newal application forms shall be prescribed, prepared and fur-  
0208 nished by the commission.

0209 (c) No application or renewal application shall be approved  
0210 until the applicant has:

0211 (1) Provided sufficient information, as required by the com-  
0212 mission, for purposes of identification;

0213 (2) submitted evidence that all current and prior years' taxes  
0214 for property associated with the drilling or servicing of wells  
0215 have been paid; and

0216 (3) paid an annual license fee of \$100 and an annual license  
0217 fee of \$25 for each rig operated by the applicant. The commission  
0218 shall issue an identification tag for each such rig which shall be  
0219 displayed on such rig at all times.

0220 (d) Upon the approval of the application or renewal applica-  
0221 tion, the commission shall issue to such applicant a license  
0222 which shall be in full force and effect until one year from the date  
0223 of issuance or until surrendered, suspended or revoked as pro-  
0224 vided in K.S.A. 55-162, *and amendments thereto*. No new li-  
0225 cense shall be issued to any applicant who has had a license  
0226 revoked until the expiration of one year from the date of such  
0227 revocation.

0228 (e) The commission shall remit all moneys received from  
0229 es assessed pursuant to this section to the state treasurer at  
0230 least monthly. Upon receipt of each such remittance, the state

02 Insurer shall deposit the entire amount thereof in the state  
0232 treasury. Twenty percent of each such deposit shall be credited  
0233 to the state general fund and the balance shall be credited to the  
0234 conservation fee fund created by K.S.A. 55-143, and amendments  
0235 thereto.

0236 Sec. 11. K.S.A. 55-158 is hereby amended to read as follows:

0237 55-158. Operators, upon request of the commission ~~or the secre-~~  
0238 ~~tary~~, shall submit cement bond logs or other surveys for surface  
0239 casing. Failure to submit such logs or surveys within a reason-  
0240 able period of time as prescribed by the rules and regulations of  
0241 the commission shall be a class C misdemeanor.

(a)

(b) Upon request of the secretary of the department of health and environment, the commission shall transmit a copy of any bond log requested by the secretary.

0242 Sec. 12. K.S.A. 55-159 is hereby amended to read as follows:

0243 55-159. Operators shall notify the commission prior to setting  
0244 surface casing on or plugging of any well, in conformance with  
0245 the rules and regulations adopted pursuant to this act. An agent  
0246 of the commission ~~or the secretary~~ may conduct on-site inspec-  
0247 tion of such drilling or plugging operations. Failure to ~~so~~ notify  
0248 shall be a class C misdemeanor.

0249 Sec. 13. K.S.A. 55-160 is hereby amended to read as follows:

0250 55-160. Every operator shall notify the commission at least 48  
0251 hours prior to the commencement of reentering or washing down  
0252 any abandoned or plugged well. An agent of the commission ~~or~~  
0253 ~~the secretary~~ may conduct on-site inspection of such drilling  
0254 operations.

0255 Sec. 14. K.S.A. 55-161 is hereby amended to read as follows:

0256 55-161. ~~The commission or the secretary~~ shall investigate aban-  
0257 doned wells, and, based on actual or potential pollution prob-  
0258 lems, may select abandoned wells to be drilled out by the  
0259 commission in order to test the integrity of the plugs. The cost of  
0260 such testing shall be paid from the ~~conservation fee fund~~.

(a) The secretary of health and environment

oil and gas pollution control fund

0261 Sec. 15. K.S.A. 55-162 is hereby amended to read as follows:

0262 55-162. (a) Whenever the commission ~~or the secretary~~, from their  
0263 investigation or upon written complaint filed with either the  
0264 commission ~~or the secretary~~, finds reasonable cause to believe  
0265 that a person has violated any provision of this act or any rules  
0266 ~~or~~ regulations adopted pursuant to this act, the commission  
shall cause such person to come before it at a hearing held

(b) attached

(b) Upon investigation by the secretary or upon written complaint filed with the secretary if the secretary finds reasonable cause to believe that a person has violated any provision of sections 31 to 36 or any rules and regulations adopted pursuant thereto, the secretary shall cause such person to come before the secretary at a hearing held substantially in the manner prescribed for the conduct of hearings under K.S.A. 65-171d and amendments thereto. After such hearing, if the secretary finds that such person violated any provisions of this act or the rules and regulations adopted pursuant to this act, the secretary may:

(1) Order the person to take such action necessary to remedy the violation;

(2) order the well or the lease to be shut down until the violation is corrected;

(3) order any combination of such orders enumerated in paragraphs (1) and (2); or

(4) if the secretary finds that a person has not complied with an order issued under paragraph (1), (2) or (3), it may order the suspension or revocation of any license issued pursuant to this act to such person.

(b) If it appears to the secretary that damage may result if immediate remedial action is not taken, the secretary, may make such orders as provided in subsection (a), or may authorize its agents to enter upon the land and take such remedial action necessary pending the giving of notice and hearing.

(c) Proceedings for rehearing and review of any order shall be conducted in the manner provided in the administrative procedures act.

(d) Agents of the secretary shall investigate any written or oral complaint within 72 hours of receipt thereof, not including Sundays and holidays, except that if such investigation is impracticable within such time frame, the agent shall communicate the same to the person making the complaint and make alternative arrangements for such investigation.

0268 partially in the manner prescribed ~~by~~ *for the conduct of*  
0269 *hearings under K.S.A. 55-605, and amendments thereto. After*  
0270 such hearing, if the commission finds that such person violated  
0271 any provisions of this act or the rules and regulations adopted  
0272 pursuant to this act, the commission may:

0273 (1) Order the person to take such action necessary to remedy  
0274 the violation;

0275 (2) order the well or the lease to be shut down until the  
0276 violation is corrected;

0277 (3) order any combination of such orders enumerated in  
0278 ~~subparagraphs~~ *paragraphs* (1) and (2); or

0279 (4) if the commission finds that a person has not complied  
0280 with an order issued under ~~subparagraph~~ *paragraph* (1), (2) or  
0281 (3), it may order the suspension or revocation of any license  
0282 issued pursuant to this act to such person.

0283 (b) If it appears to the commission ~~or the secretary~~ that  
0284 damage may result if immediate remedial action is not taken, the  
0285 commission, without notice and hearing, may make such orders  
0286 as provided in subsection (a), or may authorize its ~~or the secre-~~  
0287 ~~tary's~~ agents to enter upon the land where the well is located and  
0288 take such remedial action necessary pending the giving of notice  
0289 and hearing.

0290 (c) Proceedings for rehearing and review of any order shall  
0291 ~~be as provided in~~ *conducted in the manner provided for the*  
0292 *conduct of rehearing and review proceedings under K.S.A. 55-*  
0293 *606, and amendments thereto.*

0294 (d) Agents of the commission ~~or the secretary~~ shall inves-  
0295 tigate any written or oral complaint within 72 hours of receipt  
0296 thereof, not including Sundays and *legal* holidays, except that if  
0297 such investigation is impracticable within such time frame, the  
0298 agent shall communicate the same to the person making the  
0299 complaint and make alternative arrangements for such investi-  
0300 gation.

0301 Sec. 16. K.S.A. 55-164 is hereby amended to read as follows:  
0302 55-164. (a) In addition to any other penalty provided by law, the  
0303 ~~commission or the secretary~~, upon finding that an operator or  
0304 actor has violated the provisions of this act, may impose a

0305 penalty not to exceed \$10,000, which shall constitute an actual  
0306 and substantial economic deterrent to the violation for which the  
0307 penalty is assessed. In the case of a continuing violation, every  
0308 day such violation continues shall be deemed a separate viola-  
0309 tion.

0310 (b) No penalty shall be imposed pursuant to this section  
0311 except upon the written order of ~~either the commission or the~~  
0312 ~~secretary~~ to the person who committed the violation. The order  
0313 shall state the violation, the penalty imposed and the right to  
0314 appeal to the order issuing agency. Any such person ~~may~~, within  
0315 30 days after receipt of such order, *may* make written request to  
0316 ~~such agency the commission~~ for a hearing thereon. The ~~issuing~~  
0317 ~~agency commission~~ shall conduct a hearing within 30 days after  
0318 receipt of such request and shall give not less than 10 days'  
0319 notice of the time and place of the hearing. Within 15 days after  
0320 such hearing, the ~~issuing agency commission~~ shall affirm, re-  
0321 verse or modify the order and shall specify the reasons therefor.  
0322 Formal rules of pleading and evidence need not ~~to~~ be observed  
0323 at any such hearing.

0324 (c) Any person aggrieved by any order issued pursuant to this  
0325 section may appeal therefrom in ~~the manner provided by law~~  
0326 ~~within 30 days after receipt of the issuing agency's affirmation or~~  
0327 ~~modification of the order accordance with the provisions of the~~  
0328 *act for judicial review and civil enforcement of agency actions.*

0329 (d) All moneys received from penalties imposed pursuant to  
0330 this section shall be remitted to the state treasurer who shall  
0331 deposit the entire amount thereof in the state treasury to the  
0332 credit of the conservation fee fund.

0333 Sec. 17. K.S.A. 55-901 is hereby amended to read as follows:

0334 55-901. (a) The owner or operator of any oil or gas well which  
0335 may be producing and which produces salt water or waters  
0336 containing minerals in an appreciable degree shall have the right  
0337 to return ~~said~~ *such* waters to any horizon from which such salt  
0338 waters may have been produced, or to any other horizon which  
0339 contains or had previously produced salt water or waters con-  
0340 taining minerals in an appreciable degree, if the owner or oper-  
0341 ator of such well makes a written application to the state corpo-



03        on commission for authority ~~so to do~~, and written approval  
0343        has been granted ~~him or her~~ *the owner or operator* after inves-  
0344        tigation by the state corporation commission.

0345        (b) The state corporation commission is hereby directed to  
0346        adopt such rules and regulations as may be just and equitable to  
0347        ~~so~~ carry out the provisions of this section ~~and K.S.A. 55-902, and~~  
0348        ~~acts amendatory thereof or supplemental thereto.~~

0349        (c) The state corporation commission is hereby directed to  
0350        assess any cost that may be incurred under the provisions of this  
0351        section ~~and K.S.A. 55-902, and acts amendatory thereof or sup-~~  
0352        ~~plemental thereto~~ against the applicant.

0353        (d) The ~~state corporation~~ commission shall remit all moneys  
0354        received by or for it for costs assessed under this section to the  
0355        state treasurer at least monthly. Upon receipt of each such  
0356        remittance, the state treasurer shall deposit the entire amount  
0357        thereof in the state treasury. Twenty percent ~~(20%)~~ of each such  
0358        deposit shall be credited to the state general fund and the  
0359        balance shall be credited to the conservation fee fund ~~created by~~  
0360        ~~K.S.A. 55-143.~~

0361        ~~Sec. 18. K.S.A. 55-903 is hereby amended to read as follows:~~  
0362        ~~55-903. Any county or district attorney who receives knowledge~~  
0363        ~~finds that there is probable cause to believe that a violation of~~  
0364        ~~subsection (a) of K.S.A. 55-904, and amendments thereto, has~~  
0365        ~~occurred shall immediately notify the secretary of the Kansas~~  
0366        ~~department of health and environment and the Kansas state~~  
0367        ~~corporation commission and shall also begin prosecution of the~~  
0368        ~~offender.~~

0369        ~~Sec. 19. K.S.A. 55-904 is hereby amended to read as follows:~~  
0370        ~~55-904. (a) It shall be unlawful for any person, firm, corporation,~~  
0371        ~~partnership or other association of persons:~~

0372        ~~(1) To dispose of or cause the disposal of salt water produced~~  
0373        ~~in conjunction with the production of oil or natural gas except in~~  
0374        ~~the manner and locations prescribed by K.S.A. 55-901 and 55-~~  
0375        ~~1003, and amendments thereto, and rules and regulations~~  
0376        ~~adopted pursuant to such sections or as provided by K.S.A.~~  
0377        ~~161 to 65-171f, inclusive, and amendments thereto, and rules~~  
0378        ~~and regulations adopted pursuant to such sections;~~

03 (2) to knowingly contract for the transportation of such salt  
0380 water with a person, firm, corporation, partnership or other  
0381 association of persons who is not licensed under the provisions  
0382 of K.S.A. 66-1,114, and *amendments thereto*; or

0383 (3) to own or operate any motor vehicle which, while being  
0384 used for the transportation of such salt water, contains an opera-  
0385 ble "trip-lever" or similar device which is installed in such  
0386 manner as to allow access to any person while riding in the  
0387 passenger compartment of such vehicle.

0388 (b) As used in this section "salt water" means water contain-  
0389 ing more than 5,000 milligrams per liter chlorides.

0390 (c) This section shall not be construed to prohibit the  
0391 spreading of salt water on road beds under construction or  
0392 maintenance if such spreading of salt water is performed in  
0393 compliance with rules and regulations ~~promulgated~~ *adopted* by  
0394 the ~~secretary of the department of health and environment. The~~  
0395 ~~secretary state corporation commission. The commission shall~~  
0396 be responsible for enforcing, by appropriate proceedings, such  
0397 rules and regulations and shall immediately notify the appro-  
0398 priate county or district attorney of any actual or suspected  
0399 violation of this section.

0400 (d) Any person, firm, corporation, partnership or other asso-  
0401 ciation of persons who violates any provision of subsection (a)  
0402 shall be guilty of a misdemeanor and, upon conviction thereof,  
0403 shall be fined not less than \$500 nor more than \$5,000, except  
0404 that a second and subsequent violation of paragraph (1) of sub-  
0405 section (a) shall be a class E felony, and upon conviction thereof,  
0406 such violator shall be punished as provided by law.

0407 Sec. 20. K.S.A. 55-1003 is hereby amended to read as fol-  
0408 lows: 55-1003. Each company or corporation engaged in the  
0409 production of petroleum or natural gas in Kansas, or organized  
0410 for the purpose of providing for disposal of oil-field or gas-field  
0411 brines and mineralized waters, may own, lease, construct,  
0412 operate, and maintain pipelines, reservoirs, treatment plants,  
0413 disposal wells, and other facilities for the conveyance and dis-  
0 disposal of such brines and mineralized waters.

04 Any person, company or corporation engaged in the produc-

116 petroleum or natural gas in Kansas, or in the disposition  
117 disposal of oil-field or gas-field brines and mineralized waters,  
118 may provide for financing and acquiring the necessary land,  
119 easements, and rights-of-way, and may own, lease, construct,  
120 operate and maintain the works necessary for such disposal. For  
121 the disposal of oil-field or gas-field brines and mineralized  
122 waters, the plans and specifications for such disposal works shall  
123 first be submitted to and be approved by the state corporation  
124 commission and the secretary of health and environment. The  
125 state corporation commission, in giving its approval, shall deter-  
126 mine that the proposed method of disposal: (1) Will not result in  
127 the loss or waste of gas or petroleum resources. The secretary of  
128 health and environment, in giving its approval, shall determine  
129 that the proposed method; and (2) is a feasible method to be  
130 employed in protecting the water resources of the state from  
131 preventable pollution. If the secretary shall find commission  
132 finds on investigation that in case the most feasible method for  
133 the prevention of pollution is by a disposal well, the secretary  
134 shall so certify to the state corporation commission. Upon such  
135 certificate being filed by the secretary, the state corporation  
136 commission shall give notice thereof to the owner of wells  
137 producing such brines and mineralized waters of the findings  
138 stated in said certificate.

139 If the owner of the wells producing such brines and mineral-  
140 ized waters desires to contest the findings stated in such certifi-  
141 cate of the commission, such owner shall give notice to the  
142 commission within ten (10) 10 days after receipt of notice  
143 thereof. Thereupon, the commission shall proceed to hear and  
144 determine the matter in the manner provided in K.S.A. 55-605,  
145 and amendments thereto. If upon such hearing, the state corpo-  
146 ration commission shall sustain sustains the findings of the  
147 secretary of health and environment, of or if such findings be are  
148 not contested, the state corporation commission shall make an  
149 order directing the owner of the wells producing such brines and  
150 mineralized waters to provide the necessary disposal system.

151 Appeals for judicial review of any order or decision of the  
152 commission under the provisions of this act may be brought as

upon

044 provided in K.S.A. 55-606, and amendments thereto. Upon final  
0454 order sustaining the findings of the ~~secretary of health and~~  
0455 ~~environment commission~~ being entered, the owner of such wells  
0456 shall provide the required disposal system in accordance with  
0457 K.S.A. 55-901 ~~or acts amendatory thereof, and amendments~~  
0458 ~~thereto~~, and is hereby authorized to exercise the right of eminent  
0459 domain as provided in K.S.A. 26-501 to 26-516, inclusive, ~~or any~~  
0460 ~~and amendments thereto to such sections~~, for the purpose of  
0461 acquiring the necessary rights-of-way and sites for the disposal of  
0462 such brines and mineralized waters.

0463 Sec. 21. K.S.A. 55-1004 is hereby amended to read as fol-  
0464 lows: 55-1004. It shall be unlawful for any person having pos-  
0465 session, control or the use of any oil-field waste disposal well  
0466 wherein salt water, mineralized brine, oil or refuse produced  
0467 from any oil well is disposed of below the surface of the earth to  
0468 inject such salt water, mineralized brine, oil or refuse from any  
0469 oil well therein at a pressure in excess of the maximum pressure  
0470 established by the ~~secretary of health and environment state~~  
0471 ~~corporation commission~~ and contained in the permit issued by  
0472 the ~~Kansas corporation commission thereby~~. The ~~secretary of~~  
0473 ~~health and environment state corporation commission~~ shall  
0474 maintain a permanent record of the maximum pressure estab-  
0475 lished by it on each such oil-field waste disposal well.

0476 Any person violating any of the provisions of this section shall  
0477 be deemed guilty of a misdemeanor, and upon conviction  
0478 thereof, shall be punished by a fine of not exceeding ~~one thou-~~  
0479 ~~sand dollars (\$1,000)~~ \$1,000, or by imprisonment not exceeding  
0480 six (6) months, or by both such fine and imprisonment, and each  
0481 day any such violation continues shall be deemed a separate  
0482 offense.

0483 Sec. 22. K.S.A. 55-1006 is hereby amended to read as fol-  
0484 lows: 55-1006. It shall be the duty of the ~~state board of water~~  
0485 ~~resources~~ Kansas water office, the ~~secretary of health and envi-~~  
0486 ~~ronment~~, ~~state corporation commission~~ and the state geological  
0487 survey to determine the minimum safe depth for salt brine or  
0 other oil field waste disposal wells for all producing areas of the  
0488 state; and upon making such determinations shall file the same

secretary of the department of health and environment, the

490 the state corporation commission, and said. *The state cor-*  
 491 *poration* commission shall adopt and promulgate rules and reg-  
 492 ulations establishing such minimum depths. The ~~state corpora-~~  
 493 ~~tion~~ commission shall inspect such disposal wells to ascertain  
 494 whether they meet said *the* requirements for minimum depth.  
 495 Whenever ~~said the corporation~~ commission shall determine *de-*  
 496 *termines* that the depth of any disposal well is less than the  
 497 recommended depth, it shall immediately report such fact to the  
 498 proper authorities who shall proceed to charge the parties using  
 499 such a well with a violation of this act.

500 Sec. 23. K.S.A. 65-171d is hereby amended to read as fol-  
 501 lows: 65-171d. (a) For the purpose of preventing surface and  
 502 subsurface water pollution and soil pollution detrimental to  
 503 public health or to the plant, animal and aquatic life of the state,  
 504 and to protect beneficial uses of the waters of the state and to  
 505 require the treatment of sewage predicated upon technologically  
 506 based effluent limitations, the secretary of health and environ-  
 507 ment shall make such rules and regulations, including registra-  
 508 tion of potential sources of pollution, as may in the secretary's  
 509 judgment be necessary to: (1) Protect the waters of the state from  
 510 pollution by ~~oil, gas, salt water injection wells or~~ underground  
 511 storage reservoirs of hydrocarbons, natural gas and liquid pe-  
 512 troleum gas; (2) control the disposal, discharge or escape of  
 513 sewage as defined in K.S.A. 65-164, and amendments thereto, by  
 514 or from municipalities, corporations, companies, institutions,  
 515 state agencies, federal agencies or individuals and any plants,  
 516 works or facilities owned or operated, or both, by them; and (3)  
 517 establish water quality standards for the waters of the state to  
 518 protect their beneficial uses.

519 (b) The secretary of health and environment may adopt by  
 520 reference any *rule and* regulation relating to water quality and  
 521 effluent standards promulgated by the federal government pur-  
 522 suant to the provisions of the federal ~~water pollution control act~~  
 523 and the ~~1972~~ amendments thereto, which the secretary is other-  
 524 wise authorized by law to adopt.

525 For the purposes of this act, including K.S.A. 65-161  
 526 t. gh 65-171h, and amendments to those statutes, "pollution"

oil, gas, salt water or

clean water act

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0527 as: (1) Such contamination or other alteration of the physical,  
0528 chemical or biological properties of any waters of the state as will  
0529 or is likely to create a nuisance or render such waters harmful,  
0530 detrimental or injurious to public health, safety or welfare, or to  
0531 the plant, animal or aquatic life of the state or to other designated  
0532 beneficial uses; or (2) such discharge as will or is likely to exceed  
0533 state effluent standards predicated upon technologically based  
0534 effluent limitations.

0535 (d) In making rules and regulations, the secretary of health  
0536 and environment, taking into account the varying conditions that  
0537 are probable for each source of sewage and its possible place of  
0538 disposal, discharge or escape, may provide for varying the con-  
0539 trol measures required in each case to those the secretary finds to  
0540 be necessary to prevent pollution. ~~The storage or disposal of salt~~  
0541 ~~water, oil or refuse in surface ponds shall be prohibited unless a~~  
0542 ~~permit for such storage or disposal shall first be obtained from~~  
0543 ~~the secretary of health and environment, and such permit shall~~  
0544 ~~be considered as granted unless denied within 10 days. The~~  
0545 ~~secretary of health and environment is authorized to deny or~~  
0546 ~~revoke a permit for such storage or disposal in any case where~~  
0547 ~~the secretary finds such storage is causing or likely to cause~~  
0548 ~~pollution.~~ Where a freshwater reservoir or farm pond is privately  
0549 owned and where complete ownership of land bordering the  
0550 reservoir is under common private ownership, such freshwater  
0551 reservoir or farm pond shall be exempt from water quality stan-  
0552 dards except as it relates to water discharge or seepage from the  
0553 reservoir to waters of the state, either surface or groundwater, or  
0554 as it relates to the public health of persons using the reservoir or  
0555 pond or waters therefrom.

0556 (e) (1) Whenever the secretary of health and environment or  
0557 the secretary's duly authorized agents shall find that the waters  
0558 of the state are not being protected from pollution by ~~oil, gas, salt~~  
0559 ~~water injection wells or~~ underground storage reservoirs of hy-  
0560 drocarbons, natural gas and liquid petroleum gas or that storage  
0561 disposal of ~~salt water, oil or refuse~~ in any surface pond is  
0562 causing or is likely to cause pollution of soil or waters of the state,  
0563 the secretary or the secretary's duly authorized agents shall issue

oil, gas, salt water or

0564 order prohibiting the operation or use of such oil, gas, salt  
0565 water injection well, underground storage reservoir or surface  
0566 pond. Such order ~~to~~ shall take effect 10 days after service upon  
0567 the owner, operator, contractor or agents thereof. Any person  
0568 aggrieved by such order may within 10 days of service of the  
0569 order request a hearing on the order.

activities

0570 (2) Hearings may be conducted by the secretary or hearing  
0571 officers appointed by the secretary. Such hearing officers shall  
0572 have the power and authority to conduct such hearings in the  
0573 name of the secretary at any time and place and a record of the  
0574 proceedings of such hearings shall be taken and filed with the  
0575 secretary together with findings of fact. On the basis of the  
0576 evidence produced at the hearing, the secretary shall make  
0577 findings of fact and conclusions of law and shall give written  
0578 notice of such findings and conclusions to the alleged violator.  
0579 The order of the secretary shall be final unless appealed to the  
0580 courts within 30 days after the order has been made.

0581 (3) Any notice, order or instrument issued by or with the  
0582 authority of the secretary may be made by mailing a copy of the  
0583 notice, order or other instrument by registered or certified mail  
0584 directly to the person affected at such person's last known post  
0585 office address as shown by the files or records of the secretary.

0586 (4) An appeal may be taken from any final order or final  
0587 determination of the secretary, by any person adversely affected,  
0588 to the district court of the county of residence of the appellant.  
0589 Notice of appeal from any such final order or determination shall  
0590 be served on the secretary. Failure to serve such notice of appeal  
0591 within 30 days shall operate as a waiver of the right of appeal.  
0592 Notice of appeal shall refer to the action of the secretary ap-  
0593 pealed from and shall specify the grounds for appeal. Copy of the  
0594 original notice of appeal with proof of service on the secretary  
0595 shall be filed by the appellant with the clerk of the court within  
0596 10 days of the service of the notice and thereupon the court shall  
0597 have jurisdiction of the appeal. Service of a notice of appeal shall  
0598 not operate as a stay of the secretary's order. The appellant has  
0599 the right to apply to the secretary for a stay, which the secretary  
0600 in the secretary's discretion may grant. Upon receipt by the

0600 Secretary of the notice of appeal, the secretary shall, within 15  
 0602 days, file with the clerk of the district court a certified transcript  
 0603 of all files and proceedings relating to the order or decision  
 0604 appealed from. The review shall be conducted by the court  
 0605 without a jury and shall be *de novo*, except that in cases of  
 0606 alleged irregularities in procedure, testimony thereon may be  
 0607 taken in the court. The court may affirm the order or decision of  
 0608 the secretary, or may reverse or modify the order. Appeals may  
 0609 be taken from the order or decision of the district court in the  
 0610 same manner as in other civil cases.

0611 (4) The secretary may adopt rules and regulations establish-  
 0612 ing fees for the following services:

0613 (1) Plan approval, monitoring and inspecting underground or  
 0614 buried petroleum products storage tanks, for which the annual  
 0615 fee shall not exceed \$5 for each tank in place;

0616 (2) permitting, monitoring and inspecting salt solution min-  
 0617 ing operators, for which the annual fee shall not exceed \$1,950  
 0618 per company;

0619 (3) permitting, monitoring and inspecting hydrocarbon stor-  
 0620 age wells and well systems, for which the annual fee shall not  
 0621 exceed \$1,875 per company; and

0622 (4) permitting, monitoring and inspecting oil and gas lease  
 0623 salt water and oil storage, disposal and emergency facilities, for  
 0624 which the fee shall not exceed \$.012 for each barrel of oil and  
 0625 \$.00036 for each 1,000 cubic feet of gas produced and removed  
 0626 from the lease each month.

0627 New Sec. 24. The storage or disposal of salt water, oil or  
 0628 refuse in surface ponds resulting from oil and gas activities shall  
 0629 be prohibited unless a permit for such storage or disposal shall  
 0630 first be obtained from the commission. Such permit shall be  
 0631 considered as granted unless denied within 10 days. The com-  
 0632 mission is authorized to deny or revoke a permit for such storage  
 0633 or disposal in any case where the commission finds such storage  
 0634 is causing or likely to cause pollution.

0635 New Sec. 25. It shall be unlawful for any person having  
 0636 possession or control of any well drilled or being drilled for oil or  
 0637 gas, either as contractor, owner, lessee, agent or manager, or in

20  
 47  
 S. J.

(f) The secretary may adopt rules and regulations establishing fees for the following services:

(1) Plan approval, monitoring and inspecting underground or buried petroleum products storage tanks, for which the annual fee shall not exceed \$5 for each tank in place;

(2) permitting, monitoring and inspecting salt solution mining operators, for which the annual fee shall not exceed \$1,950 per company; and

(3) permitting, monitoring and inspecting hydrocarbon storage wells and well systems, for which the annual fee shall not exceed \$1,875 per company.



0638 other capacity, to permit salt water, oil or refuse from any  
0639 such well to escape by overflow, seepage or otherwise from the  
0640 vicinity of such well, and it shall be the duty of any such person  
0641 to keep such salt water, oil or refuse safely confined in tanks,  
0642 pipelines or ponds, so as to prevent the escape thereof. Nothing  
0643 in this act shall be construed to apply to the escape of salt water,  
0644 oil or refuse because of circumstances beyond the control of the  
0645 person in the possession or control of such well and under  
0646 circumstances which could not have been reasonably anticipated  
0647 and guarded against.

0648 New Sec. 26. Before any work or procedure is commenced to  
0649 abandon and plug any producing oil or gas well in this state and  
0650 after notice thereof is given to the commission by the operator  
0651 thereof, in accordance with the rules and regulations adopted  
0652 pursuant to K.S.A. 55-152, and amendments thereto, the com-  
0653 mission, in any case where the surface landowner upon whose  
0654 land such well is located has filed with the commission a state-  
0655 ment expressing a desire to be notified when any such well is to  
0656 be abandoned, shall mail a copy of such notice to such surface  
0657 landowner and may charge a fee therefor in an amount fixed by  
0658 the commission and approved by the director of accounts and  
0659 reports under K.S.A. 45-204, and amendments thereto.

0660 New Sec. 27. (a) Any person, firm, association or corporation  
0661 who fails to comply with the requirement to give notice to the  
0662 state corporation commission of intent to drill a seismic, core or  
0663 exploratory hole for the purpose of exploration, discovery or  
0664 production of oil or natural gas in accordance with the provisions  
0665 of K.S.A. 55-128, and amendments thereto, and who has been  
0666 convicted twice of violating such requirement, shall be prohib-  
0667 ited from drilling a seismic, core or exploratory hole in this state  
0668 for the purpose of exploration, discovery or production of oil or  
0669 natural gas within the six-month period of time following the  
0670 date of the second conviction of violating such requirement. Any  
0671 such person, firm, association or corporation who has been con-  
0672 victed more than twice of violating such requirement shall be  
0673 prohibited from drilling a seismic, core or exploratory hole in  
0674 this state for the purpose of exploration, discovery or production

oil or natural gas within the one-year period of time following the date of the third or later conviction of violating such requirement.

(b) Any person, firm, association or corporation who shall violate the provisions of this section shall be deemed guilty of a class B misdemeanor.

New Sec. 28. The commission shall appoint such agent or agents as may be necessary to represent them and to enforce the provisions of this act, and the rules and regulations adopted pursuant thereto. The commission shall designate an agent for each district field office established to enforce this act and the rules and regulations adopted pursuant thereto to administer and supervise the operation of such office.

New Sec. 29. (a) The commission shall assess operators or their designated agents for the actual costs and expenses incurred in: (1) The supervision, administration, inspection, investigation; (2) the enforcement of this act and the rules and regulations adopted pursuant to this act; and (3) monitoring and inspecting oil and gas lease salt water and oil storage, disposal and emergency facilities.

(b) The commission shall remit all moneys received by or for it for costs or expenses under this section to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. Twenty percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the conservation fee fund created by K.S.A. 55-143, and amendments thereto.

New Sec. 30. Leaving the surface of lands with a part of the operating structure or other equipment intact after abandoning oil or gas wells is against public policy, and constitutes a public nuisance, and shall be hereafter prohibited. Whenever any lease operator abandons any oil or gas well, the lease operator, within six months thereafter, shall remove any rig, derrick or other operating structure, and all abutments and other obstacles of every kind or size used in the operation of such oil or gas lease, from the land upon which the well was theretofore operated, and

(a)

071 All grade the surface of the soil in such manner as to leave the  
0713 land, as nearly as practicable, in the same condition after the  
0714 removal of such structures, equipment and obstacles as it was  
0715 before such structures and abutments were placed thereon, un-  
0716 less the owner of the land and the abandoning party have  
0717 entered into a contract providing otherwise.

0718 ~~New Sec. 31.~~ Any person, firm, association, partnership or  
0719 corporation violating the provisions of this act shall be deemed  
0720 guilty of a misdemeanor, and upon conviction shall be punished  
0721 by a fine of not less than \$100 nor more than \$500.

(b)

0722 New Sec. 32. Any person who has reason to believe that any  
0723 well which has been abandoned is causing or is likely to cause  
0724 the pollution of any usable water strata or supply or the loss of  
0725 any usable water through downward drainage by reason of the  
0726 fact that the well has not been plugged, was improperly plugged,  
0727 or that the plugging is no longer effective by reason of the  
0728 deterioration of the pipe or by any other cause, may file a  
0729 complaint in writing, so alleging, with the ~~commission.~~ Such  
0730 complaint shall state the location of the well and the facts which  
0731 caused the complainant to believe that such well is causing or is  
0732 likely to cause the pollution of any usable water strata or supply  
0733 or the loss of usable water.

31

secretary of the department of health and environment

0734 New Sec. 33. (a) Upon receipt of any complaint filed pursu-  
0735 ant to ~~K.S.A. 55-130, and amendments thereto, the commission~~  
0736 shall make an investigation for the purpose of determining  
0737 whether such abandoned well is polluting or is likely to pollute  
0738 any usable water strata or supply or causing the loss of usable  
0739 water, or the ~~commission~~ may initiate such investigation on its  
0740 own motion. If the ~~commission~~ determines:

32

section 32, the secretary

secretary

0741 (1) That such abandoned well is causing or likely to cause such  
0742 pollution or loss; and

0743 (2) (A) that no person is legally responsible for the proper  
0744 care and control of such well; or (B) that such person so legally  
0745 responsible for the care and control of such well is dead or no  
0746 longer in existence or insolvent or cannot be found, then, within  
0747 \_\_\_\_\_ days after completing its investigation, the ~~commission~~ shall  
0748 plug, replug or repair such well, or cause it to be plugged,

secretary

0749 replugged or repaired, in such a manner as to prevent any further  
0750 pollution or danger of pollution of any usable water strata or  
0751 supply or loss of usable water. The cost of such plugging shall be  
0752 paid by the ~~commission from the conservation fee~~ fund.

secretary from the oil and gas pollution control

0753 (b) For the purposes of this section, a person who is legally  
0754 responsible for the proper care and control of an abandoned well  
0755 shall include, but is not limited to, the following: Any operator of  
0756 a waterflood or other pressure maintenance program deemed to  
0757 be causing pollution or loss of usable water; the current or last  
0758 operator of the lease upon which such well is located, irrespec-  
0759 tive of whether such operator plugged or abandoned such well;  
0760 and the original operator who plugged or abandoned such well.

0761 (c) Whenever the ~~commission~~ determines that a well has  
0762 been abandoned and is causing or is likely to cause pollution of  
0763 any usable water strata or supply or loss of usable water, and

secretary

0764 whenever the ~~commission~~ has reason to believe that a particular  
0765 person is legally responsible for the proper care and control of  
0766 such well, the ~~commission~~ shall cause such person to come  
0767 before it at a hearing held substantially in the manner prescribed

secretary

0768 by ~~K.S.A. 55-605, and amendments thereto,~~ and to show cause  
0769 why the requisite care and control has not been exercised with  
0770 respect to such well. After such hearing, if the ~~commission~~ finds

the administrative procedures act

secretary

0771 that such person is legally responsible for the proper care and  
0772 control of such well and that such well is abandoned, in fact, and  
0773 is causing or is likely to cause pollution of any usable water strata

secretary

0774 or supply or loss of usable water, the ~~commission~~ may make any  
0775 order or orders prescribed in ~~K.S.A. 55-162,~~ and amendments  
0776 thereto. Proceedings for rehearing and review of any of the

55-161

0777 ~~commission's orders may be held pursuant to K.S.A. 55-606, and~~  
0778 ~~amendments thereto.~~

secretary's orders may be held pursuant to the administrative procedures act

0779 (c) For the purpose of this section, any well which has been  
0780 abandoned, in fact, and has not been plugged pursuant to the  
0781 rules and regulations in effect at the time of plugging such well  
0782 shall be and is hereby deemed likely to cause pollution of any  
0783 usable water strata or supply.

0784 (d) For the purpose of this section, the person legally re-  
0785 sponsible for the proper care and control of an abandoned well

0786 I not include the landowner or surface owner unless the  
0787 landowner or surface owner has operated or produced the well,  
0788 has deliberately altered or tampered with such well thereby  
0789 causing the pollution or has assumed by written contract such  
0790 responsibility.

33

0791 New Sec. 34. (a) The fact that any person has initiated or  
0792 supported a proceeding before the ~~commission~~, or has remedied  
0793 or attempted to remedy the condition of any well under the  
0794 authority of this act, shall not be construed as an admission of  
0795 liability or received in evidence against such person in any  
0796 action or proceeding wherein responsibility for or damages from  
0797 surface or subsurface pollution, or injury to any usable water or  
0798 oil-bearing or gas-bearing formation, is or may become an issue;  
0799 nor shall such fact be construed as releasing or discharging any  
0800 action, cause of action or claim against such person existing in  
0801 favor of any third person for damages to property resulting from  
0802 surface or subsurface pollution, or injury to any usable water or  
0803 oil-bearing or gas-bearing formation.

secretary of the department of health and environment

0804 (b) The ~~commission~~, on its own motion, may initiate an  
0805 investigation into any pollution problem related to oil and gas  
0806 activity. In taking such action the ~~commission~~ may require or  
0807 perform the testing, sampling, monitoring or disposal of any  
0808 source of groundwater pollution related to oil and gas activities.

secretary

0809 (c) The ~~commission~~ or any other person authorized by the  
0810 ~~commission~~ who has no obligation to plug, replug or repair any  
0811 abandoned well, but who does so in accordance with the provi-  
0812 sions of this act, shall have a cause of action for the reasonable  
0813 cost and expense incurred in plugging, replugging or repairing  
0814 the well against any person who is legally responsible for the  
0815 proper care and control of such well pursuant to the provisions of  
0816 K.S.A. 55-140, and amendments thereto, and such person shall  
0817 have a lien upon the interest of such obligated person in and to  
0818 the oil and gas rights in the land and equipment located thereon.

secretary

34

0819 New Sec. 35. In the administration and enforcement of the  
0820 provisions of this act or any rule, regulation or order promulgated  
0821 pursuant thereto, the ~~corporation commission~~, attorney general,  
0822 county attorney and courts of general jurisdiction are hereby

sections 31 to 36, inclusive,

secretary

08. granted the same power and authority respectively granted  
0824 under K.S.A. 55-608, and amendments thereto.

35

0825 New Sec. 36. Agents of the ~~commission~~ shall have the right  
0826 of ingress and egress upon any lands where any abandoned well  
0827 is located and the lands adjacent thereto and to occupy such  
0828 lands as are necessary in making any investigation or in plug-  
0829 ging, replugging or repairing of any well or in the supervision  
0830 thereof. Any agent when entering upon any land to plug, replug  
0831 or repair an abandoned well, or to supervise or inspect the same,  
0832 shall not be liable for any damages necessarily resulting there-  
0833 from, except damages to growing crops, livestock or improve-  
0834 ments on the land.

secretary

0835 New Sec. 37. (a) Whenever the corporation commission is  
0836 authorized or directed by this act, or by any of the acts contained  
0837 in chapter 55 of the Kansas Statutes Annotated, to adopt rules and  
0838 regulations, any rules and regulations so adopted shall be pub-  
0839 lished by the commission and made available to the public  
0840 without charge. The commission shall maintain the publication  
0841 in a current condition either by a published supplement thereto  
0842 or, whenever supplementation is impractical due to the cost or  
0843 usefulness thereof, by republishing all of such rules and regula-  
0844 tions in effect. In addition, the commission is hereby directed to  
0845 comply with the provisions of K.S.A. 77-415 *et seq.*, and amend-  
0846 ments thereto, with respect to any such rule and regulation.

36

0847 (b) Whenever the commission is authorized or directed by  
0848 this act, or by any of the acts contained in chapter 55 of the  
0849 Kansas Statutes Annotated, to levy, assess, tax or otherwise fix or  
0850 determine any fee, tax, charge or other payment of money to the  
0851 commission or to the state of Kansas, such authority or directive  
0852 shall be exercised or complied with by the adoption of a rule and  
0853 regulation.

0854 New Sec. 38. This act shall not be construed as impairing,  
0855 affecting or repealing any existing law but shall be construed as  
0856 supplementary to existing laws.

37

~~New Sec. 39. (a) The state corporation commission is hereby  
authorized and empowered to adopt rules and regulations gov-  
erning: (1) The procedures and qualifications for certification~~

0866 approval of laboratories performing water sample analysis,  
 0861 and (2) the procedures and methods of examination and approval  
 0862 of persons conducting such water sample analysis in certified  
 0863 and approved laboratories and of the apparatus, materials and  
 0864 procedures utilized in such water sample analysis. Upon appli-  
 0865 cation therefor, the commission may certify and approve labora-  
 0866 tories which meet the qualifications therefor as set forth in rules  
 0867 and regulations adopted pursuant to this section.

0868 (b) The commission may submit water samples for analysis to  
 0869 the laboratory certified by the Kansas department of health and  
 0870 environment pursuant to K.S.A. 65-171k, and amendments  
 0871 thereto. Such laboratory shall perform any analysis requested by  
 0872 the commission.

0873 Sec. 40. K.S.A. 55-121, 55-128c, 55-128d, 55-129, 55-131, 55-  
 0874 132a, 55-132b, 55-139, 55-140a, 55-140b, 55-141, 55-141a, 55-142,  
 0875 55-150, 55-151, 55-152, 55-155, 55-158, 55-159, 55-160, 55-161,  
 0876 55-162, 55-164, 55-901, 55-903, 55-904, 55-1003, 55-1004, 55-  
 0877 1006 and 65-171d and K.S.A. 1985 Supp. 55-140 are hereby  
 0878 repealed.

0879 Sec. 41. This act shall take effect and be in force from and  
 0880 after its publication in the statute book.

New Sec. 38. There is hereby created in the state treasury the oil and gas pollution control fund. All deposits credited to such fund shall be for the use of the Kansas department of health and environment in administering the provisions of sections 31 to 36, inclusive. All expenditures from the oil and gas pollution control fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the Kansas department of health and environment or by a person or persons designated by the secretary. The secretary, with the approval of the director of accounts and reports, shall formulate a system of accounting procedures to account for the moneys credited to the oil and gas pollution control fund.

39

40

## PROPOSED SUBSTITUTE FOR HOUSE BILL NO. 2703

By Committee on Energy and Natural Resources

AN ACT concerning water; relating to water conservation; amending K.S.A. 74-2608, 74-2622, 82a-711, 82a-927, 82a-1311a and 82a-1503 and repealing the existing sections.

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

Section 1. K.S.A. 74-2608 is hereby amended to read as follows: 74-2608. The Kansas water office shall:

~~(1)~~ (a) Collect and compile information pertaining to climate, water and soil as related to the usage of water for agricultural, industrial and municipal purposes and the availability of water supplies in the several watersheds of the state, and, in so doing, the office shall ~~first~~ collect and compile the information obtainable from other agencies, instrumentalities of the state, political subdivisions of the state and the federal government.

~~(2)---Work---out~~ (b) Develop a state plan of water resources management, conservation and development for water planning areas as determined by the office, and cooperate with any agency or instrumentality of the state or federal government now or hereafter engaged in the development of plans or having developed plans affecting any such area of the state.

(c) Develop and maintain guidelines for water conservation plans and practices. Such guidelines shall be technologically and economically feasible for each water user to implement and shall: (1) Be designed to curtail the waste of water; (2) consider the use of other water if the use of freshwater is not necessary; (3) not require curtailment in water use which will not benefit other water users or the public interest; (4) not result in the unreasonable deterioration of the quality of the waters of the state; (5) consider the reasonable needs of the



water user at the time; (6) not conflict with the provisions of the Kansas water appropriation act and the state water planning act; (7) be limited to practices of water use efficiency except for drought contingency plans for municipal users; and (8) take into consideration drought contingency plans for municipal and industrial users. When developing such guidelines, the Kansas water office shall consider the cost to benefit ratio effect of any plan.

Sec. 2. K.S.A. 74-2622 is hereby amended to read as follows: 74-2622. (a) There is hereby established within and as a part of the Kansas water office the Kansas water authority. The authority shall be composed of 16 members of whom 11 shall be appointed as follows: (1) Eight members shall be appointed by the governor for terms of four years, except that of the first members of the authority, two members shall be appointed for terms commencing July 1, 1981, and ending on May 1, 1982, two members shall be appointed for terms commencing on July 1, 1981, and ending on May 1, 1983, two members shall be appointed for terms commencing on July 1, 1981, and ending on May 1, 1984, and two members shall be appointed for terms commencing on July 1, 1981, and ending on May 1, 1985. The governor shall designate the term for which each of the members first appointed shall serve. Of the members appointed under this provision one shall be a representative of large municipal water users, one shall be representative of small municipal water users, one shall be a board member of a western Kansas groundwater management district, one shall be a board member of a central Kansas groundwater management district, one shall be a member of the Kansas association of conservation districts, one shall be representative of industrial water users, one shall be a member of the state association of watershed districts, and one shall be representative of the general public. The member who is representative of large municipal water users shall be appointed from three nominations submitted by the Kansas league of Kansas municipalities. The member who is representative of small

municipal water users shall be appointed from three nominations submitted by the Kansas rural water districts' association. The member who is representative of a western Kansas groundwater management district shall be appointed from three nominations submitted by the presidents of the groundwater management district boards No. 1, 3 and 4. The member who is representative of a central Kansas groundwater management district shall be appointed from three nominations submitted by the presidents of the groundwater management district boards No. 2 and 5. The member who is representative of industrial water users shall be appointed from three nominations submitted by the Kansas association of commerce and industry. The member who is representative of the state association of watershed districts shall be appointed from three nominations submitted by the state association of watershed districts. The member who is representative of the Kansas association of conservation districts shall be appointed from three nominations submitted by the state association of conservation districts. If the governor cannot make an appointment from the original nominations, the nominating authority shall be so advised and, within 30 days thereafter, shall submit three new nominations; (2) one member shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto, and such member shall serve at the pleasure of the governor and shall be the chairperson of the authority. Members appointed by the governor shall be selected with special reference to training and experience with respect to the functions of the Kansas water authority, and no not more than five of such members shall belong to the same political party; (3) one member shall be appointed by the president of the senate for a term of two years commencing on July 1, 1981; and (4) one member shall be appointed by the speaker of the house of representatives for a term of two years commencing on July 1, 1981. The state geologist, the chief engineer of the division of water resources of the state board of agriculture, the director

of the division of environment of the department of health and environment, the director of the Kansas water office and the director of the agricultural experiment stations of Kansas state university of agriculture and applied science shall be nonvoting members ex officio of the authority. The director of the Kansas water office shall serve as the secretary of the authority.

(b) In the case of a vacancy in the appointed membership of the Kansas water authority, the vacancy shall be filled for the unexpired term by appointment in the same manner that the original appointment was made. Appointed members of the authority attending regular or special meetings thereof shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

(c) The Kansas water authority shall:

(1) Consult with and be advisory to the governor, the legislature and the director of the Kansas water office.

(2) Review plans for the development, management and use of the water resources of the state by any state or local agency.

(3) Make a study of the laws of this state, other states and the federal government relating to conservation and development of water resources, appropriation of water for beneficial use, flood control, construction of levees, drainage, irrigation, soil conservation, watershed development, stream control, gauging of stream and stream pollution for the purpose of determining the necessity or advisability of the enactment of new or amendatory legislation in this state on such subjects.

(4) Make recommendations to other state agencies and political subdivisions of the state for the coordination of their activities relating to flood control, construction of levees, drainage, irrigation, soil conservation, watershed development, stream control, gauging of stream, stream pollution and groundwater studies.

(5) Make recommendations to each regular session of the legislature and to the governor at such times as the authority considers advisable concerning necessary or advisable legislation

relating to any of the matters or subjects which it is required by this act to study for the purpose of making recommendations to the legislature. All such recommendations to the legislature shall be in drafted bill form together with such explanatory information and data as the authority considers advisable.

(6) Approve, prior to submission to the legislature by the Kansas water office or its director, (A) any contract entered into pursuant to the state water plan storage act, (B) any amendments to the state water plan or the state water planning act and (C) any other legislation concerning water resources of the state.

(7) Approve, before they become effective, any policy changes proposed by the Kansas water office concerning the pricing of water for sale pursuant to the state water plan storage act.

(8) Approve, before it becomes effective, any agreement entered into with the federal government by the Kansas water office.

(9) Request any agency of the state, which shall have the duty upon that request, to submit its budget estimate pertaining to the state's water resources and any plans or programs related thereto and, upon the authority's receipt of such budget estimate, review and evaluate it and furnish recommendations relating thereto to the governor and the legislature.

(10) Approve, prior to adoption by the director of the Kansas water office, rules and regulations authorized by law to be adopted.

(11) Approve, prior to adoption by the director of the Kansas water office, guidelines for conservation plans and practices developed pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto.

(d) The Kansas water authority may appoint citizens' advisory committees to study and advise on any subjects upon which the authority is required or authorized by this act to study or make recommendations.

(e) The provisions of the Kansas sunset law apply to the Kansas water authority established by this section, and the authority is subject to abolition under that law.

Sec. 3. K.S.A. 82a-711 is hereby amended to read as follows: 82a-711. (a) If a proposed use neither ~~will impair~~ impairs a use under an existing water right nor prejudicially and unreasonably ~~affect~~ affects the public interest, the chief engineer shall approve all applications for such use made in good faith in proper form which contemplate the utilization of water for beneficial purpose, within reasonable limitations except that the chief engineer shall not approve any application submitted for the proposed use of fresh water in any case where other waters are available for such proposed use and the use thereof is technologically and economically feasible. Otherwise, the chief engineer shall make an order rejecting such application or requiring its modification to conform to the public interest to the end that the highest public benefit and maximum economical development may result from the use of such water.

(b) In ascertaining whether a proposed use will prejudicially and unreasonably affect the public interest, the chief engineer shall take into consideration:

- (1) Established minimum desirable streamflow requirements;
- (2) the area, safe yield and recharge rate of the appropriate water supply;
- (3) the priority of existing claims of all persons to use the water of the appropriate water supply;
- (4) the amount of each such claim to use water from the appropriate water supply; and
- (5) all other matters pertaining to such question.

(c) With regard to whether a proposed use will impair a use under an existing water right, impairment shall include the unreasonable raising or lowering of the static water level or the unreasonable increase or decrease of the streamflow or the unreasonable deterioration of the water quality at the water user's point of diversion beyond a reasonable economic limit. Any

person aggrieved by any order or decision by the chief engineer relating to that person's application for a permit to appropriate water may appeal to the district court in the manner prescribed by K.S.A. 82a-724, and amendments thereto.

(d) The chief engineer may require an applicant for a permit to appropriate water to adopt and implement conservation plans and practices. Such plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto. Prior to approval of an application, the chief engineer, in consultation with the director of the Kansas water office if requested by the applicant, shall determine whether such plans and practices are consistent with the guidelines adopted by the Kansas water office.

Sec. 4. K.S.A. 82a-927 is hereby amended to read as follows: 82a-927. The long-range goals and objectives of the state of Kansas for management, conservation and development of the waters of the state, are hereby declared to be:

{1} (a) The development, to meet the anticipated future needs of the people of the state, of sufficient supplies of water for beneficial purposes;

{2} (b) the reduction of damaging floods and of losses resulting from floods;

{3} (c) the protection and the improvement of the quality of the water supplies of the state;

{4} (d) the sound management, both public and private, of the atmospheric, surface, and groundwater supplies of the state;

{5} (e) the prevention of the waste of the water supplies of the state;

{6} (f) the prevention of the pollution of the water supplies of the state;

{7} (g) the efficient, economic distribution of the water supplies of the state; and

{8} (h) the sound coordination of the development of the

water resources of the state with the development of the other resources of the state-; and

(i) the conservation of the water resources of the state in a technologically and economically feasible manner.

Sec. 5. K.S.A. 82a-1311a is hereby amended to read as follows: 82a-1311a. (a) The date of receipt of each application submitted pursuant to K.S.A. 82a-1310a, and amendments thereto, shall be stamped thereon and authenticated as directed by the director. Applicants shall notify the director in writing that they wish to commence negotiations for a contract to withdraw and use water. Within 10 days after the completion of negotiations for a contract to withdraw and use water, the director shall transmit to the chairperson of the authority a copy of the proposed contract.

(b) In order to determine whether a proposed contract for the sale of water from the state's conservation water supply capacity is in the interest of the people of the state of Kansas and whether the benefits to the state for approving the contract outweigh the benefits to the state for not approving the contract, the authority shall consider all matters pertaining to such questions, including:

(1) The present and future water supply needs of the applicant;

(2) any current beneficial uses being made of the noncontracted water proposed to be diverted;

(3) any reasonably foreseeable future beneficial uses of the water;

(4) the economic, environmental, public health and welfare and other benefits or adverse impact of approving the contract;

(5) alternative sources of water available to the applicant;

(6) the preliminary plan of design, construction and operation of any works or facilities used in conjunction with carrying the water to its point of use;

(7) whether the proposed purchase is consistent with the

state water plan approved by the legislature;

(8) the date of receipt of the application to contract for withdrawal and use of water; and

(9) minimum streamflow requirements.

(c) The authority may require an applicant for a contract for the sale of water from the state's conservation water supply capacity to adopt and implement conservation plans and practices. Such plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto. Prior to approval of an application, the director of the Kansas water office, in consultation with the chief engineer, shall determine whether such plans and practices are consistent with the guidelines adopted by the Kansas water office.

~~(e)~~ (d) The authority may approve or reject the proposed contract and may recommend purchase of water from an alternative source. The authority may approve a contract for a smaller amount of water than requested and may approve a contract upon such terms, conditions and limitations as it deems necessary for the protection of the public interest of the state as a whole.

Sec. 6. K.S.A. 82a-1503 is hereby amended to read as follows: 82a-1503. (a) Any person desiring to make a water transfer shall file, with the chief engineer, an application in the form required by rules and regulations adopted by the chief engineer. If the application is found to be insufficient to enable the panel to determine the source, nature and amount of the proposed transfer, it shall be returned for correction or completion or for any other necessary information. This act shall not be construed as to exempt the applicant from complying with the provisions of the Kansas water appropriation act or the state water plan storage act, whichever is applicable.

(b) No water transfer shall be approved unless the applicant has adopted and implemented conservation plans and practices. Such plans and practices shall be consistent with the



guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto. Prior to approval of an application for a water transfer, the panel shall determine whether such plans and practices are consistent with the guidelines adopted by the Kansas water office.

~~(b)~~ (c) Within 60 days of receipt of a sufficient application for a water transfer pursuant to this act, the chief engineer shall convene and conduct a hearing thereon. At such hearing, the panel shall consider the application and shall take testimony, hear oral arguments and accept all other evidence offered to determine whether to approve the proposed water transfer.

If it is determined to be in the best interest of the state, the chief engineer may convene and conduct such a hearing within 60 days of receipt of (1) an application to appropriate water pursuant to the Kansas water appropriation act or (2) a proposed contract for the sale of water from the state's conservation storage water supply capacity even though such diversion and transportation of water is not a water transfer as defined by K.S.A. 82a-1501, and amendments thereto.

~~(e)~~ (d) The panel shall consist of the chief engineer, the director and the secretary or the director of the division of environment of the department of health and environment if designated by the secretary. The chief engineer shall serve as the chairperson of the panel. All actions of the panel shall be taken by a majority of the members thereof. The panel shall have all powers necessary to conduct the hearings, make its findings and ~~effectuate~~ implement the provisions of this act. The hearing shall be conducted in a prudent and timely manner.

~~(d)~~ (e) To determine whether the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer, the panel shall consider all matters pertaining thereto, including specifically:

(1) Any current beneficial use being made of the water

proposed to be diverted, including minimum desirable streamflow requirements;

(2) any reasonably foreseeable future beneficial use of the water;

(3) the economic, environmental, public health and welfare and other impacts of approving or denying the transfer of the water;

(4) alternative sources of water available to the applicant and present or future users for any beneficial use;

(5) the proposed plan of design, construction and operation of any works or facilities used in conjunction with carrying the water from the point of diversion. The plan shall be in sufficient detail to enable all parties to understand the impacts of the proposed water transfer; and

~~(6) -- conservation practice implementation plans for the use of water currently available to and being used by the applicant and for the use of the water proposed to be transferred, and~~

~~(7)~~ (6) conservation plans and practices or the need for such plans and practices of persons protesting or potentially affected by the proposed transfer. Such plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto.

~~(e)~~ (f) Any person shall be permitted to appear and testify at any such hearing upon the terms and conditions determined by the chief engineer.

~~(f)~~ (g) Notice of any such hearing shall be published in the Kansas register. Such notice shall be published at least 15 days prior to the date of the hearing.

~~(g)~~ (h) The record of the hearing and findings of fact shall be public records and open for inspection at the office of the chief engineer. The panel shall assess to the applicant all costs of obtaining a court reporter for the hearing and transcribing the transcript of the hearing. Certified

transcripts of the hearing shall be provided at the expense of those requesting same. A transcript shall be provided to the chairperson of the authority.

New Sec. 7. Each member of a water assurance district shall adopt conservation plans and practices for such member. Such plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608, and amendments thereto. Prior to entering into a contract with an assurance district, the director of the Kansas water office, in consultation with the chief engineer, shall determine whether such plans and practices are consistent with the guidelines for conservation plans and practices adopted by the Kansas water office.

Sec. 8. K.S.A. 74-2608, 74-2622, 82a-711, 82a-927, 82a-1311a and 82a-1503 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

0267 water withdrawn *under each contract* from the state's conser-  
 0268 vation storage water supply capacity in the preceding year;  
 0269 (4) the amount necessary to repay the operation, mainte-  
 0270 nance and repair costs associated with the state's conservation  
 0271 water supply capacity based on the actual costs of operation,  
 0272 maintenance and repair of the state's conservation water supply  
 0273 capacity in the preceding year divided by the greater of: (A) Fifty  
 0274 percent of the total amount of water under *each contract* from the  
 0275 state's conservation storage water supply capacity in the preced-  
 0276 ing year; or (B) the total amount of water withdrawn *under each*  
 0277 *contract* from the state's conservation storage water supply ca-  
 0278 pacity in the preceding year; ~~and .~~

~~0279 (5) an amount equal to \$.025 as a depreciation reserve cost to~~  
~~0280 be dedicated for the purposes provided for in K.S.A. 82a-1315b,~~  
~~0281 and amendments thereto.~~

0282 (b) In computing such rates, the director shall consider the  
 0283 state's conservation water supply capacity from all sources as  
 0284 though impounded in one single reservoir. No water supply  
 0285 capacity of a reservoir shall be considered to be in such capacity  
 0286 until the year in which the state incurs contract obligations for  
 0287 the project. The rate so fixed for each year shall be the same for  
 0288 each contract under K.S.A. 82a-1305, and amendments thereto,  
 0289 for withdrawal from every reservoir. The rate so fixed for each  
 0290 twelve-month period from January 1 to December 31 shall be the  
 0291 same for every contract under K.S.A. 82a-1305, and amendments  
 0292 thereto.

0293 Sec. 7. K.S.A. 82a-1310a is hereby amended to read as fol-  
 0294 lows: 82a-1310a. (a) Any person desiring to enter into a contract  
 0295 under K.S.A. 82a-1305, and amendments thereto, shall file an  
 0296 application therefor with the director. Such application shall be  
 0297 in such form and contain such information as the director re-  
 0298 quires.

0299 (b) ~~Upon request of the chairperson of the authority, the~~  
 0300 ~~director shall transmit all available information necessary to~~  
 0301 ~~determine whether or not to approve a contract to purchase water~~  
 0302 ~~from the state's conservation water supply capacity or to use~~  
 0303 ~~surplus waters for minimum streamflow requirements, unless an~~

0304 ~~emergency exists.~~

0305 Sec. 8. K.S.A. 82a-1311a is hereby amended to read as fol-  
 0306 lows: 82a-1311a. (a) The date of receipt of each application  
 0307 submitted pursuant to K.S.A. 82a-1310a shall be stamped thereon  
 0308 and authenticated as directed by the director. Applicants shall  
 0309 notify the director in writing that they wish to commence nego-  
 0310 tiations for a contract to withdraw and use water. Within 10 days  
 0311 after the completion of negotiations for a contract to withdraw  
 0312 and use water, the director shall transmit to the chairperson of  
 0313 the authority a copy of the proposed contract.

0314 (b) *Upon request of the chairperson of the authority, the*  
 0315 *director shall transmit all available information necessary to*  
 0316 *determine whether or not to approve a contract to purchase*  
 0317 *water from the state's conservation water supply capacity or to*  
 0318 *use surplus waters for minimum streamflow requirements, un-*  
 0319 *less an emergency exists.*

0320 ~~(b)~~ (c) In order to determine whether a proposed contract for  
 0321 the sale of water from the state's conservation water supply  
 0322 capacity is in the interest of the people of the state of Kansas and  
 0323 whether the benefits to the state for approving the contract  
 0324 outweigh the benefits to the state for not approving the contract,  
 0325 the authority shall consider all matters pertaining to such ques-  
 0326 tions, including:

0327 (1) The present and future water supply needs of the appli-  
 0328 cant;

0329 (2) any current beneficial uses being made of the noncon-  
 0330 tracted water proposed to be diverted;

0331 (3) any reasonably foreseeable future beneficial uses of the  
 0332 water;

0333 (4) the economic, environmental, public health and welfare  
 0334 and other benefits or adverse impact of approving the contract;

0335 (5) alternative sources of water available to the applicant;

0336 (6) the preliminary plan of design, construction and opera-  
 0337 tion of any works or facilities used in conjunction with carrying  
 0338 the water to its point of use;

0339 (7) whether the proposed purchase is consistent with the  
 0340 state water plan approved by the legislature;

MEMORANDUM

March 3, 1986

TO: House Energy and Natural Resources Committee  
FROM: Kansas Legislative Research Department  
RE: The State Water Marketing Program

Historical Background

The flood of 1951, followed by a drought period from 1952 through 1955, made Kansans aware of the feast and famine extremes of the state's water supplies. These water problems of the 1950s led to a comprehensive study of Kansas water resources, which was published in 1955 as, Water in Kansas. As a result of the recommendations of the study, the Water Resources Board was created. The Board, which had as its primary responsibility water planning, legislation, and policy, was given the additional responsibilities for guiding overall water development and coordinating water-related activities of state and local interests.

In 1958, the citizens of Kansas approved an amendment to the state constitution which permits the state to be a party to flood control works or works for the conservation or development of the water resources of the state. The amendment modified the prohibition against state involvement in internal improvements. The Water Resources Board prepared a report for the 1961 Legislature which dealt with means of implementing this 1958 amendment. In the 1961 report, the Board identified four objectives of water development: (1) development of surface water supplies to meet growing needs; (2) continued attention to rural and urban flood problems; (3) accelerated research, particularly to the problems of evapotranspiration; and (4) development of policies for areas of extensive groundwater use. The Board also recommended a policy of state financial participation in conservation storage development, and state assistance for certain flood control projects undertaken by public corporations where the benefits extend beyond the district itself.

In 1958 the Federal Water Supply Act authorized the inclusion of future water supply storage in federal reservoirs. Under the terms of the Act, up to 30 percent of the cost of federal multipurpose reservoir projects may be allocated for future municipal and industrial water supply if a nonfederal entity provides assurances that future use and repayment will be made. In this case, repayment may be made over a period of up to 50 years or the life of the reservoir and need not be made until water use is initiated. The nonfederal obligation is interest free for up to ten years or until use is initiated, whichever is the shortest period. Using the provisions of this Act, the states may choose to recognize the repayment obligation in order to guarantee that water supply storage is included in a project as it is developed and therefore, be available when future demands required it.

Attachment 5

## Legislative Approval of State Participation

Legislative approval of state participation in water supply storage in federal reservoirs was given with the adoption of 1961 H.C.R. 5 providing assurances of repayment for water supply storage in five major federal reservoirs. The 1961 Legislature also directed the Legislative Council to undertake a comprehensive study of means of implementing H.C.R. 5. In response to a Legislative Council Budget Committee request for assistance, the Kansas Water Resources Board prepared a report which was submitted to the Legislative Council Budget Committee in September of 1962 and was subsequently printed by the Council under the title of A Suggested Water Development Program for Kansas.

The rationale for a water development program was presented by the Board in that publication. The Board determined that a fundamental reason for state participation is that government can accomplish that which is beyond the economic or legal limitation of the individual. Long-range conservation considerations provide a basis for governmental action. Government must be concerned with the long-range picture when it comes to questions of resource management. The individual is usually much less concerned with problems of full site development or with the source, quantity, and quality of the water supply in the distant future. Government and the individual can share a concern over problems created by too much or too little water supply, but government must view these problems as they affect the general welfare, while the individual tends to weight primarily personal considerations.

It was recognized that Kansas requirements for water could be aided greatly by the provisions of the federal Water Supply Act of 1958, which authorized storage in the major reservoir projects being developed by the Corps of Engineers and the Bureau of Reclamation, and subsequently, in the smaller watershed reservoirs developed by local interests and the Soil Conservation Service.

### 1963 and 1965 Acts

The 1963 Kansas Legislature enacted the State Water Plan (K.S.A. 82a-901 et al.), which made provision for state financial assistance and participation in water projects and directed the Kansas Water Resources Board to formulate, adopt, and present to the 1965 Legislature a comprehensive State Water Plan. The first phase of the plan was submitted to the 1965 Legislature and became the State Water Plan (K.S.A. 82a-927 et al.).

Embodied in the 1963 and 1965 legislation (K.S.A. 82a-901 et al.) are several important sections dealing with administrative procedures for the state to follow in assuming financial responsibility for water supply cost in federally-constructed reservoirs. The Water Resources Board was given authority to provide the federal government reasonable assurances regarding the desirability of including storage for future water supply needs in federal projects in K.S.A. 82a-933.

In addition, the Water Resources Board was given authority to enter into agreements with the federal government for the repayment of future water

supply. These agreements would be subject to legislative approval through the appropriation processes.

Implementation of the provisions of the 1963 and 1965 acts led to (1) providing assurance for future water supply in 14 reservoirs, five through the 1961 Legislature, eight by the Water Resources Board, and one by the Kansas Water Office; (2) negotiation of agreements with the appropriate federal agencies for repayment costs associated with assurances; and (3) consideration of prices to be charged and revenue derived by the state from the sale of water. The Kansas Legislature in 1961 provided assurances for the inclusion of water storage in five reservoirs: Council Grove, Elk City, John Redmond, Milford, and Perry. The 1965 Legislature granted the Water Resources Board authority to provide assurances to the federal government of the need for storage and for repayment of construction costs. The Board provided repayment assurances on eight additional reservoirs: Marion, Clinton, Big Hill, Hillsdale, Onaga\*, Cedar Point, Towanda, and Douglass. The Kansas Water Office added Fort Scott to the system. These eight reservoirs, along with the original five were included in the State Water Plan. Currently, there are nine reservoirs in the water supply storage program. (Douglas, Cedar Point, and Towanda were taken out of the pricing formula in 1981.)

In 1971, the Kansas Resources Board undertook an analysis of alternative policies which would control the sale of water from the reservoir system. The comments and views of interested parties were collected during this period of time.

#### 1973 State Water Plan Storage Act

In 1973, an interim committee of the Legislature studied guidelines for the administration and sale of water from state-owned storage. The 1973 study resulted in the introduction and passage of the State Water Plan Storage Act (K.S.A. 82a-1301 et seq.) The 1973 interim study set forth the following policies, which were embodied in the Act, for the management and sale of water available from state controlled storage:

1. The state, through the Kansas Water Resources Board, acts as wholesale and manager of water stored in state controlled storage.
2. The State General Fund is the source of funding for the repayment of the state obligations to the federal government.
3. All reservoirs for which the state has given assurances are to be considered as a single system in determining costs and for pricing water available for sale.
4. All purchasers of water are to be charged the same price regardless of the type of use for which water is purchases.
5. Water is sold at the reservoir in its "raw" state.

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\* Onaga was deleted from the State Water Plan in 1982.

6. The rate per thousand gallons set out in a contract is subject to review at least every ten years.
7. Costs, including interest, to be repaid to the federal government for each reservoir are the basis for cost computations in pricing water along with 5 percent interest return on money advanced from the general fund.
8. The latest federal cost figures are to be used in computing the charge for water each year with the understanding they are subject to change.
9. The state will recover administrative costs incurred by the Division of Water Resources for protecting water released to the purchaser and the costs to the Water Resources Board. The administrative cost is set at an arbitrary one-half cent per 1,000 gallons.
10. A minimum and maximum price for water sold from state storage is set by statute, i.e., 5 to 10 cents per 1,000 gallons.
11. The Legislature reviews contracts entered into by the Board for the sale of water from state controlled storage.

In 1973, the Legislature set forth the policy for pricing water which was that the users of water from state controlled storage should bear the state's repayment obligation, including the additional cost of interest at the rate of 5 percent on moneys advanced from the general fund, i.e., any general fund appropriations required to make up the difference between revenue and costs in the early years before demand equals capacity.

The first contract negotiated under the Program was with Kansas Gas and Electric Company for all the water from John Redmond Reservoir in 1976. Over the next three years seven contracts were entered into with various entities.

#### 1979 Special Committee Report

A 1979 Special Committee studied the Water Marketing Program under Proposal No. 41 --State Water Plan and Water Marketing Policies. The Committee noted that many questions had been raised about the marketing plan including the following:

1. Should the state repay first costs during reservoir construction to reduce the state's liability for repayment?
2. Should a portion of the state's costs be borne statewide rather than by purchasers of water?
3. Should the price charged for water be computed on a different basis?
4. Should purchasers of water pay interest on the general fund monies advanced by the state.



5. Should all operation, maintenance, and replacement (O,M&R) charges be repaid by purchasers of water?
6. Should purchasers be responsible for the payment of the state's administrative expenses associated with marketing water from state storage?

The Special Committee did not recommend any change in the method of computing the annual price of water for sale from state controlled storage. The Committee did recommend that the Legislature continue to review the marketing program to determine whether program changes were appropriate. (Incidentally, the Committee recommended that the Legislature consider development of water supply in smaller structures.)

A minority report expressed disagreement with the majority decision regarding the marketing program. The minority suggested that an immediate change in the pricing policy should be made. They noted that the existing price for water imposed costs of present users for benefits that were not received. (At that time the pricing policy allowed for inclusion of projected costs for four reservoirs for which no funds had been appropriated.)

The 1979 Committee Report included the comment that the Legislature had failed to provide direction to the Water Resources Board "on the question of whether water available in state controlled storage should be aggressively marketed or retained under state control until a need for the water arises."

1981 S.B. 95. During the 1981 Session, the Legislature passed S.B. 95 which would have amended the State Water Plan Storage Act. That bill proposed the following changes in the contracting provisions for the sale of water from state storage:

Contract Provisions	1973 Law	1981 S.B. 95																																	
a. Term of Contract	Not less than 10 years nor more than 40 years. Provisions for short-term sale.	No limit.																																	
b. Price Range	Not less than 5 cents per 1,000 gallons, nor more than 10 cents per 1,000 gallons.	No limit.																																	
c. Minimum Payment	The minimum charge of 50 percent of the total amount of water contracted for.	The minimum charge is 50 percent of the total amount of water contracted for; however, if the total amount contracted for water not utilized and paid for and another user was willing to contract for the water, the contract amount could be adjusted on the 10th anniversary and every 5th anniversary thereafter.																																	
d. Price Adjustment Period	The rate adjusted on every 10th anniversary.	The rate adjusted every 5th anniversary.																																	
e. Prefunding	--	Provision that total capital costs could be paid in a single lump sum.																																	
f. Deferred Payment	The term of contracts could begin on the date of execution of the contract or on any date not later than two years after execution of the contract.	Payment period could be deferred 5 years or until use commenced, whichever came first, if use involved issuance of bonds.																																	
g. Price Components per 1,000 gallons	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Capital costs</td> <td style="width: 20%; text-align: right;">2.67¢</td> <td style="width: 30%;"></td> </tr> <tr> <td>O&amp;M</td> <td style="text-align: right;">1.21</td> <td></td> </tr> <tr> <td>Admin. Costs</td> <td style="text-align: right;">.5</td> <td></td> </tr> <tr> <td>Interest on Moneys Advanced from State General Fund (5%)</td> <td style="text-align: right;"><u>1.77</u></td> <td></td> </tr> <tr> <td></td> <td style="text-align: right;">6.15</td> <td></td> </tr> </table>	Capital costs	2.67¢		O&M	1.21		Admin. Costs	.5		Interest on Moneys Advanced from State General Fund (5%)	<u>1.77</u>			6.15		<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Capital costs</td> <td style="width: 20%; text-align: right;">2.67¢</td> <td style="width: 30%;"></td> </tr> <tr> <td>O&amp;M</td> <td style="text-align: right;">1.21</td> <td></td> </tr> <tr> <td>Admin. Costs</td> <td style="text-align: right;">.50</td> <td></td> </tr> <tr> <td>Interest on Moneys Advanced from State General Fund (8.25%)</td> <td style="text-align: right;">3.26</td> <td></td> </tr> <tr> <td>Water Development Surcharge</td> <td style="text-align: right;"><u>1.50</u></td> <td></td> </tr> <tr> <td></td> <td style="text-align: right;">9.14¢</td> <td></td> </tr> </table>	Capital costs	2.67¢		O&M	1.21		Admin. Costs	.50		Interest on Moneys Advanced from State General Fund (8.25%)	3.26		Water Development Surcharge	<u>1.50</u>			9.14¢	
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Governor Carlin vetoed S.B. 95 with the comment that the bill was passed without the benefit of adequate study and review, and he vetoed it because the bill underwent major changes in conference committee in the final days of the 1981 Session. The Governor suggested that the newly-created Kansas Water Office study the marketing program.

1983 S.B. 61

In Recommendations to the 1983 Kansas Legislature (January 18, 1983), the Kansas Water Authority submitted to the Legislature proposed revisions to the State Water Plan Storage Act and the supporting rationale for its recommendations. The Senate Committee on Energy and Natural Resources introduced the Authority's proposed changes to the Act as a Committee bill.

S.B. 61, as passed by the 1983 Legislature and signed by the Governor made numerous changes in the State Water Plan Storage Act. Amendments to S.B. 61 provided that the Kansas Water Authority find that withdrawal and use of state water be in the interest of the people of the state of Kansas. The Authority authorizes the Director of the Water Office to enter into contracts for the sale of water within or without the state from the state's conservation water supply capacity. In making a decision whether to approve a proposed contract, the Authority is directed to make various public interest determinations specified in the bill.

Provisions in the 1973 law for a 40-year maximum term for a contract, a specified minimum and a maximum charge for water, and the adjustment of the rate on the 10th anniversary of a contract and each subsequent 10th anniversary were deleted. New provisions adjusted the rate annually, adjusted the amount under contract on the 6th anniversary and annually thereafter if the full amount is not paid for and another user is willing to contract for the unused amount, established a charge on the unused amount under contract above a 50 percent minimum charge, and deferred beginning of the payment for up to three years if use of the water involves issuance of bonds for construction of transmission or treatment facilities.

The Director of the Water Office was authorized to set the rate for charges for water, subject to approval of the Authority. Components of the rate include: (1) an amount necessary to repay the amortized capital costs of the state's conservation water supply capacity; (2) an amount as interest on moneys advanced from the State General Fund for the water supply capacity; (3) an amount necessary to pay for the administration and enforcement of the Act; (4) an amount necessary to repay the federal government for operation, maintenance, and repair costs of the water supply capacity; (5) and 2.5 cents per 1,000 gallons as a depreciation reserve cost to be used to acquire new and develop existing conservation water supply capacity.

S.B. 61 directed the Director of the Water Office, subject to Authority approval, to acquire or develop conservation storage water supply capacity impoundments specified in the State Water Plan. Moneys not required to repay the cost of the system and expenses to administer and maintain it will be deposited in the State Conservation Water Supply Fund established by the bill.

An amendment to the Act allowed the submission of water contracts to the Legislature up to the 30th calendar day of each session. The 1973 law required that contracts be submitted on the first day of each session.

The price for water from the state's conservation water supply capacity under S.B. 61 was computed at 11.58 cents per 1,000 gallons. Two contracts

were negotiated under the bill, following its enactment in the 1983 Session, and were submitted to the Legislature. Those contracts were not disapproved.

A comparison of certain provisions in the 1973 law and 1983 S.B. 61 are as follows:

<u>Contract Provisions</u>	<u>1973 Law</u>	<u>1983 S.B. 61</u>																								
a. Term of Contract	Not less than 10 years nor more than 40 years. Provisions for short-term sale.	Not less than 10 years unless desired by the applicant. Provisions for short-term sale.																								
b. Price Range	Not less than 5 cents per 1,000 gallons, nor more than 10 cents per 1,000 gallons.	No limit; there was a 7.5 cent minimum in KWA recommendation.																								
c. Minimum Payment	The minimum charge of 50 percent of the total amount of water contracted for.	Minimum of 50 percent of the total amount of water contracted for, but an interest penalty is assessed on the amount not used under contract.																								
d. Price Adjustment Period	The rate was adjusted on every 10th anniversary.	The rate is adjusted annually every July 1, effective on January 1.																								
e. Prefunding	--	--																								
f. Deferred Payment	The term of contract could begin on date of execution of contract or on any date not later than two years after execution of contract.	Payment can be deferred for three years or until use commences, whichever comes first, if use of water involves issuance of bonds.																								
g. Price Components per 1,000 gallons	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Capital Costs</td> <td style="text-align: right;">2.67¢</td> </tr> <tr> <td>O&amp;M</td> <td style="text-align: right;">1.21</td> </tr> <tr> <td>Admin. Costs</td> <td style="text-align: right;">.5</td> </tr> <tr> <td>Interest on Moneys Advanced from General Fund</td> <td style="text-align: right;">1.77</td> </tr> <tr> <td>Water Development Surcharge</td> <td style="text-align: right;"><u>    --</u></td> </tr> <tr> <td></td> <td style="text-align: right;">6.15</td> </tr> </table>	Capital Costs	2.67¢	O&M	1.21	Admin. Costs	.5	Interest on Moneys Advanced from General Fund	1.77	Water Development Surcharge	<u>    --</u>		6.15	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Capital Costs</td> <td style="text-align: right;">2.67¢</td> </tr> <tr> <td>O&amp;M</td> <td style="text-align: right;">1.44</td> </tr> <tr> <td>Admin. Costs</td> <td style="text-align: right;">.46</td> </tr> <tr> <td>Interest on Moneys Advanced from General Fund</td> <td style="text-align: right;">4.51</td> </tr> <tr> <td>Water Development Fund Surcharge</td> <td style="text-align: right;"><u>    2.5</u></td> </tr> <tr> <td></td> <td style="text-align: right;">11.58</td> </tr> </table>	Capital Costs	2.67¢	O&M	1.44	Admin. Costs	.46	Interest on Moneys Advanced from General Fund	4.51	Water Development Fund Surcharge	<u>    2.5</u>		11.58
Capital Costs	2.67¢																									
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	11.58																									

The following is an explanation of the pricing formula created by 1983 S.B. 61.

<u>Cost Components</u>	<u>Per 1,000 Gallons</u>
a. Capital Costs	2.67¢
Total Repayments Costs for Life of the System (\$140 million) divided by Total Estimated Requests for Water over the Life of the System (5.23 trillion Gallons or 16,035,218 acre feet) (13,277,926 gallons sold in previous year)	
b. Interest Rate on Moneys Advanced by the General Fund	4.51¢
(Pooled Money Investment Board rate 10% X Net Amount of Moneys Advanced from the General Fund divided by Amount Used Under Contract = \$5,989,140)	
c. Administration and Enforcement Costs	.46¢
(Actual costs, \$61,372)	
d. Operation and Maintenance Costs	1.44
(Actual costs, \$191,284)	
e. Development Surcharge	<u>2.5¢</u> 11.58

(Penalty of X% (Pooled Money Investment Board rate) X Total Amount of Moneys Advanced from the General Fund X % of the System under Contract that is unused.)

In addition, S.B. 61 provided for a particular way of distributing the receipts for each particular price component.

a. Capital costs	To the General Fund to Repay the Federal Government
b. Interest Rate on Moneys Advanced by the General Fund	To the Conservation Storage Water Supply Fund
c. Administration and Enforcement Costs	To the General Fund to pay administration costs
d. Operation and Maintenance Costs	To the General Fund to Repay the Federal Government
e. Development Surcharge	To the Conservation Storage Water Supply Fund

1986 H.B. 2721

1986 H.B. 2721 amends the State Water Plan Storage Act to implement certain recommendations contained in the State Water Plan. These include: authorization to make Water Marketing Program sales on a graduated use basis; requirement that the state have water purchase contract commitments prior to acquiring additional water storage; requirement that Water Marketing Program purchasers implement a water conservation plan; expansion of eligible uses of the State Conservation Storage Water Supply Fund, also known as the Development Fund; and provision that interest earned on Development Fund moneys be credited to that fund rather than the State General Fund.

H.B. 2721 further amends the State Water Plan Storage Act by adjusting the formula used to set rates for water sold under the State Water Marketing Program and by altering the method of allocating water sale revenues between the State General Fund and the State Conservation Storage Water Supply Fund. Both changes would apply to all of calendar year 1986.

The amendments having fiscal implications include those relating to the rate setting formula, the deposit of Water Marketing Program revenues and the crediting of interest to the State Conservation Storage Water Supply Fund.

Proposed changes to the rate setting formula affect two of the five components used in determining rates. The first would exclude certain interest costs from calculations used in the component for amortized capital costs associated with the state's conservation water supply capacity. Regarding the component for interest owed on moneys borrowed from the State General Fund, H.B. 2721 would authorize a credit for the amount of money paid in the preceding year to the State Conservation Storage Water Supply Fund. The result in calendar year 1986 would be to decrease -- from 16.36 cents to 14.3 cents per 1,000 gallons of water -- the rate charged pursuant to formula. The change would affect the five purchasers in the Marketing Program who have the most recent contracts.

H.B. 2721 also establishes the following priority ranking for use of revenues derived from the sale of water under the Marketing Program:

1. Repayment of amortized capital costs associated with acquisition of water supply capacity.
2. Payment of operation, maintenance, and repair costs.
3. Payment of state administration and enforcement costs.
4. Payment of interest on money borrowed from the State General Fund.
5. Payments for depreciation reserve expenses.

The effect of the prioritization is to satisfy State General Fund claims on the proceeds before depositing any funds in the State Conservation Water Supply Fund.

H.B. 2721 also allows interest earnings on moneys in the Conservation Storage Water Supply Fund to be credited to that fund, rather than the State General Fund.

The Kansas Water Office estimates that, with passage of H.B. 2721, Water Marketing Program revenues would be \$1,413,379 in FY 1987. Of that amount, \$1,339,906 would be deposited in the State General Fund and the remainder in the State Conservation Storage Water Supply Fund. These amounts compare to previous estimates related to the Governor's FY 1987 Budget Report of \$1,516,562 in total receipts and \$1,253,742 in deposits to the State General Fund.

In addition to recommending the changes in the marketing plan as proposed in H.B. 2721, the Water Office recently elected to exercise certain options contained in water purchase contracts with the Corps of Engineers. These options permit the state to defer principal and interest payments on unused storage in Milford and Perry Reservoirs until the storage is committed under the Water Marketing Program. The Office is proposing to exercise the same option for the unused storage in Clinton, Big Hill, and Hillsdale.

C86-40.RP

Prepared by Kansas Water Office  
for House Committee on Energy and Natural Resources  
6 March 1986

Current Contracts

Purchaser	1986 Rate	Frequency of Price Review	Volume Under Contract MGY
KS Gas & Electric	10¢	(10 yrs)	9,672
Lawrence	6.626¢	(5 yrs)	3,650
Baldwin	6.626¢	(5 yrs)	340
Dg. Co. RWD #1	6.626¢	(5 yrs)	50
Dg. Co. RWD #2	16.36¢	each year	50
Dg. Co. RWD #3	7.402¢	(10 yrs)	720
Dg. Co. RWD #4	6.626¢	(5 yrs)	72
Dg. Co. RWD #5	6.626¢	(5 yrs)	48
Dg. Co. RWD #6	7.402¢	(10 yrs)	25
Hillsboro	7.402¢	(10 yrs)	300
KP & L	7.402¢	(10 yrs)	7,300
Miami Co. RWD #2	7.402¢	(5 yrs)	239
Emporia	7.402¢	(5 yrs)	1,095
Iola	7.402¢	(5 yrs)	110
Marion	7.402¢	(5 yrs)	238
Coffeyville	7.402¢	(5 yrs)	1,900
PWWSO #5	7.402¢	(5 yrs)	87
Johnson Co. RWD #7	16.36¢	each year	110
PWWSO #4	16.36¢	each year	548
Spring Hill	16.36¢	each year	20
White Mem. Camp	16.36¢	each year	2

Attachment 6

House Energy and Natural Resources 3/6/86



Estimate of Receipts Not Collected  
Due to "Capped" Contracts for 1987<sup>1,2</sup>

	Current Law		HB 2721	
	SGF	Dev. Fund	SGF	Dev. Fund
Capital Costs	(\$87,899)	\$ 0	\$ 0	\$ 0
Operation & Maintenance	(68,515)	0	0	0
Administration & Enforcement	(19,385)	0	0	0
Interest on Advances from State General Fund	0	(315,892)	0	(425,210)
Depreciation Reserve	0	(391,923)	0	(391,923)
Subtotal	<u>(\$175,799)</u>	<u>(\$717,815)</u>	<u>\$ 0</u>	<u>(\$817,133)</u>
	=====		=====	
Total		(\$883,614)		(\$817,133)

Estimate of Receipts by Component for 1987<sup>1,2</sup>

	Current Law		HB 2721	
	SGF	Dev. Fund	SGF	Dev. Fund
Capital Costs	\$349,460	\$ 0	\$410,752	\$ 0
Operation & Maintenance	272,393	0	340,625	0
Administration & Enforcement	77,067	0	96,753	0
Interest on Advances from State General Fund	0	435,768	0	273,236
Depreciation Reserve	0	36,131	0	36,131
Subtotal	<u>\$698,920</u>	<u>\$471,899</u>	<u>\$848,130</u>	<u>\$309,367</u>
	=====		=====	
Total		\$1,170,819		\$1,157,497

<sup>1</sup>Based on 13,287,470 million gallons per year of usage under current contracts.

<sup>2</sup>Based on estimated rate of 12.28¢ under current law and 11.8¢ under HB 2721.

The Honorable Ron Fox, Chairperson  
Committee on Energy and Natural Resources  
House of Representatives  
Third Floor, Statehouse

Dear Representative Fox:

SUBJECT: Fiscal Note for House Bill No. 2721 by Committee  
on Energy and Natural Resources

In accordance with K.S.A. 75-3715a, the following fiscal note concerning House Bill No. 2721 is respectfully submitted to your committee.

House Bill No. 2721 amends the State Water Plan Storage Act to implement certain recommendations contained in the State Water Plan. These include: authorization to make Water Marketing Program sales on a graduated use basis; requirement that the state have water purchase contract commitments prior to acquiring additional water storage; requirement that Water Marketing Program purchasers implement a water conservation plan; expansion of eligible uses of the State Conservation Storage Water Supply Fund, also known as the Development Fund; and provision that interest earned on Development Fund moneys be credited to that fund rather than the State General Fund.

House Bill No. 2721 further amends the State Water Plan Storage Act by adjusting the formula used to set rates for water sold under the State Water Marketing Program and by altering the method of allocating water sale revenues between the State General Fund and the State Conservation Storage Water Supply Fund. Both changes would apply to all of calendar year 1986.

The amendments having fiscal implications include those relating to the rate setting formula, the deposit of Water Marketing Program revenues and the crediting of interest to the State Conservation Storage Water Supply Fund.

Proposed changes to the rate setting formula affect two of the five components used in determining rates. The first would exclude certain interest costs from calculations used in the component for amortized capital costs associated with the state's conservation water supply capacity. Regarding the component for interest owed on moneys borrowed from the State

General Fund, House Bill No. 2721 would authorize a credit for the amount of money paid in the preceding year to the State Conservation Storage Water Supply Fund. The result in calendar year 1986 would be to decrease -- from 16.36¢ to 14.3¢ per 1,000 gallons of water -- the rate charged pursuant to formula. The change would affect the five purchasers in the Marketing Program who have the most recent contracts.

House Bill No. 2721 also establishes the following priority ranking for use of revenues derived from the sale of water under the Marketing Program: 1) repayment of amortized capital costs associated with acquisition of water supply capacity; 2) payment of operation, maintenance and repair costs; 3) payment of state administration and enforcement costs; 4) payment of interest on money borrowed from the State General Fund; and 5) payments for depreciation reserve expenses. The effect of the prioritization is to satisfy State General Fund claims on the proceeds before depositing any funds in the State Conservation Storage Water Supply Fund.

House Bill No. 2721 also allows interest earnings on moneys in the Conservation Storage Water Supply Fund to be credited to that fund, rather than the State General Fund.

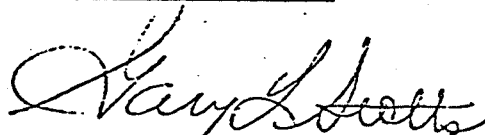
The Kansas Water Office estimates that, with passage of House Bill No. 2721, Water Marketing Program revenues would be \$1,413,379 in FY 1987. Of that amount, \$1,339,906 would be deposited in the State General Fund and the remainder in the State Conservation Storage Water Supply Fund. These amounts compare to previous estimates related to the Governor's FY 1987 Budget Report of \$1,516,562 in total receipts and \$1,253,742 in deposits to the State General Fund.

The differences between the two sets of estimates can be attributed in part to the effects of House Bill No. 2721. However, there has been an intervening factor that also has a bearing on program revenues and their distribution. The Water Office recently elected to exercise certain options contained in water purchase contracts with the Corps of Engineers. These options permit the state to defer principal and interest payments on unused storage in Milford and Perry Reservoirs until the storage is committed under the Water Marketing Program.

This will have inter-related effects on the rate setting formula and on the relative distribution of revenues between the State General Fund and the Development Fund. These effects have been incorporated into the revised estimates given above, but no separate analysis has been done to isolate them from the effects of House Bill No. 2721.

For FY 1987, the Kansas Water Office estimates that the amount of interest to be credited to the State Conservation Storage Water Supply Fund would be \$80,309. There would be an equivalent loss in receipts to the State General Fund.

Adjustments affecting the State General Fund are not included in the FY 1987 Governor's Budget Report.



Gary L. Stotts  
Acting Director of the Budget

GLS:JJ:ks

BILL ANALYSIS

Date of Final Committee Action 3-6-76

Sponsor Ks Wtr Off Committee ENR

Brief Explanation Allows for the graduated increase of purchased quantity from the state water storage. Present law requires a set static purchase amount. This change should allow municipalities and industrial users greater flexibility in contracting for future water needs. Another change in the bill would place interest earned on the water development fund in the development fund

Proponents Ks Wtr Off Opponents rather than in the SGF.

Ks Wtr Authority None

If close vote explain \_\_\_\_\_

Explain Important Committee Amendments (if any) \_\_\_\_\_

Deleted one change in the wtr pricing formula.

Fiscal Note (if any) see attached

Other Comments \_\_\_\_\_

Signed [Signature]

Chairman or Designee

Notes for Individual Legislators use:

NOTIFICATION OF COMMITTEE ACTION


DATE: March 6, 1986

COMMITTEE: HOUSE ENERGY AND NATURAL RESOURCES

BILL NUMBER: House Bill 2782

COMMITTEE RECOMMENDATION:               Be Passed  
     X   Be Passed As Amended  
          Be Not Passed  
          \_\_\_\_\_

BILL WILL BE CARRIED BY: Representative Acheson

CHAIRMAN: 

COMMENTS:

\* WHEN COMPLETED PLEASE SEND THIS FORM TO -  
THE MAJORITY LEADER'S OFFICE - 381-W.

NOTIFICATION OF COMMITTEE ACTION

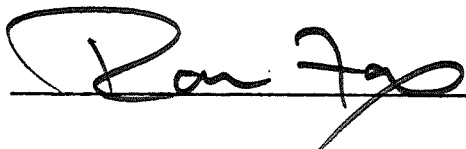
DATE: March 6, 1986

COMMITTEE: HOUSE ENERGY AND NATURAL RESOURCES

BILL NUMBER: House Bill 3078

COMMITTEE RECOMMENDATION:               Be Passed  
     X   Be Passed As Amended  
          Be Not Passed  
          \_\_\_\_\_

BILL WILL BE CARRIED BY: Representative Spaniol

CHAIRMAN: 

COMMENTS:

\* WHEN COMPLETED PLEASE SEND THIS FORM TO -  
THE MAJORITY LEADER'S OFFICE - 381-W.

NOTIFICATION OF COMMITTEE ACTION

DATE: March 6, 1986

COMMITTEE: ENERGY AND NATURAL RESOURCES

BILL NUMBER: Substitute House Bill 2703

COMMITTEE RECOMMENDATION:               Be Passed  
          Be Passed As Amended  
          Be Not Passed

INTRODUCE AND PASS

BILL WILL BE CARRIED BY: Representative Patrick

CHAIRMAN:  \_\_\_\_\_

COMMENTS:

\* WHEN COMPLETED PLEASE SEND THIS FORM TO -  
THE MAJORITY LEADER'S OFFICE - 381-W.



