

Approved February 25, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Dennis Spaniol at
Chairperson

3:30 ~~xxx~~ p.m. on February 22, 1988 in room 526-S of the Capitol.

All members were present except:

Representative Sifers (excused)

Committee staff present:

Raney Gilliland, Legislative Research
Laura Howard, Legislative Research
Arden Ensley, Revisor
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Representative Diane Gjerstad
Dr. Stanley C. Grant, Secretary, Department of Health and Environment
Representative Mary Jane Johnson
Hugh J. Taylor, Board of Public Utilities, Kansas City, Kansas
Representative Jack Lacey
Darrel Montei, Legislative Liaison, Department of Wildlife and Parks

Chairman Dennis Spaniol called the meeting to order and began with several bill requests.

Representative Gjerstad requested a bill which would regulate those businesses which want to make phone calls by use of automated or computerized telephones. This would apply to personal phones as well. A motion was made by Representative Shore, seconded by Representative Grotewiel, to introduce this bill. The motion carried.

Representative Holmes, on the recommendation of the subcommittee which studied chemigation, requested introduction of two bills. The first bill would:

1. Reinsert the section relative to training.
2. Change the fee structure on chemigation.
3. Change the penalty clauses to conform with the Groundwater Protection Act.
4. Require notarization on chemigation permits.
5. Provide equal responsibility for enforcement.

The second bill would deal with notarization on water right use reports. Representative Holmes moved, seconded by Representative Grotewiel, to introduce both of these bills. The motion passed.

Dr. Stanley Grant requested approval of the committee to introduce two legislative proposals on behalf of the Department of Health and Environment. The first bill related to funding for the Central Interstate Low Level Radioactive Waste Compact Commission. (Attachment 1) The second proposal related to the waste water discharge permit system. (Attachment 2) Representative Acheson moved and Representative Freeman seconded to introduce these two bills. The motion carried.

Representative Shore requested a bill establishing maximum lawful price for first sales (wellhead) of natural gas for agricultural use. He made a motion, seconded by Representative Charlton, to introduce this bill. The motion passed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
room 526-S, Statehouse, at 3:30 ~~xxx~~ p.m. on February 22, 1988.

The revisor explained two bills which the Governor's office had requested to be introduced. The first bill would establish an advisory commission on health and environment. (Attachment 3) The second bill would transfer mined-land conservation and reclamation to the Department of Health and Environment. (Attachment 4) A motion was made by Representative Holmes and seconded by Representative Acheson to introduce these bills. The motion carried.

House Bill 2863--Board of public utilities; rate increases; appeals. Representative Mary Jane Johnson introduced Hugh Taylor, Manager of Rates and Regulations for the Board of Public Utilities in Kansas City, Kansas. Mr. Taylor testified in support of House Bill 2863, which had been initiated by his Board. This bill would modify a law dealing with implementation of a rate increase for cities of 100,000 or more. (Attachment 5)

The Chair expressed concern regarding the check and balance system since this was not regulated by the Kansas Corporation Commission. Mr. Taylor noted that the Public Utilities Board of Kansas City, Kansas acts as a regulatory agency. The Board has a rate form which is provided for by Kansas statutes. This form provides for interveners to be represented; the Board hears that testimony as under any commission process and the Board determines whether it is reasonable. If the interveners then feel that the rates are unreasonable, they have the right to petition the court under the Kansas statute. If the rates were found to be unreasonable, the overcharges would be refunded to those customers who had been charged too much. Mr. Taylor believed there were adequate safeguards in the public interest in this matter. Responding to a question of the Chairman, Mr. Taylor said that this money could be escrowed or put in a special account. Responding to another question, Mr. Taylor said this would affect both electric and water utility rates for businesses and residences. The residential customers are in fact the owners of the system and are well represented in the rate process.

House Bill 2867--Fish and game; state preemption of regulation thereof. Representative Lacey explained this bill which he sponsored. The bill was designed to make it clear that the state, through the Department of Wildlife and Parks would have the responsibility for management of all wildlife, birds, game and fish. (Attachment 6) Considerable discussion followed.

Darrel Montei represented the Department of Wildlife and Parks, noting that his agency supported the intent of the bill. He commented that Wildlife and Parks has a community lake assistance program in which they work with a number of cities and counties to help manage the lakes. Mr. Montei did not feel he understood the bill well enough to offer amendments. His other concern related to animal damage control work. There are provisions now whereby cities and counties can address this problem, but this must be done within established guidelines all the way down from the federal level to the state level. Responding to a question of the Chairman, Mr. Montei said that the bill would clarify, at least on paper, that the intent of the Legislature is for the state to manage the fish and wildlife resources of the state. Relative to how this would apply to health and safety areas, Mr. Montei said that this would emphasize the need for communication between the agency, the state, and the municipality or county. There are broad regulations giving the authority to handle programs. More discussion followed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES,
room 526-S Statehouse, at 3:30 ~~xxx~~ p.m. on February 22, 1988.

Representative Freeman requested a bill to be introduced as a committee bill. This would establish a toll-free hotline for Wildlife and Parks concerning damage caused by wildlife. Representative Freeman moved and Representative Grotewiel seconded that this bill be introduced. The motion carried.

There were no objections to the minutes of February 16 and they were approved. The minutes of February 18 were distributed.

The meeting was adjourned at 4:15 p.m.

The next meeting of House Energy and Natural Resources Committee will be held at 3:30 p.m. on February 22, 1988 in Room 526-S.

_____BILL NO._____
 BY _____

AN ACT concerning central low-level radioactive waste compact commission.

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

New Section 1. (a) The department shall collect fees from major generators designated by the secretary for services provided pursuant to the central interstate low-level radioactive waste compact. Services for which fees may be established include (1) the budget and expenses of the central interstate low-level radioactive waste compact commission, (2) financing the various phases of development of any regional waste management facility, and (3) department expenses for compact commission administration.

(b) In determining the amount of such fees, the secretary shall set the fees in an amount sufficient to reimburse the state and/or commission for its direct and indirect costs of the services specified in subsection (a) of this section. The secretary shall take into account any special arrangements between the state and a licensee, another state, or a federal agency from which the cost of the service is partially or fully recovered.

(c) When a licensee fails to pay the applicable fee, the department may suspend or revoke the license or may issue an appropriate order.

(d) Any fees collected pursuant to this section shall be deposited in the department's low-level radioactive waste fund, which is hereby created.

(f) The term major generator shall mean a generator that produces or processes an annual average of more than 4,000 cubic feet of waste over a period of three calendar years.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

_____ BILL NO. _____
 BY _____

AN ACT concerning secretary of health and environment, activities; amending K.S.A. 65-164, 65-165, 65-166, 65-167, 65-170c, 65-170d, 65-170e, 65-171d and repealing the existing sections.

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

Section 1. K.S.A. 65-164 is hereby amended to read as follows: 65-164.

(a) No person, company, corporation, institution or municipality shall place or permit to be placed or discharge or permit to flow into any of the waters of the state, including privately owned freshwater reservoirs and farm ponds, any sewage; ~~except as hereinafter provided. This act shall not prevent the discharge of sewage from any public sewer system owned and maintained by a municipality or sewerage company, if such sewer system was in operation and was discharging sewage into the waters of the state on March 20, 1987, but this exception shall not permit the discharge of sewage from any sewer system that has been extended subsequent to such date, nor shall it permit the discharge of any sewage which, upon investigation by the secretary of health and environment as hereinafter provided, is found to be polluting the waters of the state in a manner prejudicial to the health of the inhabitants thereof.~~

(b) For the purposes of this act, "sewage" means any substance that contains any of the waste products or excrementitious or other discharges from the bodies of human beings or animals, or chemical or other wastes from domestic, manufacturing or other forms of industry.

(c) Whenever a complaint is made to the secretary of health and environment by the mayor of any city of the state, by a local health officer or by a county or joint board of health, complaining of the pollution or of the polluted condition of any of the waters of the state situated within the county within which the city, local health officer or county or joint board of health is located, it shall be the duty of the secretary of health and environment to cause an investigation of the pollution or the polluted condition complained of. Also, whenever the secretary of health and environment otherwise has reason to believe that any of the waters of the state are being polluted in a manner prejudicial to the health of any of the inhabitants of the state, the secretary may initiate an investigation of such pollution.

(d) Whenever an investigation is undertaken by the secretary of health and environment, under subsection (c), it shall be the duty of any person, company, corporation, institution or municipality concerned in such pollution to furnish, on demand, to the secretary of health and environment such information as required relative to the amount and character of the polluting material discharged into the waters by such person, company, corporation, institution or municipality. If the secretary of health and environment finds that any of the waters of the state have been or are being polluted in a manner prejudicial to the health of any of the inhabitants of the state, the secretary of health and environment shall have the authority to make an order requiring: (1) Such pollution to cease within a reasonable time; (2) requiring such manner of treatment or of disposition of the sewage or other pollution material as, in the secretary's judgment, is necessary to prevent the future pollution of such waters; or (3) both. It shall be the duty of the person, company, corporation, institution or municipality to whom such order is directed to fully comply with the order of the secretary of health and environment.

(e) Any action of the secretary pursuant to subsection (d) is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. The court on review shall hear the case without delay.

Sec. 2. K.S.A. 65-165 is hereby amended to read as follows: 65-165. Upon application made to the secretary of health and environment by the public authorities having by law the charge of the sewer system of any municipality, township, county, or legally constituted sewer district, or any person, company, corporation, institution, municipality or federal agency, the secretary of health and environment shall consider the case of such a sewage discharge or sewer system, otherwise prohibited by this act from discharging sewage into any of the waters of the state, including privately owned freshwater reservoirs and farm ponds, or the extension of a sewer system and whenever it is the secretary's opinion that the general interests of the public health would be served thereby, or that the discharge of such sewage would not detract from the quality of the waters of the state for their beneficial uses for domestic or public water supply, agricultural needs, industrial needs, recreational needs or other beneficial use and that such discharge meets or will meet all applicable state water quality standards and applicable federal water quality and effluent standards under the provisions of the federal water pollution control act and amendments thereto as in effect on January 1, 1984 1988, the secretary of health and environment, shall issue a permit for the extension of a sewer system or for the discharge of sewage, or both, and shall stipulate in the permit the conditions on which such discharge will be

permitted and shall require such treatment of the sewage as determined necessary to protect beneficial uses of the waters of the state in accordance with the statutes and rules and regulations defining the quality of the water affected by such discharge and may require treatment of the sewage in accordance with rules and regulations predicated upon technologically based effluent limitations. Indirect dischargers shall comply with all applicable pretreatment regulations and water quality standards.

Every such permit for the discharge of sewage shall be revocable, or subject to modification and change, by the secretary of health and environment, upon notice having been served on the public authorities having, by law, the charge of the sewer system any municipality, township, county or legally constituted sewer district or on the person, company, corporation, institution, municipality or federal agency owning, maintaining or using the sewage system. The length of time after receipt of the notice within which the discharge of sewage shall be discontinued may be stated in the permit, but in no case shall it be less than 30 days or exceed two years, and if the length of time is not specified in the permit it shall be 30 days. On the expiration of the period of time prescribed, after the service of notice of revocation, modification or change from the secretary of health and environment, the right to discharge sewage into any of the waters of the state shall be in full force, as though no permit had been granted, but a new permit may thereafter again be granted, as hereinbefore provided.

Sec. 3. K.S.A. 65-166 is hereby amended to read as follows: 65-166. It is required of public authorities having by law the charge of the sewer system of any municipality, township, county, or legally constituted sewer district, and of each and every person, company, corporation, institution, municipality, or federal agency, that upon making application for a permit to discharge sewage into any waters of the state, including privately owned freshwater reservoirs and farm ponds, or the extension of any sewer system, the application shall be accompanied by plans and specifications for the construction of the sewage collection systems and/or sewage treatment or disposal facilities, and any additional facts and information as the secretary of health and environment may require to determine adequate protection of the public health of the state and the beneficial uses of waters of the state.

Sec. 4. K.S.A. 65-167 is hereby amended to read as follows: 65-167. Upon conviction, the penalty for the willful or negligent discharge of sewage into or from the sewer system of any municipality, township, county or legally constituted sewer district by the public authorities having, by law, charge thereof or by any person, company corporation, institution, municipality or

federal agency, to any of the waters of the state without a permit, as required by this act, or in violation of any term or condition of a permit issued by the secretary of health and environment, or in violation of any requirements made pursuant to K.S.A. 65-164, 65-165 or 65-166, and amendments thereto, shall be not less than ~~\$2,500~~ \$10,000 and not more than \$25,000, and a further penalty of not more than \$25,000 per day for each day the offense is maintained. The penalty for the discharge of sewage into or from any sewage system into any waters of the state without filing a report, in any case in which a report is required by this act to be filed shall be ~~\$1,000~~ \$10,000 per day for each day the offense is maintained.

Sec. 5. K.S.A. 65-170c is hereby amended to read as follows: 65-170c. Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under the provisions of K.S.A. 65-161 to 65-171h, inclusive, or any amendments thereto, or who falsified, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained pursuant to said statutes, shall be punished upon conviction by a fine of not less than ~~twenty-five-dollars-(\$25)~~ five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000). Each day in which the failure to comply with such requirements or other violation continues shall constitute a separate offense.

Sec. 6. K.S.A. 65-170d is hereby amended to read as follows: 65-170d. (a) Any person who violates: (1) Any term or condition of any sewage discharge permit issued pursuant to K.S.A. 65-165; (2) any effluent standard or limitation or any water quality standard or other rule or regulation promulgated pursuant to K.S.A. 65-171d; (3) any filing requirement made pursuant to K.S.A. 65-164 or 65-166; (4) any reporting, inspection or monitoring requirement made pursuant to this act or K.S.A. 65-166; or (5) any lawful order or requirement of the secretary of health and environment shall incur, in addition to any other penalty as provided by law, a civil penalty in an amount of ~~up-to-ten-thousand-dollars-(\$10,000)~~ at least \$5,000, up to an amount of \$10,000 for every such violation and, in the case of a continuing violation, every day such violation continues shall, for the purpose of this act, be deemed a separate violation.

(b) The director of the division of environment, upon a finding that a person has violated any provision of subsection (a) of this section, may impose a penalty within the limits provided in this section, which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) No such penalty shall be imposed except upon the written order of the director of the division of environment to such person stating the violation, the penalty to be imposed and the right of such person to appeal to the secretary of health and environment. Any such person may, within thirty (30) days after notification make written request to the secretary of health and environment for a hearing thereon. The secretary of health and environment shall hear such person or persons within thirty (30) days after receipt of such request and shall give not less than ten (10) days written notice of the time and place of such hearing. Within fifteen (15) days after such hearing, the secretary of health and environment shall affirm, reverse or modify the order of the director and shall specify the reasons therefor. Nothing in this act shall require the observance at any hearing of formal rules of pleading or evidence.

(d) Any person aggrieved by an order of the secretary of health and environment may apply within thirty (30) days after the rendition of the order to the district court of the county in which the order of the secretary of health and environment is to become effective for a review of such order or decision. If the order of the secretary of health and environment is to become effective in more than one county, the application must be to the district court of one of such counties. Any party to any such review proceedings in a district court may appeal from the final decision rendered by such court in such proceedings to the supreme court as provided by K.S.A. 60-2103, or any amendments thereto.

Sec. 7. K.S.A. 65-170e is hereby amended to read as follows: 65-170e.

(a) The attorney general, upon the request of the secretary of health and environment, may bring an action in the name of the state of Kansas in the district court of the county in which any person who violates any of the provisions of this act may do business, to recover penalties or damages as provided by this act.

(b) Any citizen having an interest which is or may be adversely affected has a right to intervene in civil actions brought under this statute or administrative actions brought under K.S.A. 65-170d which seek:

(1) restraint of persons from engaging in unauthorized activity which is endangering or causing damage to public health or the environment;

(2) injunction of threatened or continuing violations of this act and regulations promulgated thereunder.

(3) assessment of civil penalties for violations of the act, regulations promulgated thereunder, permit conditions, or orders of the director of environment or secretary of health and environment.

Sec. 8. K.S.A. 65-171d is hereby amended to read as follows: 65-171d.

(a) For the purpose of preventing surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, and to protect beneficial uses of the waters of the state and to require the treatment of sewage predicated upon the technologically based effluent limitations, the secretary of health and environment shall make such rules and regulations, including registration of potential sources of pollution, as may in the secretary's judgment be necessary to : (1) Clean up pollution resulting from oil and gas activities regulated by the state corporation commission; (2) protect the soil and waters of the state from pollution resulting from (A) oil and gas activities not regulated by the state corporation commission or (B) underground storage reservoirs of hydrocarbons, natural gas and liquid petroleum gas; (3) control the disposal, discharge or escape of sewage as defined in K.S.A. 65-164 and amendments thereto, by or from municipalities, corporations, companies, institutions, state agencies, federal agencies or individuals and any plants, works or facilities owned or operated, or both, by them; and (4) establish water quality standards for the waters of the state to protect their beneficial uses.

(b) The secretary of health and environment may adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal clean water act and the 1981 amendments thereto; ~~which the secretary is otherwise authorized by law to adopt~~ as in effect on January 1988.

(c) For the purposes of this act, including K.S.A. 65-161 through 65-171h and amendments thereto, pollution means: (1) Such contamination or other alteration of the physical, chemical or biological properties of any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the state or to other designated beneficial uses; or (2) such discharge as will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(d) In adopting rules and regulations, the secretary of health and environment, taking into account the varying conditions that are probable for each source of sewage and its possible place of disposal, discharge or escape, may provide for varying the control measures required in each case to those the secretary finds to be necessary to prevent pollution. If a freshwater reservoir or farm pond is privately owned and where complete ownership of land bordering the reservoir is under common private ownership, such freshwater reservoir or farm pond shall be exempt from water quality standards except as

it relates to (1) discharge of sewage into such , shwater reservoir or farm pond, (2) water discharge or seepage from the reservoir to other waters of the state, either surface or groundwater, or (3) ~~as-it-relates-to~~ the public health of persons using the reservoir or pond or waters therefrom.

(e) (1) Whenever the secretary of health and environment or the secretary's duly authorized agents find that the soil or waters of the state are not being protected from pollution resulting from oil and gas activities not regulated by the state corporation commission or from underground storage reservoirs of hydrocarbons, natural gas and liquid petroleum gas or that storage or disposal of salt water or oil not regulated by the state corporation commission or refuse in any surface pond is causing or is likely to cause pollution of soil or waters of the state, the secretary or the secretary's duly authorized agents shall issue an order prohibiting such activity, underground storage reservoir or surface pond. Such order shall take effect 10 days after service upon the owner, operator, contractor or agents thereof. Any person aggrieved by such order may within 10 days of service of the order request a hearing on the order.

(2) Hearings may be conducted by the secretary or hearing officers appointed by the secretary. Such hearing officers shall have the power and authority to conduct such hearings in the name of the secretary at any time and place and a record of the proceedings of such hearings shall be taken and filed with the secretary together with findings of fact. On the basis of the evidence produced at the hearing, the secretary shall make findings of fact and conclusions of law and shall give written notice of such findings and conclusions to the alleged violator. The order of the secretary shall be final unless review is sought under paragraph (4) of this subsection.

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

(4) Any action of the secretary pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(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 \$5.00 for each tank in place;

(2) permitting, monitoring and inspecting salt solution mining operators, for which the annual fee shall not exceed \$1,950.00 per company; and

(3) permitting, monitoring and inspecting hydrocarbon storage wells and well systems, for which the annual fee shall not exceed \$1,875.00 per company.

(g) Agents of the secretary shall have the right of ingress and egress upon any lands to clean up pollution resulting from oil and gas activities. Such agents shall have the power to occupy such land if necessary to investigate and clean up such pollution. Any agent entering upon any land to conduct cleanup activities shall not be liable for any damages necessarily resulting therefrom except damages to growing crops, livestock or improvements on the land.

Sec. 9. K.S.A. 65-164, 65-165, 65-166, 65-167, 65-170c, 65-170d, 65-170e and 65-171d are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO. _____

By

AN ACT relating to health and environment; establishing the advisory commission on health and environment; amending K.S.A. 65-3506 and repealing the existing section; also repealing K.S.A. 75-5614 and 75-5615.

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

New Section 1. (a) There is hereby established an advisory commission on health and environment which shall be advisory to and consult with the secretary of health and environment. The advisory commission on health and environment shall consist of 13 persons appointed by the governor. The governor, as far as practicable, shall make such appointments so that the members of the commission will be knowledgeable and experienced persons from different parts of the state. Two members of the commission shall be persons who are representatives of health fields; two members of the commission shall be persons who practice environmental engineering or geology; three members of the commission shall be scientists from academia or commercial health or environmental laboratories or private business; three members shall be business leaders utilizing health or environmental services; and three members shall represent the public at large.

The citizen members of the commission shall serve for a term of four years and until their successors are appointed and qualified except that the members of the first commission shall be appointed by the governor within 60 days after the effective date of this act and shall serve for terms as follows: Seven for a term of two years and six for a term of four years. The governor, in making such appointments, shall designate the term for which each is to serve. Thereafter, upon the expiration of the terms of office, successors shall be appointed in the same

manner as original appointments for terms of four years. Upon the completion of such appointments, the governor shall designate the date of the first meeting of the commission. Any vacancy occurring in the membership of the commission shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

(b) The commission shall elect annually a chairperson and vice-chairperson from its own membership who shall not be elective officials. The commission shall hold at least four regular meetings each year and any additional meetings as the secretary and chairperson deems desirable, at a place and time to be fixed by the secretary within the state of Kansas. Special meetings shall be called by the secretary upon written request of any nine members. Nine members of the commission shall constitute a quorum to transact its business.

(c) The commission shall consult with and advise the secretary on matters relating to the major department policy decisions and future agency direction, the result of study, assessment and evaluation of current actions and local, state, regional and national policy and trends in public health and the environment. The secretary may request commission advice on other matters. The members of the advisory commission attending commission meeting shall be paid amounts as provided in subsection (e) of K.S.A. 75-3223, and amendments thereto.

Sec. 2. K.S.A. 65-3506 is hereby amended to read as follows: 65-3506. (a) There is hereby established the board of adult care home administrators. The board shall be attached to the department of health and environment and shall be within the department as a part thereof. All budgeting, purchasing and related management functions of the board shall be administered under the direction and supervision of the secretary of health and environment. The department shall serve as the administrative and enforcement agency of the board in all respects and shall perform such services and duties as it may be legally called upon to perform. All vouchers for expenditures and all payrolls of the

board shall be approved by the chairperson of the board and by the secretary of health and environment.

(b) The board of adult care home administrators shall be composed of seven (7) members, ~~three (3) of whom shall be~~ appointed by the secretary of health and environment ~~from among the members of the advisory commission on health established by K.S.A. 75-5614 who,~~ three of whom are representatives of professions and institutions concerned with the care and treatment of chronically ill or infirm elderly patients. ~~In addition to the three (3) appointments from the advisory commission on health, the secretary of health and environment shall appoint two (2),~~ two consumer representatives who have no current or previous involvement in the financial affairs or as a member of the governing body of any adult care home or any association directly concerned with the regulation or licensure of adult care homes in the state and ~~shall appoint two (2) adult care home administrators who, at the time of their appointment, are licensed by the state and are actively engaged in the administration of adult care homes within the state. No more than three (3) members of the board may be licensed administrators. Members of the board, other than the licensed administrators, shall have no direct financial interest in adult care homes. Members of the board who are also members of the advisory commission on health shall serve until such members cease to be members of the advisory commission on health or until such members are otherwise disqualified from serving on the board. Members of the board who are not members of the advisory commission on health shall serve on the board for terms of two (2) years or until otherwise disqualified from serving on the board, except two (2) of the members first appointed shall serve on the board for terms of one (1) year and thereafter, upon the expiration of such one (1) year terms, successors shall be appointed in the same manner as the original appointments for terms of two (2) years.~~

(c) Members of the board of adult care home administrators

shall meet at such times as may be appropriate but in no case less than once each four (4) months. The chairperson of the board shall be elected annually from among the members of the board. ~~The board of adult care home administrators shall meet, as often as possible, on the same day as the advisory commission on health meets.~~ All final orders shall be in writing and shall be signed by the chairperson and approved by the board.

(d) Members of the board who attend meetings of such board, or attend a subcommittee meeting thereof authorized by such board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto. ~~No member of the board serving on the advisory commission on health shall receive compensation, subsistence allowances, mileage or other expenses under this section for any meeting of the board or a subcommittee meeting thereof which occurs on the same day as a meeting of the advisory commission on health established by K.S.A. 75-5614, or a subcommittee meeting thereof.~~

Sec. 3. K.S.A. 65-3506, 75-5614 and 75-5615 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO. _____

By

AN ACT concerning mined-land conservation and reclamation; transferring certain powers and duties to the Kansas department of health and environment; amending K.S.A. 49-402, 49-404, 49-405, 49-405a, 49-405b, 49-405c, 49-405d, 49-407, 49-408, 49-409, 49-410, 49-413, 49-415, 49-416, 49-416a, 49-417, 49-420, 49-421a, 49-426, 49-427, 49-428, 49-429, 49-432 and 49-433 and K.S.A. 1987 Supp. 49-403, 49-406 and 49-422a and repealing the existing sections.

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

New Section 1. (a) The Kansas department of health and environment shall have jurisdiction and authority to regulate the reclamation of lands affected by surface mining operations in order to encourage productive use of such lands.

(b) Except as otherwise provided by this act, all of the powers, duties and functions of the state corporation commission relating to mined-land conservation and reclamation are hereby transferred to and conferred and imposed upon the Kansas department of health and environment.

(c) The mined-land conservation and reclamation board and the office of executive director created by K.S.A. 49-404, and amendments thereto, are hereby abolished.

(d) Except as otherwise provided by this act, all of the powers, duties and functions of the existing mined-land conservation and reclamation board are hereby transferred to and conferred and imposed upon the secretary of the Kansas department of health and environment.

(e) Except as otherwise provided by this act, the secretary of the Kansas department of health and environment shall be the successor in every way to the powers, duties and functions of the

mined-land conservation and reclamation board in which the same were vested prior to the effective date of this act. Every act performed in the exercise of such powers, duties and functions by or under the authority of the secretary of the Kansas department of health and environment shall be deemed to have the same force and effect as if performed by the mined-land conservation and reclamation board in which such powers, duties and functions were vested prior to the effective date of this act.

(f) Except as otherwise provided by this act, whenever the mined-land conservation and reclamation board, or words of like effect, is referred to or designated by a statute, contract or other document, such reference shall be deemed to apply to the secretary of the Kansas department of health and environment.

(g) All rules and regulations of the mined-land conservation and reclamation board in existence on the effective date of this act shall continue to be effective and shall be deemed to be duly adopted rules and regulations of the secretary of the Kansas department of health and environment until revised, amended, revoked or nullified pursuant to law.

(h) All permits, orders and directives of the mined-land conservation and reclamation board in existence on the effective date of this act shall continue to be effective and shall be deemed to be permits, orders and directives of the secretary of the Kansas department of health and environment until revised, amended, revoked or nullified pursuant to law.

New Sec. 2. (a) On the effective date of this act, the balance of all funds appropriated and reappropriated to the state corporation commission for the activities of the mined-land conservation and reclamation board is hereby transferred to the Kansas department of health and environment and shall be used only for the purpose for which the appropriation was originally made.

(b) On the effective date of this act, the liability for all accrued compensation or salaries of all officers and employees who, immediately prior to such date, were engaged in

the performance of powers, duties or functions of any state agency, board or office abolished by this act, or which becomes a part of the Kansas department of health and environment, or the powers, duties and functions of which are transferred to the secretary of the Kansas department of health and environment, shall be assumed and paid by the Kansas department of health and environment.

New Sec. 3. (a) The Kansas department of health and environment shall succeed to all property, property rights and records which were used for or pertain to the performance of the powers, duties and functions transferred pursuant to this act. Any conflict as to the proper disposition of property or records arising under this section, and resulting from the transfer, attachment or abolition of any state agency, board or office, or all or part of the powers, duties and functions thereof, shall be determined by the governor, whose decision shall be final.

(b) When any conflict arises as to the disposition of any power, duty or function or the unexpended balance of any appropriation as a result of any abolition, transfer, attachment or change made by or under authority of this act, such conflict shall be resolved by the governor, whose decision shall be final.

New Sec. 4. (a) No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against the state corporation commission or the mined-land conservation and reclamation board, or by or against any officer of the commission or the board in relation to the discharge of such officer's official duties, shall abate by reason of the transfer of powers, duties and functions effected under provisions of this act. The court may allow any such suit, action or other proceeding to be maintained by or against the Kansas department of health and environment or any officer affected.

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

New Sec. 5. (a) On the effective date of this act, all officers and employees who were engaged immediately prior to the effective date of this act in the performance of powers, duties and functions which are transferred pursuant to the provisions of this act, and who in the opinion of the secretary of the Kansas department of health and environment are necessary to perform such powers, duties and functions, shall be transferred to and shall become officers and employees of the Kansas department of health and environment. All officers and employees so transferred shall be in the classified service under the Kansas civil service act. Any such officer or employee shall retain all retirement benefits and all rights of civil service which had accrued to or vested in such officer or employee prior to the effective date of this act. The service of each such officer or employee so transferred shall be deemed to have been continuous.

Sec. 6. K.S.A. 49-402 is hereby amended to read as follows:
49-402. Where surface mining operations are conducted, it is declared to be the policy of this state to provide for the reclamation of affected lands to encourage productive use including but not limited to: The planting of forests; the seeding of grasses and legumes for grazing purposes; the planting of crops for harvest; the enhancement of wildlife and aquatic resources; the establishment of recreational, home and industrial sites; and for the conservation, development, management and appropriate use of all the natural resources of such areas for compatible multiple purposes; and protecting the health, safety and general welfare of the people, as well as the natural beauty and aesthetic values, in the affected areas of this state. It is also declared to be the policy of this state to authorize the board secretary to take such action as may be necessary to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87).

Sec. 7. K.S.A. 1987 Supp. 49-403 is hereby amended to read as follows: 49-403. (a) "Minerals" means coal.

(b) "Overburden" means all of the earth and other materials which lie above a natural deposit of minerals and also means such earth and other material after removal from their natural state in the process of surface types of mining.

(c) "Operator" means any person, including any agency of state or local government, or any publicly owned utility or corporation, engaged in surface types of mining who disturbs more than 1/4 acre or who removes or intends to remove more than 100 tons of minerals or who removes overburden for the purpose of producing minerals, and such person shall be subject to the mined-land conservation and reclamation act and to all the requirements of such act and rules and regulations which may be adopted pursuant thereto for the purpose of qualifying to administer the regulatory programs adopted by the United States department of interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto.

(d) "Operation" means all of the premises, facilities, roads and equipment used in the process of producing minerals from a designated surface mine area and removing overburden for the purpose of producing minerals.

(e) "Method of operation" means the manner by which the surface cut is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing minerals.

(f) "Person" means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization.

(g) "Reclamation and conservation" means the reconditioning of the area of land affected by surface types of mining under a plan approved by the ~~mined-land--conservation--and--reclamation~~ board secretary.

(h) "Board"---means---the---mined-land---conservation---and reclamation-board-as-created-by-this-act "Secretary" means the secretary of the Kansas department of health and environment.

(i) "Pit" means the place where minerals are being or have been mined by surface mining.

(j) "Commissioner"---means---the---chairman---of---the---state corporation---commission "Department" means the Kansas department of health and environment.

(k) "Abandoned mines" means mined land where mining operations were completed prior to such mining operations being subject to the provisions of this act or the national surface mining control and reclamation act of 1977 (public law 95-87).

(l) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the board secretary determines that they are in compliance with performance standards of this act.

(m) "Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this act in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose oneself to the danger during the time necessary for abatement.

(n) "Permit" means a permit to conduct surface coal mining and reclamation operations issued by the board secretary.

(o) "Permit area" means the area of land indicated on the approved map submitted by the operator with the operator's application, which area of land shall be covered by the operator's bond as required by this act and shall be readily identifiable by appropriate markers on the site.

(p) The term "prime farmland" shall have the same meaning as that previously prescribed by the federal secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics, and which historically have been used for intensive agricultural purposes, and as published in the federal register.

(q) "Surface coal mining and reclamation operations" means surface mining operations and all activities necessary and incident to the reclamation of such operations after the date of enactment of this act.

(r) "Surface coal mining operations" or "surface mining" means:

(1) Activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or, preparation, loading of coal at or near the mine site.

(2) The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for

haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

(s) "Unwarranted failure to comply" means the failure of an operator to prevent the occurrence of any violation of the operator's permit or any requirement of this act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the act due to indifference, lack of diligence, or lack of reasonable care.

(t) "Geologist" means a person engaged in the practice of geology who is a graduate of an institution of higher education accredited by a regional or national accrediting agency, who has a minimum of 30 semester or 45 quarter hours of undergraduate or graduate work in geology and whose post-baccalaureate training has been in geology.

(u) "Geology" means the science which treats of the earth in general, the earth's processes and its history; which investigates the earth's crust and the rocks and other materials which compose it; and the applied science of utilizing knowledge of the earth's history, processes, constituent rocks, minerals, liquids, gasses and other materials for the use of mankind.

Sec. 8. K.S.A. 49-404 is hereby amended to read as follows:
 49-404. ~~The mined-land-conservation-and-reclamation-board--shall be--within--and--a--part-of-the-state-corporation-commission.--The chairman-of-the-state-corporation-commission--shall-be-a-member-of the-board-and-serve-as--its--chairperson.--Other--board--members, appointed--by--the--governor,--shall-be-one-representative-of-the state-geological-survey, two-landowners-who-are-cooperators-of--a local--soil--conservation--district,--one--representative--of-the department-of-economic-development,--one--representative--of--the state--conservation--commission,--one-representative-of-the-state~~

board-of--agriculture,--one--member--of--the--employees--of--mine operators,--one--representative--of--the--forestry,--fish-and-game commission,--one--operator--of--surface--type--mines,--one representative--of--the--water--resources--board--in--the--state--of Kansas,--one--representative--of--the--division--of--environment--of--the department--of--health--and--environment--and--two--representatives--of the--general--public.

Members-of-the-mined-land-conservation-and-reclamation-board attending-meetings-of-such-board,--or--attending--a--subcommittee meeting---thereof---authorized--by--such--board,--shall--be--paid compensation,--subsistence--allowances,--mileage--and--other--expenses as-provided-in-K.S.A.--75-3223.

The-board-shall-employ-an-executive-director-who-shall-serve at--the--pleasure--of--the--board.--The--executive-director-shall receive-an-annual-salary-fixed-by-the-board-with-the-approval--of the--governor.--The--executive-director-shall-assist-the-board-in the-administration-of-the-mined-land-conservation-and-reclamation act-and-shall-perform-such-duties-and-functions-as-the-board--may direct. Within the limits of appropriations therefor, the board secretary may employ inspectors, clerical help and other personnel as may be necessary for the purpose of administering and enforcing the provisions of the mined-land conservation and reclamation act. Within the limits of appropriations therefor, the board secretary may enter into contracts with consultants for services of a technical nature which may be required in the administration of the mined-land conservation and reclamation act. Employees-of-the-board,--other--than--the--executive--director and--consultants--working--under--contract--with--the--board,--shall--be in-the-classified-service-of-the-Kansas-civil--service--act. No employee of the board department directly involved in the operation of the mined-land conservation and reclamation program shall have a direct or indirect financial interest in any underground or surface coal mining operation. The board secretary shall prescribe by regulations, methods for filing employee statements to aid in enforcement of this provision.

Whoever knowingly violates the provisions of the prohibition against financial interests shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or both. The board secretary shall adopt rules and regulations to establish methods by which this prohibition shall be monitored and enforced, to provide for filing by employees and review of statements and supplements thereto concerning any financial interest which may be affected by this prohibition, and to make such reports to congress related thereto that may be required by the national surface mining control and reclamation act of 1977 (public law 95-87).

Sec. 9. K.S.A. 49-405 is hereby amended to read as follows:
49-405. The board secretary shall have and exercise the following authority and powers which shall be enforced and administered by the board secretary: (a) To adopt rules and regulations respecting the administration of this act and in conformity therewith and to adopt rules and regulations which may be necessary for the board secretary to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto and may adopt and enforce all standards established by such federal rules and regulations. Prior to adoption of such rules and regulations, the board secretary shall give not less than ~~thirty-(30)~~ 30 days advance public notice by publication in a newspaper or newspapers of general circulation in each county in which coal mining operations are being conducted. And provide in such notice for not less than one public hearing at a place within a county wherein coal mining operations are being conducted, and for a period of not less than ~~thirty-(30)~~ 30 days prior to adoption of such rules and regulations, during which written public comments may be filed with the board secretary.

(b) To encourage and conduct investigations, research,

experiments and demonstrations, and to collect and disseminate information relating to surface types of mining and reclamation and conservation of lands and waters affected by surface types of mining.

(c) To examine and pass upon all plans and specifications submitted by the operator for the method of operation and for the reclamation and conservation of the area of land affected by said the operation.

(d) To make investigations and inspections which may be deemed necessary to insure compliance with the provisions and intent of this act, and to require by rules and regulations such reporting, monitoring and record keeping requirements as are required by the national surface mining control and reclamation act of 1977 (public law 95-87). Authorized board representatives of the department shall have the right, without advance notice and upon presentation of credentials, to enter upon any surface coal mining and reclamation operations or any premises in which records required to be maintained are kept and may, at reasonable times and without delay, may have access to and copy any records, or inspect any monitoring equipment or method of operation under this act. The board secretary shall have all authority respecting concerning such activity as is required by the national surface mining control and reclamation act of 1977 (public law 95-87).

(e) To order the suspension of any permit and order to cease and desist operations for failure to comply with any of the provisions of this act.

(f) To order the stopping of any operation that is started without first having secured a permit as required by this act.

(g) To conduct hearings under provision of this act and for the purpose of any investigation or hearing, the ~~board--or--any member---thereof~~ secretary or the secretary's designee may administer oaths or affirmation, subpoena witnesses relevant to the inquiry. The board secretary shall adopt rules and regulations respecting concerning the conduct of hearings

consistent with and in compliance with the national surface mining control and reclamation act of 1977 (public law 95-87).

(h) To order an operator to adopt such remedial measures as are necessary to comply with this act.

(i) To issue, after a hearing, a final order directing the revocation of a permit when any remedial action ordered has not been taken.

(j) To apply for and receive grants of funds from federal agencies.

(k) To request from and receive from state agencies technical assistance in administering the provisions of this act.

(l) To perform such other duties and functions as may be required by the provisions of the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto in order to qualify to administer the initial and permanent regulatory programs adopted by the United States department of interior, office of surface mining reclamation and enforcement, pursuant to such act, and to prohibit mining where reclamation required by such act is not feasible.

(m) (1) When, on the basis of any inspection, the ~~board or its authorized representative~~ secretary or the secretary's designee determines that any condition or practices exist, or that any operator is in violation of any requirement of this act or any permit condition required by this act, which condition, practice, or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the ~~board or its authorized representative shall~~ secretary or the secretary's designee immediately shall order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the condition, practice, or violation. Such cessation order shall remain in effect until the ~~board or its authorized representative~~ secretary or the secretary's designee determines that the

condition, practice, or violation has been abated, or until modified, vacated, or terminated by the ~~board or its authorized representative~~ secretary or the secretary's designee. Where the ~~board~~ secretary finds that the ordered cessation of surface coal mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the ~~board shall~~ secretary in addition to the cessation order, shall impose affirmative obligations on the operator requiring ~~him or her~~ the operator to take whatever steps the ~~board~~ secretary deems necessary to abate the imminent danger or the significant environmental harm.

(2) When, on the basis of an inspection, the ~~board or its authorized representative~~ secretary or the secretary's designee determines that any operator is in violation of any requirement of this act or any permit condition required by this act, but such violation does not create an imminent danger to the health or safety of the public, or cannot be reasonably expected to cause significant, imminent environmental harm to land, air, or water resources, the ~~board or its authorized representative~~ secretary or the secretary's designee shall issue a notice to the operator or ~~his or her~~ the operator's agent fixing a reasonable time but not more than ~~ninety-(90)~~ 90 days for the abatement of the violation and providing opportunity for public hearing.

If, upon expiration of the period of time as originally fixed or subsequently extended, for good cause shown and upon the written finding of the ~~board or its authorized representative~~ secretary or the secretary's designee, the ~~board or its authorized representative~~ secretary or the secretary's designee finds that the violation has not been abated, ~~they shall~~ the secretary immediately shall order a cessation of surface coal mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the ~~board or its authorized representative~~ secretary or the secretary's designee determines that the violation has been

abated, or until modified, vacated, or terminated. In the order of cessation issued by the board secretary under this subsection, the board secretary shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order.

(3) When, on the basis of an inspection, the board-or-its authorized-representative secretary or the secretary's designee determines that a pattern of violations of any requirements of this act or any permit conditions required by this act exists or has existed, and if the board-or-its-authorized-representative secretary or the secretary's designee also finds that such violations are caused by the unwarranted failure of the operator to comply with any requirements of this act or any permit conditions, or that such violations are willfully caused by the operator, the board-or-its-authorized-representative secretary or the secretary's designee shall forthwith issue an order to the operator to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a public hearing. If a hearing is requested the board secretary shall inform all interested parties of the time and place of the hearing. Upon the operator's failure to show cause as to why the permit should not be suspended or revoked, the board-or-its authorized-representative secretary or the secretary's designee shall forthwith suspend or revoke the permit.

(4) Notices and orders issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. Each notice or order issued under this section shall be given promptly to the operator or his or--her the operator's agent by the board-or-its-authorized representative-who-issues-such-notice-or-order, secretary or the secretary's designee and all such notices and orders shall be in writing and shall be signed by such--authorized--representatives

the secretary or the secretary's designee. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the ~~board--or--its--authorized--representative~~ secretary or the secretary's designee. Any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within ~~thirty-(30)~~ 30 days of actual notice to the operator unless a public hearing is held at the site or within such reasonable proximity to the site that any viewings of the site can be conducted during the course of public hearing.

The attorney general upon ~~his-er-her~~ the attorney general's own initiative or, at the request of the board secretary, shall secure enforcement of the orders of the board secretary and the provisions of this act, through mandamus, injunction, by action to compel specific performance of an order, or by other appropriate relief. Such proceedings shall be initiated by the filing of a petition in said the district court of Shawnee county, together with a transcript of the record ~~upon~~ of the hearing before the board secretary or the secretary's designee, if a hearing has been held, and issuance and service of a copy of said the petition as in civil actions. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony and proceedings an order or decree, enforcing, modifying and enforcing, as so modified, or setting aside in whole or in part the order of the board secretary.

Sec. 10. K.S.A. 49-405a is hereby amended to read as follows: 49-405a. In accordance with the provisions of this act, the board secretary shall promulgate rules and regulations requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or use of explosives in surface coal mining operations.

Sec. 11. K.S.A. 49-405b is hereby amended to read as follows: 49-405b. (a) (1) Upon petition pursuant to subsection (b) ~~of this section~~, the board secretary shall designate an area

as unsuitable for all or certain types of surface coal mining operations if the board secretary determines that reclamation pursuant to the requirements of this act is not technologically and economically feasible.

(2) Upon petition pursuant to subsection (b) ~~of this section~~, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will:

(A) Be incompatible with existing land use plans or programs; ~~or~~

(B) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; ~~or~~

(C) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands ~~to~~ shall include aquifers and aquifer recharge areas; or

(D) affect natural hazard lands in which such operations could substantially endanger life and property, such lands ~~to~~ shall include areas subject to frequent flooding and areas of unstable geology.

(3) The board secretary shall develop by regulations a process which includes:

(A) Responsibility of the board secretary for surface coal mining lands review;

(B) a data base and an inventory system which ~~will permit~~ permits proper evaluation of the capacity of different land areas to support and permit reclamation of surface coal mining operations;

(C) a method or methods for implementing land use planning decisions concerning surface coal mining operations; and

(D) proper notice, opportunities for public participation, including a public hearing prior to making any designation or redesignation, pursuant to this section.

(4) Determinations of the unsuitability of land for surface coal mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state, and local levels.

(5) The requirements of this section shall not apply to lands on which surface coal mining operations are being conducted on August 3, 1977, or under a permit issued pursuant to this act, or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.

(b) Any person having an interest which is or may be adversely affected shall have the right to petition the board secretary to have an area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such-a The petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ~~ten-(10)~~ 10 months after receipt of the petition the board secretary or the secretary's designee shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of fact with supporting evidence which would tend to establish the allegations. Within ~~sixty-(60)~~ 60 days after such hearing, the board secretary shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all petitioners stipulate agreement prior to the requested hearing, and withdraw their request, such hearing need not be held.

(c) Prior to designating any land areas as unsuitable for surface coal mining operations, the board secretary shall prepare a detailed statement on (i) the potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy, and the supply

of coal.

Sec. 12. K.S.A. 49-405c is hereby amended to read as follows: 49-405c. (a) Any operator who violates any permit condition or who violates any other provision of this act, may be assessed a civil penalty by the board secretary, except that if such violation leads to the issuance of a cessation order under this act, the civil penalty shall be assessed. Such penalty shall not exceed \$5,000 for each violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular surface coal mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the operator was negligent; and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of the violation.

(b) A civil penalty shall be assessed by the board secretary only after the person charged with a violation described under subsection (a) of this section has been given an opportunity for a public hearing. Where such a public hearing has been held, the board hearing officer appointed by the secretary shall make findings of fact, and shall issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the board secretary or hearing officer shall consolidate such hearings with other proceedings under this act. Any hearing under this section shall be of record. Where the person charged with such a violation fails to take advantage of the opportunity for a public hearing, ~~a civil penalty shall be assessed by the board after the board has determined that a violation did occur, and the amount of the penalty which is warranted, and has issued an order requiring that the penalty be~~ paid the assessment of the civil penalty shall become final.

(c) Upon the issuance of a notice or order charging that a violation of the act has occurred, the board secretary shall inform the operator within 30 days of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the board secretary for placement in an interest-bearing escrow account. Each such escrow account shall be outside the state treasury and shall be in a bank, as defined by subsection (d) of K.S.A. 1982-Supp-75-4201, and amendments thereto, designated by the pooled-money investment board. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the board secretary shall remit within 30 days remit the appropriate amount to the person, with interest at the rate earned thereon. Failure to forward the money to the board secretary within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) Civil penalties owed under this act may be recovered in a civil action brought by the attorney general at the request of the board secretary in the district court of Shawnee county.

(e) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this act or fails or refuses to comply with any order issued under this act, or any order incorporated in a final decision issued by the board secretary under this act, except an order incorporated in a decision issued under subsection (b) ~~of--this--section~~, upon conviction, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year or both.

(f) Whenever an operator violates a condition of a permit issued pursuant to this act or fails or refuses to comply with any order issued under this act, or any order incorporated in a final decision issued by the board secretary under this act, except an order incorporated in a decision issued under

subsection (b) ~~of this section~~, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (e) ~~of this section~~.

(g) Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this act, upon conviction, shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than one year or both.

(h) Any operator who fails to correct a violation for which a citation has been issued within the period permitted for its correction shall be assessed a civil penalty of not less than \$750 for each day during which such failure or violation continues.

(i) Any action pursuant to ~~the foregoing subsections of~~ this section shall not be a bar to enforcement of this act, rules and regulations in force pursuant thereto, and any orders made pursuant to this act, by injunction or other appropriate remedy, and the board secretary shall have power to institute and maintain in the name of this state any and all such enforcement proceedings.

(j) Nothing in this act shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceedings therefor.

Sec. 13. K.S.A. 49-405d is hereby amended to read as follows: 49-405d. (a) Board Departmental inspections shall be made on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the mining and reclamation operations covered by each permit. Inspections shall occur without prior notice to the

operator or its agents or employees except for necessary on site meetings and shall include filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this act. When an inspection results from information provided to the board department by any person, either directly or through the secretary of the interior, the board secretary shall notify such person when the inspection is proposed to be carried out, and such person shall be allowed to accompany the inspector during the inspection.

(b) Each operator shall conspicuously maintain at the entrances of the surface coal mining and reclamation operations a clearly visible sign which sets forth the name, business address, and phone number of the operator and the permit number of the surface coal mining and reclamation operations.

(c) Each inspector, upon detection of each violation of any requirement of this act, or the national surface mining control and reclamation act of 1977 (public law 95-87), shall forthwith inform the operator in writing, and shall report in writing any such violation to the board secretary.

(d) Copies of any records, reports, inspection materials, or information obtained under this title by the board department shall be made immediately available to the public at the board's department's field office so that they are conveniently available to residents in the areas of mining.

Sec. 14. K.S.A. 1987 Supp. 49-406 is hereby amended to read as follows: 49-406. (a) No operator shall engage in surface mining unless such operator possesses a valid permit issued by the board secretary designating the area of land affected by the operation. The permit shall authorize the operator to engage in surface mining upon the area of land described in such permit and shall be valid for a period not to exceed five years from the date of its issuance unless sooner revoked or suspended as herein provided. All surface mining conducted under such permit shall comply with the requirements of the surface mining control and reclamation act of 1977 (public law 95-87) and the regulations

issued thereunder. It shall be the duty of each producer holding a permit within the state of Kansas to file an annual statement setting forth the full amount of coal mined or taken from each source or deposit and to identify the specific source or deposit from which taken. Such statement shall be filed with the board secretary upon forms provided by the board department not later than 30 days after the end of each calendar year. All operators ~~must~~ shall apply for new permits within two months following approval of the state reclamation program by the secretary of the interior, pursuant to the final program provisions of the national surface mining control and reclamation act of 1977 (public law 95-87), who expect to operate a mine or mines after the expiration of eight months following such approval of this act.

(b) The application for the permit shall include: (1) Two Five copies of a United States geological survey topographic map on which the operator has indicated the location of the area of land affected, the course which would be taken by drainage from the area of land affected to the nearest stream or streams to which such drainage would normally flow, the name of the applicant and the date.

(2) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area within 500 feet of any part of the affected area.

(3) All persons with any interest in the coal to be mined.

(4) The source of the applicant's legal right to mine the coal or other minerals affected by the permit.

(5) The permanent and temporary post-office address of the applicant.

(6) Whether the applicant or any person, firm, partnership or corporation associated with the applicant holds or has held any other permits under this act; and, if so, an identification of such permits.

(7) The written consent of the applicant and such other persons, if any, necessary to grant such access to the

~~commissioner--and--board--members--or---representatives---thereof~~
secretary and the secretary's designee to the area of land affected under application from the date of application until the expiration of any permit granted under such application and thereafter for such time as is necessary to assure compliance with all provisions of this act or any rule or regulation promulgated hereunder.

(8) A determination of probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the board department of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area, and particularly upon water availability. This determination shall not be required until hydrologic information on the general area prior to mining is made available from appropriate governmental agencies, but a permit shall not be approved until such information is available and is incorporated into the application. If the board secretary finds that the probable total annual production at all locations of any operator will not exceed 100,000 tons, the determination of probable hydrologic consequences, and any statement required by the board-respecting secretary concerning results of test borings or core samplings, shall, upon written operator request, be performed by a qualified public or private laboratory designated by the board secretary, at board departmental expense.

(9) Such other information as may be required by the board secretary in order to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted

pursuant thereto.

(c) At the time of submission of the application for a permit (, or amendment to a permit), the operator shall submit to the board secretary proof of publication which shall contain such data and be in such form as the board secretary shall require by regulations consistent with the national surface mining control and reclamation act of 1977 (public law 95-87), which notice shall be published at least once a week for four consecutive weeks. The board secretary, in accordance with regulations consistent with such national act, shall notify appropriate public agencies of the operator's intention to mine, and shall receive and make available for public inspection the written comments or objections of such agencies and any person having an interest possibly affected adversely by proposed operations. The board--shall secretary also shall prescribe by regulations consistent with such national act, a system for holding informal conferences in the area of proposed operations with public notice thereof.

(d) The application for a permit shall be accompanied by an enlarged United States geological survey topographic map prepared and certified by a professional engineer or geologist containing the following: (1) An identification of the area to correspond with the application.

(2) The boundaries of surface properties and names of owners on the area of land affected, adjacent deep mines, and the name of the owner or owners of the surface area within 1,000 feet of any part of the area of land affected, and, if known to the operator, the existence of adjacent deep mines.

(3) Be of a scale of not less than 400 feet to the inch and not to exceed 660 feet to the inch.

(4) Show the names and locations of all streams, creeks or other bodies of public water, roads, buildings, cemeteries, oil and gas wells and utility lines on the area to be mined and within 1,000 feet of such area.

(5) Show by appropriate markings the boundaries of the area

of land affected, the cropline of the seam or deposit to be mined, and the total number of acres involved in the area of land affected.

(6) Show the date on which the map was prepared, the north point and the quadrangle name.

(7) Show the drainage plan on and away from the area of land affected. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the nearest streams or tributaries receiving the discharge.

(8) A verified statement by the operator containing the proposed method of operation, grading, reclamation and conservation plan for the affected area including dates and approximate time of completion, and that the operation will meet the requirements of this act, or any rule or regulation promulgated hereunder.

(9) The certification of the maps by the professional engineer or geologist shall read as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the surface mining laws of this state." The certification shall be signed and, in the case of an engineer, the engineer's seal affixed.

(10) Such other information as may be required by the board secretary in order to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto.

Nothing in this subsection shall be construed to permit the practice of engineering, as defined by K.S.A. 74-7001, and amendments thereto, by a geologist.

(e) The application for a permit shall be accompanied by a plan of reclamation that meets the requirements of this act, and

the rules and regulations promulgated hereunder and the requirements necessary for the board secretary to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto.

(f) The board secretary shall not approve the application for a permit to mine where such mining would constitute a hazard to a residence, public building, school, church, cemetery, commercial or residential building, public road, stream, lake or other property. No surface coal mining operations shall be permitted within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the board secretary may permit such roads to be relocated or the area affected to lie within 100 feet of such road, if after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected thereby will be protected; or within 300 feet from any occupied dwelling, unless waived by the owner thereof, nor within 300 feet of any public building, school, church, community, or institutional building, public park, or within 100 feet of a cemetery.

(g) (1) A basic fee of \$50 plus a fee in an amount to be fixed by the board secretary for every acre and fraction of an acre of land to be affected shall be paid ~~before--the--permit required--herein--shall--be--issued~~ at the time of application.

(2) Each permittee shall be assessed a per ton fee on every ton of coal extracted.

(3) Pursuant to paragraph (2) of this subsection (g), the per ton fee shall be an amount not less than \$.03 and not more than \$.10 per ton of coal extracted each calendar year. This per ton fee shall be paid to the board department on a quarterly basis and it shall be due within 30 calendar days after the

beginning of each calendar quarter.

(4) Fees established under this subsection (g) shall be fixed by the board secretary, subject to restrictions and limitations imposed by this subsection (g), in amounts deemed necessary to administer and enforce the provisions of the mined-land conservation and reclamation act.

(h) (1) After a surface coal mining and reclamation permit application has been approved but before such a permit is issued, the applicant shall file with the board secretary, on a form prescribed and furnished by the board department, a bond for performance payable to the state treasurer, and conditional upon faithful performance of all the requirements of this act and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of surface coal mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the board department an additional bond or bonds to cover such increments as required by the board secretary. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential; and shall be determined by the board secretary. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by the board in the event of forfeiture and in no case shall the bond for the entire area under one permit be less than \$10,000.

(2) Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with operator's responsibility for revegetation requirements. Surety bonds shall be executed by the operator and a corporate surety licensed to do business in Kansas.

(3) The amount of the bond required and the terms of each

acceptance of the applicant's bond shall be adjusted by the board secretary from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

(4) An applicant may elect to satisfy the bonding requirements of this subsection (h) by depositing with the state treasurer cash, negotiable bonds of the United States or of the state of Kansas, negotiable certificates of deposit of any bank organized under the laws of the United States or of the state of Kansas or irrevocable letters of credit of any such bank. The cash deposit or market value of any such securities shall be equal to or greater than the amount of the bond required for the bonded area.

(i) Each permit applicant shall submit to the board department as part of the application, a certificate issued by an insurance company licensed to do business in Kansas, certifying that the applicant has a public liability policy in force for all operations under the permit applied for, providing personal injury and property damage insurance in an amount adequate to compensate persons damaged as a result of mining and reclamation operations, including use of explosives, and entitled to compensation under the laws of Kansas. The board secretary may establish, by regulations, the amount of such insurance to be carried. Such policy shall be maintained during the term of the permit and any renewal, and be continued until completion of all operations.

(j) Where one operator succeeds another at any uncompleted operation, either by sale, assignment, lease or otherwise, the board secretary may release the first operator from all liability under this act as to that particular operation. If two or more operators have been issued a permit for the same operation and have otherwise complied with the requirements of the act and regulations promulgated pursuant thereto, the successor operator shall assume as part of such operator's obligation under the act, all liability for the reclamation of the area of land affected by

the former operator.

(k) A valid permit issued by the board secretary may be renewed with respect to areas within boundaries of the existing permit, upon application by the permit holder. The burden shall be upon the applicant, subsequent to fulfillment of public notice requirements of the national surface mining control and reclamation act of 1977 (public law 95-87), to establish, subject to confirmation by written findings of the board secretary, that:

(1) Terms and conditions of the existing permit are satisfactorily met; and

(2) present mining and reclamation operations are in compliance with environmental protection standards imposed by this act and the national surface mining control and reclamation act of 1977 (public law 95-87); and

(3) renewal will not substantially jeopardize the operator's continuing responsibility on existing permit areas; and

(4) the operator has provided evidence that the performance bond in effect for the operation together with any additional bond required by the board secretary, will continue in full force and effect for any renewal requested; and

(5) any additional revised or updated information required by the board secretary has been provided.

Prior to approval of any permit renewal, the board secretary shall provide notice to any appropriate public authorities.

(1) If a renewal application includes a proposal to extend operations beyond existing permit boundaries, that portion of the application applicable to areas beyond existing permit boundaries shall be subject to all standards applicable to new permits. Permit renewals shall not be issued for terms greater than provided for original permits, and applications for renewal permits shall be made at least 120 days prior to expiration of the existing permit.

(m) Each permit applicant shall file a copy of the application for public inspection at the field office of the

board department, which copy need not contain information relating to the coal seam itself. Any person with an interest which may be adversely affected shall be furnished with information pertaining to coal seams, test borings, core samplings, or soil samples, if such information is required by the board secretary, together with data respecting location of subsurface water and analysis of chemical properties including acid forming properties of the mineral and overburden. Information pertaining only to the analysis of the chemical and physical properties of the coal, excepting information regarding such mineral or elemental content which is potentially toxic in the environment, shall be kept confidential and not made a matter of public record.

Sec. 15. K.S.A. 49-407 is hereby amended to read as follows: 49-407. (a) Upon the basis of a complete application or an amendment or renewal thereof, as required by this act and the national surface mining control and reclamation act of 1977 (public law 95-87), and public notification and opportunity for a public hearing as required by said the national act, the board secretary shall grant, require modification of, or deny the application within ~~sixty-(60)~~ 60 days and notify the applicant in writing. The applicant shall have the burden of establishing compliance with law. Within ~~ten-(10)~~ 10 days after granting a permit, the board secretary shall notify the board of county commissioners of the county in which the area of affected land is located and furnish a legal description of the permit area. No permit or revision shall be approved unless the application and any other evidence referred to in board the secretary's findings affirmatively establishes, and the board secretary determines, according to written findings in ~~its~~ the secretary's order, the following:

(1) The application is accurate, complete, and complies with all requirements of this act and the aforesaid national act; and

(2) the applicant demonstrates reclamation required by this

act and the aforesaid national act can be accomplished under the reclamation plan proposed; and

(3) the assessment of probable cumulative impact of all anticipated mining in the area on the hydrologic balance specified in the aforesaid national act has been made by the board department and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(4) the area proposed to be mined is not included within an area designated unsuitable for mining or within an area under study for such designation, pursuant to this act or the national surface mining control and reclamation act of 1977 (public law 95-87); and

(5) in cases involving mining of a severed mineral interest, the applicant has furnished written consent of the surface estate owner or a conveyance expressly granting or reserving the right to surface extraction of coal or the applicant otherwise establishes the right to extract coal by surface methods under the law of Kansas.

(b) The applicant shall file with the application a schedule listing all notices of violations of this act or the national surface mining control and reclamation act of 1977 (public law 95-87), or any law, rule or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection insured by the applicant in connection with any surface coal mining operation during the three-year period prior to the date of the application. The schedule shall also shall indicate the final resolution of any such notice of violation. Where the schedule or other information available to the board department indicates any surface coal mining operation owned or controlled by the applicant is currently in violation of this act or such other laws referred to herein, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the

agency which has jurisdiction over such violation and no permit shall be issued to an applicant after a finding by the board secretary, after opportunity for hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of this act of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this act.

(c) If the area proposed to be mined contains prime farmland, as determined pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87), the ~~board~~ secretary, after consultation with the United States secretary of agriculture and pursuant to national regulations, shall grant a permit to mine on prime farmland if the board secretary makes written findings that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards provided by ~~said~~ the national act.

(d) (1) If an informal conference has been held, the board secretary shall issue and furnish to parties to the proceedings written findings granting or denying the application, in whole or in part, and stating reasons therefor, within ~~thirty-(30)~~ 30 days of ~~said~~ the conference.

(2) If no informal conference is held, the board secretary shall notify the operator whether the application has been approved or disapproved, in whole or in part.

(3) If the application is approved the permit shall be issued. If disapproved, specific reasons therefor must be set forth in the notification. Within ~~thirty-(30)~~ 30 days after notification of the ~~board's~~ secretary's final decision, the operator or any party with an interest which may be adversely affected may request a hearing on the final determination, ~~which~~. Such hearing shall be held within ~~thirty-(30)~~ 30 days of such

request, with notice being given by the board secretary to all interested parties.

(4) The hearing shall be adjudicatory in nature, with a record made of all proceedings, and no person who presided at an informal conference shall preside at the hearing or participate in the decision thereon or in any administrative appeal therefrom. Within ~~thirty-(30)~~ 30 days after such hearing, the board secretary shall issue and furnish to parties to the proceeding written findings granting or denying the application, in whole or in part, and stating reasons therefor.

(5) Where a hearing is requested, the board ~~may~~ secretary, under conditions ~~it may prescribe~~ the secretary prescribes by rules and regulations, may grant appropriate temporary relief pending a final determination, if:

(i) All parties have been given notice and an opportunity to be heard on the request for temporary relief;

(ii) the applicant for temporary relief shows there is a substantial likelihood that ~~he or she~~ the applicant will prevail on the merits of the final determination; and

(iii) such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air, or water resources.

(6) In connection with any hearing, the board secretary or hearing officer may administer oaths, subpoena witnesses, or written or printed materials, compel attendance of witnesses, or production of materials, and take evidence including but not limited to site inspections of the land to be affected and other surface coal mining operations carried on by the applicant. A verbatim record of each public hearing required by this act shall be made, and a transcript made available on the motion of any party or by order of the board secretary.

Sec. 16. K.S.A. 49-408 is hereby amended to read as follows: 49-408. All land affected by surface coal mining and reclamation operations, except as otherwise provided in this act, shall be reclaimed and all operations shall be conducted, in

accordance with the requirements and specifications of the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto. The board secretary shall issue such regulations as may be required to conform to the requirements of said the national act.

All waters in existence on mined land after reclamation is completed shall become public waters to the extent they may be stocked with fish from the state or federal hatcheries and shall be under the law enforcement jurisdiction of the Kansas fish--and game--commission department of wildlife and parks. The owner of the mined land containing such waters shall retain all other rights consistent with the ownership thereof.

Sec. 17. K.S.A. 49-409 is hereby amended to read as follows: 49-409. After the area of land affected, except access roads, has been graded and found by the board secretary to meet the requirements of K.S.A. 49-408, and amendments thereto, and rules and regulations promulgated hereunder, the operator shall revegetate the affected area described in the application with seeds, plants or cutting of trees, shrubs or grasses, as shall be recommended or approved in writing by the board secretary. Such revegetation shall conform to the approved land-use objectives as stated in the approved plan of reclamation. Such seeding or planting, as required above, shall be carried out in accordance with the revegetation plan which shall be filed with the board department before November 30 of the year preceding planting. Such revegetation plan shall include information on the approximate number or kinds of plants or seeds to be used together with such seed or plant recommendations as set forth by the board department. The board secretary may establish additional requirements relating to revegetation and the revegetation plan as may be necessary in order to comply with the provisions of the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto.

Sec. 18. K.S.A. 49-410 is hereby amended to read as follows: 49-410. (a) (1) During the term of the permit an operator may submit an application to amend the permit, together with a revised reclamation plan, to the board department.

(2) An application to amend a permit shall not be approved unless the board secretary finds that reclamation as required by this act can be accomplished under the amended reclamation plan. The amended plan shall be approved or disapproved within a period of time established by the board secretary, and the board secretary shall establish guidelines for a determination of the scale or extent of an amendment request for which all permit application information requirements and procedures, including notice and hearings, shall apply. Any amendments which propose significant alterations in the reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

(3) Any extensions to the area covered by the permit except incidental boundary revisions must be made by application for another permit.

(b) No transfer, assignment, or sale of the rights granted under any permit issued pursuant to this act shall be made without the written approval of the board secretary.

(c) The board---shall department within a time limit prescribed in regulations promulgated by the board, shall review outstanding permits and may require reasonable revision or modification of the permit provisions during the term of such permit. Such revision or modification shall be based upon written findings and subject to notice and hearing requirements.

Sec. 19. K.S.A. 49-413 is hereby amended to read as follows: 49-413. When the planting of a permit area is completed, the operator shall file a planting report with the board secretary on a form to be prescribed and furnished by the board department giving the following information: (a) Identification of the operation;

(b) the type of planting or seeding, including mixtures and amounts;

(c) the date of planting or seeding;
(d) the area of land planted; and
(e) such other relevant information as the board secretary may require.

~~(f)~~ All planting reports shall be signed by the operator.

Inspection and evaluation for vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established.

Sec. 20. K.S.A. 49-415 is hereby amended to read as follows: 49-415. Within ~~sixty-(60)~~ 60 days after the date of expiration of a permit, the operator shall file with the board secretary a report stating the exact number of acres of land affected by the operation, the extent of the reclamation already accomplished by it, and such other information as may be required by the board secretary. The report shall be accompanied by a copy of the map filed with the original application which shall show any revisions made necessary by result of the operation.

The operator may file a request with the board secretary for release of all or part of a bond. The board secretary shall prescribe by regulation procedures consistent with the national surface mining control and reclamation act of 1977 (public law 95-87), for public advertisement of such release request, notification of interested property owners and public agencies, inspection and evaluation of requests, corrective action, public hearings, and release of bonds. The board secretary may release in whole or in part any bond if satisfied the reclamation covered by the bond has been accomplished as required by this act according to the following schedule:

(1) When the operator completes the backfilling, regrading, and drainage control of a bonded area in accordance with ~~his-or~~ her the operator's approved reclamation plan, the release of ~~sixty--percent--(60%)~~ 60% of the bond for the applicable permit area.

(2) After revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan.

When determining the amount of bond to be released after successful revegetation has been established, the board department shall retain that amount of bond for the revegetated area which would be sufficient for a third party to cover the cost of reestablishing revegetation for the period required by the national surface mining control and reclamation act of 1977 (public law 95-87). No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or run-off outside the permit area in excess of the requirements set by law or until soil productivity for prime farm lands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from a soil survey performed. Where a silt dam is to be retained as a permanent impoundment, the portion of bond may be released under this paragraph as long as provisions for sound future maintenance by the operator or the landowner have been made with the board department.

(3) When the operator has completed successfully all surface coal mining and reclamation activities, ~~the--release--of~~ the remaining portion of the bond shall be released, but not before the expiration of the period specified for operator responsibility. No bond shall be fully released until all reclamation requirements of this act are fully met.

Any person with a valid legal interest which might be adversely affected by release of the bond or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations shall have the right to file written objections to the proposed release from bond with the board secretary within ~~thirty--(30)~~ 30 days after the last publication of notice as required by the board secretary and specified by board rules and regulations adopted by

the secretary. If written objections are filed, and a hearing requested, the board secretary shall inform all the interested parties of the time and place of the hearing, and hold a public hearing in the locality of the surface coal mining operation proposed for bond release within ~~thirty--(30)~~ 30 days of the request for such hearing. The date, time, and location of such public hearings shall be advertised by the board department in a newspaper of general circulation in the locality for two consecutive weeks,--and. The secretary shall hold a public hearing in the locality of the surface coal mining operation proposed for bond release within ~~thirty--(30)~~ 30 days of the request for such hearing.

For the purpose of such hearing the board secretary or hearing officer shall have the authority and is hereby empowered to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of the materials, and take evidence including but not limited to inspections of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this act shall be made, and a transcript made available on the motion of any party or by order of the board secretary.

Sec. 21. K.S.A. 49-416 is hereby amended to read as follows: 49-416. An operator whose mining permit has been revoked shall not be eligible to receive another permit or to have suspended permits reinstated until the operator has complied with all the requirements of the mined-land conservation and reclamation act in respect to former permits issued to such operator. No operator who has forfeited any bond shall be eligible to receive another permit unless the land for which the bond was forfeited can be reclaimed without cost to the state, or until the operator has paid into the land reclamation fund such sum as the board secretary finds is adequate to reclaim such lands.

Sec. 22. K.S.A. 49-416a is hereby amended to read as

follows: 49-416a. (a) An operator issued a notice or order by the board secretary or any person having an interest which is or may be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order, may apply to the board secretary for review of the notice or order within ~~thirty--(30)~~ 30 days of receipt thereof or within ~~thirty--(30)~~ 30 days of its modification, vacation, or termination. Upon receipt of such application, the board secretary shall cause such investigation to be made as ~~it~~ the secretary deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice. The operator and other interested persons shall be given written notice of the time and place of the hearing at least five days prior thereto. Any such hearing shall be of record.

(b) Upon receiving the report of such investigation, the board secretary shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the notice or order, or the modification, vacation, or termination of such notice or order complained of and incorporate its findings therein. Where the application for review concerns an order for cessation of surface coal mining and reclamation operations the board secretary shall issue the written decision within ~~thirty--(30)~~ 30 days of the receipt of the application for review, unless temporary relief has been granted.

(c) Pending completion of the investigation and hearing required by this section, the applicant may file with the board secretary a written request that the board secretary grant temporary relief from any notice or order issued together with a

detailed statement giving reasons for granting such relief. The board secretary shall issue an order or decision granting or denying such relief expeditiously. Where the applicant requests relief from an order for cessation of coal mining and reclamation operations, the order or decision on such a request shall be issued within five days of its receipt. The board secretary may grant such relief, under such conditions as ~~it~~ the secretary may prescribe, if:

(1) A hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

(2) the applicant shows that there is substantial likelihood that the findings of the board secretary will be favorable to ~~him-or-her~~ the applicant; and

(3) such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air, or water resources.

(d) Following the issuance of an order to show cause as to why a permit should not be suspended or revoked the board secretary or hearing officer shall hold a public hearing after giving written notice of the time, place, and date thereof. Any such hearing shall be of record. Within ~~sixty-(60)~~ 60 days following the public hearing, the board secretary shall issue and furnish to the operator and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. If the board secretary revokes the permit, the operator ~~shall~~ immediately shall cease surface coal mining operations on the permit area and shall complete reclamation within a period specified by the board secretary, or the board secretary shall declare as forfeited the performance bonds for the operation.

(e) Whenever an order is issued under this section, or as a result of any administrative proceeding under this act, at the request of any person, a sum equal to the aggregate amount of all costs and expenses (including attorney fees), as determined by

the board secretary to have been reasonably incurred by such person for or in connection with ~~his--or--her~~ such person's participation in such proceedings, including any judicial review of agency actions, may be assessed against either party as the court, resulting from judicial review or the board secretary, resulting from administrative proceedings, deems proper.

Sec. 23. K.S.A. 49-417 is hereby amended to read as follows: 49-417. (a) In the reclamation of land affected by surface mining for which ~~it--has~~ funds are available to the secretary, the board secretary may avail itself of any services which may be provided by other state agencies or by agencies of the federal government, and may compensate them for such services. The ~~board--may~~ secretary also may receive any federal funds, state funds or any other funds for the reclamation of land affected by surface mining. The board secretary may cause the reclamation work to be done by ~~its-own~~ departmental employees or by the employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons. Such contracts shall be awarded to the lowest responsible bidder upon competitive bids after advertising for bids in the Kansas register at least 30 days prior to bid opening. The board department and any other agency and any contractor under a contract with the board secretary shall have the right of access to the land affected to carry out such reclamation.

(b) Any funds available to the board secretary and any public works program ~~(, both funds and services),~~ may be used and expended to reclaim and rehabilitate any lands that have been subjected to surface mining that have not been reclaimed and rehabilitated in accordance with standards set by this ~~chapter~~ act and which are not covered by bond to guarantee such reclamation.

(c) A person or organization having qualifications acceptable to the board secretary may post bond or a cash deposit in a sum determined by the board secretary and assume the

liability for carrying out the reclamation plan approved by the board secretary in areas where the mining operation and any necessary grading have been completed. The ~~board-shall~~ secretary then shall release the bond posted by the operator for such area.

Sec. 24. K.S.A. 49-420 is hereby amended to read as follows: 49-420. (a) The ~~mined-land-conservation-and-reclamation board~~ department shall remit all moneys received ~~by-or-for-it~~ from the payment of fees or from civil penalties assessed by the ~~board~~ secretary, including any interest thereon, 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 mined-land conservation and reclamation fee fund. All expenditures from the mined-land conservation and reclamation 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--mined-land conservation--and--reclamation--board~~ secretary or by a person or persons designated by the ~~chairperson~~ secretary and may be expended for the administration and enforcement of this act.

(b) The mined-land reclamation fund is hereby created in the state treasury. The ~~mined-land-conservation-and--reclamation board~~ secretary shall remit all moneys received ~~by-or-for-it~~ from the forfeiture of bonds 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 and such amount shall be credited to the mined-land reclamation fund. All expenditures from the mined-land reclamation 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--mined-land--conservation--and reclamation--board~~ secretary or by a person or persons designated by the ~~chairperson~~ secretary and shall be expended for reclamation of land affected by open pit, strip pit and surface

types of mine operations,

(c) As soon after the effective date of this act as practicable, the director of accounts and reports shall (1) transfer the amount, as certified by the board, which is equal to the total of all moneys which were received from the forfeiture of bonds and were deposited in the state treasury and credited to the mined-land conservation and reclamation fee fund prior to that date, from the mined-land conservation and reclamation fee fund to the mined-land reclamation fund created by this section, and (2) transfer the amount, as certified by the board, which is equal to the total of all moneys received from the forfeiture of bonds and credited to the state general fund under this section prior to amendment by this act, from the state general fund to the mined-land reclamation fund created by this section.

Sec. 25. K.S.A. 49-421a is hereby amended to read as follows: 49-421a. Except as permitted by law, any person who willfully resists, prevents, impedes or interferes with the board department or any of its employees or agents in the performance of their duties pursuant to the mined-land conservation and reclamation act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

Sec. 26. K.S.A. 1987 Supp. 49-422a is hereby amended to read as follows: 49-422a. Any action of the board secretary is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 27. K.S.A. 49-426 is hereby amended to read as follows: 49-426. (a) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action on his-er-her-own such person's behalf to compel compliance with this act:

(1) Against the state or any subdivision thereof which is alleged to be in violation of the provisions of this act or of any rule, regulation, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this title;

or

(2) against the board secretary where there is alleged a failure of the board secretary to perform any act or duty under this act which is not discretionary with the board secretary. Any actions hereunder shall be brought in any judicial district where land involved in surface coal mining operations complained of lies.

(b) No action may be commenced:

(1) Under paragraph (1) of subsection (a)~~(1)~~ ~~of this section~~:

(A) Prior to ~~sixty--(60)~~ 60 days after the plaintiff has given notice in writing of the violation (i) to the board secretary and (ii) to any alleged violator; or

(B) if the board secretary has commenced and is diligently prosecuting a civil action to require compliance with the provisions of this act, or any rule, regulation, order, or permit issued pursuant to this act, but in any such action any person may intervene as a matter of right; or

(2) under paragraph (2) of subsection (a)~~(2)~~ ~~of this section~~ prior to ~~sixty--(60)~~ 60 days after the plaintiff has given notice in writing of such action to the board secretary, in such manner as the board ~~shall--by--regulation--prescribe~~ secretary prescribes by rule and regulation, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(c) In such action under this section, the board secretary, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) ~~of--this--section~~, may award costs of litigation, including attorney and expert witness fees, to any party, wherever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, may require the filing of a

bond or equivalent security.

(e) Nothing in this section shall restrict any right which any person, or class of persons, may have under any statute or common law to seek enforcement of any of the provisions of this act and the regulations thereunder, or to seek any other relief, including relief against the board secretary.

(f) Any person who is injured ~~in--his-or-her-person-or~~ property or whose property is injured through the violation by any operator of any rule, regulation, order, or permit issued pursuant to this act may bring an action for damages, including reasonable attorney and expert witness fees, in any judicial district where land involved in surface coal mining operations complained of lies. Nothing in this subsection shall affect the rights established by or limits imposed under the workers' compensation laws of this state.

Sec. 28. K.S.A. 49-427 is hereby amended to read as follows: 49-427. (a) Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with exploration regulations issued by the board secretary. Such regulations shall include, at a minimum (1) the requirement that prior to conducting any exploration under this section, any person must file with the board department a notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration and (2) provisions for reclamation in accordance with the performance standards of this act of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(b) Information submitted to the board department pursuant to this ~~subsection~~ section as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intended to explore the described area shall not be available for public examination.

(c) Any person who conducts any coal exploration activities

which substantially disturb the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the penalty provisions of this act.

(d) No operator shall remove more than ~~two--hundred--fifty~~ ~~(250)~~ 250 tons of coal pursuant to an exploration permit without specific written authority of the board secretary.

Sec. 29. K.S.A. 49-428 is hereby amended to read as follows: 49-428. (a) The board secretary is authorized to develop and adopt plans and programs for the reclamation of land having abandoned mines, which plans and programs will be eligible for participation in the abandoned mine reclamation program established by the national surface mining control and reclamation act of 1977 (public law 95-87), to submit such plans and programs, and all reports and applications contemplated by such act to the secretary of the interior, and to participate in such abandoned mine reclamation program. The governor is authorized to make certification contemplated by such act, with respect to such plans and programs, in order to authorize receipt of funds pursuant to such act. All amounts received under this section by ~~er--fer--the-mined-land-conservation-and-reclamation board-under-this-section~~ the department shall be remitted at least monthly to the state treasurer and the state treasurer shall deposit all thereof in the state treasury and credit the same to the abandoned mined-land fund. All expenditures from the abandoned mined-land 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-mined-land-conservation-and-reclamation-board~~ secretary or by a person or persons designated by the ~~chairperson~~ secretary. Expenditures from the abandoned mined-land fund shall be made for administration of this section and reclamation of eligible abandoned mined-land in accordance with plans and programs adopted and approved as provided in this section.

(b) In developing and adopting plans and programs for reclamation of abandoned mines, the board secretary shall observe

the following priorities of policy, in the order stated:

(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;

(2) the protection of public health, safety, and general welfare from adverse effects of coal mining practices;

(3) the restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;

(4) research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques;

(5) the protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices;

(6) the development of publicly owned land adversely affected by coal mining practices including land acquired as provided in public law 95-87 for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

(c) Abandoned mines eligible for inclusion in plans and programs authorized herein are those having land or water requiring reclamation or drainage abatement, which were mined for coal or which were affected by such mining, waste banks, coal processing or other coal mining process, and which were abandoned or left in an inadequate reclamation status prior to the date of enactment of the national surface mining control and reclamation act of 1977 (public law 95-87), and for which there is no continuing reclamation responsibility under the laws of this state or of the United States.

(d) The board secretary is authorized to make annual or other applications for support of ~~its~~ the department's plans and

programs and implementation of specific reclamation projects to the secretary of the interior, which applications shall contain the information required by ~~said-public-law~~ the national surface mining control and reclamation act of 1977 (public law 95-87); and the ~~board~~ secretary is authorized to make such other reports as may be requested from time to time by the secretary of interior in connection with administration of such plans and programs. The ~~board-shall~~ secretary also shall make an annual report to Congress on operations relative to reclamation of abandoned mines and make recommendations as to future uses of federal funds available for such reclamation.

(e) (1) Within six months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land, the ~~board~~ department shall itemize the moneys so expended and may file a statement thereof in the office of the clerk of the district court in the county in which the land lies, together with a verified appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices if the moneys so expended shall result in a significant increase in property value. Such statement shall constitute a lien upon the ~~said~~ land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. No lien shall be filed against the property of any person, in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

(2) The landowner may bring a civil action in the district court of the county wherein the subject land lies within 60 days of the filing of the lien, to determine the increase in the market value of the land as a result of the restoration,

reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement herein provided. The only necessary party defendant shall be the board, which--may-be-served-by-serving-its-executive-director secretary. Any party aggrieved by the decision may appeal as provided by law.

(3) The lien provided in this section shall be recorded in the county in which the land lies. Such statement shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon said the land. Such lien shall be for the benefit of the mined-land conservation-and-reclamation-board department.

(4) If liens are filed affecting a tract, affected portions of which lie in more than one county, a civil action brought to determine the increase in value as provided herein, and any action for foreclosure, may be brought in any county in which land subject to such lien lies.

Sec. 30. K.S.A. 49-429 is hereby amended to read as follows: 49-429. Notwithstanding the general applicability of this act to surface mining, no person shall engage in underground coal mining in this state without first obtaining a permit from the board secretary. The provisions of this act shall apply to all aspects of underground coal mining subject to the national surface mining control and reclamation act of 1977 (public law 95-87). The board secretary shall enforce this act and the provisions of the national surface mining control and reclamation act of 1977 (public law 95-87) with respect to all such aspects of underground coal mining, in the same manner as for surface mining, and is authorized to adopt such rules and regulations as may be required for such enforcement.

Sec. 31. K.S.A. 49-432 is hereby amended to read as follows: 49-432. (a) If the mined-land--conservation--and

reclamation-board secretary makes a finding of fact that:

(1) Land or water resources have been adversely affected by past coal mining practices;

(2) the adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control or prevent should be taken;

(3) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control or prevent the adverse effects of past coal mining practices are not known or readily available; or

(4) the owners will not give permission for the ~~mined-land conservation--and-reclamation-board~~ secretary, or ~~its~~ the agents, employees or contractors of the department to enter upon such property to restore, reclaim, abate, control or prevent the adverse effects of past coal mining practices; then, upon giving notice by mail to the owners, if known, or if not known, by posting notice upon the premises and advertising once in a newspaper of general circulation in the county in which the land is located, the ~~mined-land-conservation-and-reclamation-board-and~~ its secretary and the agents, employees or contractors of the department shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon.

(b) The ~~mined-land-conservation-and-reclamation--board--and~~ its secretary and the agents, employees or contractors ~~of the~~ state of the department, pursuant to an approved state program, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement,

control or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

Sec. 32. K.S.A. 49-433 is hereby amended to read as follows: 49-433. ~~(a)-As-used-in-this-section,-"board"-means-the-mined-land-conservation-and-reclamation-board-~~

~~(b)--The-board~~ (a) The secretary may acquire eligible abandoned mined-land by purchase or donation if the board secretary finds:

(1) That after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal-mining practices, such land would provide recreation, historic, conservation and reclamation purposes; and

(2) that permanent facilities such as a treatment plant or a relocated stream channel shall be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal-mining practices; or

(3) that acquisition of coal refuse disposal sites and any coal refuse thereon shall achieve the purposes of this act or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal-mining practices.

~~(e)~~ (b) The board secretary may acquire eligible abandoned mined-land by eminent domain if the board secretary finds:

(1) The property in question meets the requirements of subsection ~~(b)~~ (a); and

(2) the property owner or owners thereof have refused the board's secretary's offer to purchase the eligible abandoned mined-land.

~~(d)~~ (c) Before the board secretary initiates eminent domain proceedings, a hearing shall be held to determine if the property in question meets the requirements of subsection ~~(b)~~ (a). Notice of the hearing shall be mailed at least 30 days prior thereto to

the owners of such property by prepaid first class mail. Any such property owner shall have the right to appear at such hearing.

{e} (d) After the hearing, if the board secretary finds that the property in question meets the requirements of subsection ~~{b}~~, (a), the secretary may initiate eminent domain procedures in the manner provided by K.S.A. 26-501 et seq., and amendments thereto, to acquire such property.

{f} (e) Any expenditure made to acquire, by purchase or eminent domain, eligible abandoned mined-land property shall be made jointly from the abandoned mined-land fund and the mined-land conservation and reclamation fee fund and the contribution from the mined-land conservation and reclamation fee fund shall be at least 10% of such expenditure.

{g} (f) Title to all eligible abandoned mined-land acquired by purchase, donation or eminent domain shall be in the name of the state of Kansas and administered by the board secretary.

{h} (g) The board secretary may sell any eligible abandoned mined-land in ~~its~~ the secretary's control upon an order stating that reclamation in accordance with K.S.A. 49-428, and amendments thereto, has been completed.

{i} (h) Moneys received from any sale of reclaimed abandoned mined-land shall be deposited in the abandoned mined-land fund to be used on further abandoned mined-land projects.

{j} (i) The board secretary may lease any eligible abandoned mined-land under ~~its~~ the secretary's control, as long as the intended uses do not violate the reclamation purposes established in K.S.A. 49-428, and amendments thereto. Any moneys generated from the lease of abandoned mined-land under the board's secretary's control shall be deposited in the abandoned mined-land fund to be used for further abandoned mined-land projects.

Sec. 33. K.S.A. 49-402, 49-404, 49-405, 49-405a, 49-405b, 49-405c, 49-405d, 49-407, 49-408, 49-409, 49-410, 49-413, 49-415, 49-416, 49-416a, 49-417, 49-420, 49-421a, 49-426, 49-427, 49-428,

49-429, 49-432 and 49-433 and K.S.A. 1987 Supp. 49-403, 49-406 and 49-422a are hereby repealed.

Sec. 34. This act shall take effect and be in force from and after its publication in the statute book.

TESTIMONY OF HUGH J. TAYLOR
BEFORE THE HOUSE ENERGY COMMITTEE

FEBRUARY 22, 1988

Mr. Chairman, Ladies and Gentlemen, I am Hugh J. Taylor, Manager of Rates and Regulations for the Board of Public Utilities of Kansas City, Kansas. I am here today to speak in support of House Bill 2863. This bill has been initiated by the Board, who believes it serves the highest public interest.

As you know, House Bill 2863 modifies KSA. 13-1228f which has to do with the implementation of a rate increase for cities of 100,000 or more. Under present law, a rate increase may be implemented upon approval by the Board unless a petitioning party requests a stay in which case the rate increase is automatically stayed until there is a specific finding by the district court. The problem with the present law is that, if the rate increase is stayed any substantial amount of time (1 month or more) there is no mechanism to recover revenues that have been lost. Conceivably, a stay could put the Board in violation of its bond covenants in the worst case, or alternately cause the Board to be short of its needed revenues and consequently need to immediately file for another rate increase. No other utility in the state has to operate under such a threat.

House Bill 2863 has been written to emulate the rate implementation procedures used by the Kansas Corporation Commission (KSA. 66-118g), which provides that the petitioning shall not in itself automatically stay the increase, but the court may suspend or stay the increase pending the review of the increase. Furthermore, this proposed statute provides that, if the increase were found by the court to be unreasonable, the Board would be required to refund any overcharges together with interest at the rate specified KSA. 16-204.

In conclusion, the Board urges your support and favorable action on this House Bill

Attachment 5

House Energy & NR

2-22-88

JACK LACEY
REPRESENTATIVE, SECOND DISTRICT
CHEROKEE, LABETTE, AND
MONTGOMERY COUNTIES
P.O. BOX 6
OSWEGO, KANSAS 67356



TOPEKA

HOUSE OF
REPRESENTATIVES

February 22, 1988

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE AND SMALL BUSINESS
ENERGY AND NATURAL RESOURCES
TRANSPORTATION

RE: Testimony before the House Energy & Natural Resources Committee
House Bill 2867

Chairman Spaniol and Members of the Committee:

House Bill 2867 is designed to make it clear that the State of Kansas through the Department of Wildlife and Parks will have the authority to manage the wildlife, birds, game and fish.

The statutes state the wildlife are the property of the State and allows for the setting of seasons, limits and fees.

Without this clarification, I can see some county deciding they like to see the deer or quail and stop the harvesting within their borders.

When and where this happens, the over population of that species always causes a problem and a call to the State to come in and solve the problem.

This legislation will make it clear the State has the responsibility to manage the wildlife of Kansas for the good of Kansas citizens and wildlife its self.

There are others here today to give testimony demonstrating the need and desirability for this bill.

I will be happy to try to answer any questions and of course I'll be available at anytime.