

Approved Thomas F. Walker 28
Date

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Representative Thomas F. Walker at
Chairperson

9:00 a.m./p.m. on Wednesday, March 2, 1988 in room 522-S of the Capitol.

All members were present except:

Representative Peterson

Committee staff present:

Avis Swartzman - Revisor
Carolyn Rampey - Legislative Research Dept.
Mary Galligan - Legislative Research Dept.
Jackie Breymeyer - Committee Secretary

Conferees appearing before the committee:

Ed Flentje - Secretary, Department of Administration
Dorothy Ilgen - Kansas Arts Commission
Howard Schwartz - Judicial Administrator
Wilbur Leonard - Committee of Kansas Farm Organizations
Stanley C. Grant - Secretary, Department of Health and Environment
Ron Fox - Executive Director, Mined-Land Conservation and Reclamation Board

Chairman Walker called the meeting to order. He stated the minutes would stand approved at the end of the meeting if there were no corrections or additions. He announced that items would be deleted from HB 3024; they were subsections (g) law enforcement and civil defense communications committee created by K.S.A. 74-5701; (p) corrections advisory boards created by K.S.A. 75-5287; and (r) advisory committee on deferred compensation created by K.S.A. 75-5522. These items are contained in New Section 1 of the bill.

The Chairman asked for a motion on these items.

Representative Barr moved subsections (g), (p) and (r) of New Section 1 of HB 3024 be removed. Representative Weimer gave a second to the motion. The motion carried.

Secretary Flentje appeared first on HB 3024. He stated the Governor had asked the cabinet to make a careful review of statutes, boards and commissions which no longer serve a viable purpose in state government.

Several committee members asked the Secretary about different subsections of the bill.

Dorothy Ilgen, Kansas Arts Commission was next to address the bill. She opposed subsection (l) advisory panel and selection committee on sculpture for top of the state capitol created by K.S.A. 75-2249. She feels there would be no process by which art could be processed and installed. The committee has met three times recently and it was created by the legislature.

Ms. Ilgen answered questions from the committee.

Howard Schwartz, Judicial Administrator, appeared on behalf of The Information System Policy Board. Since the board was created it has met regularly. Representative Bill Bunten, the legislative apointee and Mr. Schwartz have ever missed a meeting. This board was created eight years ago by the Legislature to insure that data processing needs of the Legislative and Judicial branch were recognized and accounted for. (Attachment 1)

Mr. Schwartz answered questions from various members of the committee.

Wilbur Leonard, Committee of Kansas Farm Organizations was next to speak. He was present to address (b) agricultural labor relations board. He commented that just because the board has not been active is no reason to do away with it. (Attachment 2)

The Chairman asked if there were any other conferees to speak to HB 3024. As there were none, he stated the hearing was closed on HB 3024.

HB 3009 - Mined-Land Conservation and Reclamation Board

Stanley C. Grant, Secretary, Department of Health and Environment, was first to address the bill. He said what the bill does is transfer the board's authority and functions to the Department of Health and Environment, and would eliminate the board. Qualified technical staff can evaluate reclamation plans and oversee their implementation. There has been a substantial infusion of technical expertise in the recent past. In addition to abolishing the board the bill would: transfer all current officers and employees to KDHE as classified employees; transfer all authority and responsibility of the mined-land program to the Secretary of KDHE; and provide that KDHE will be the successor to all funds, property rights and records. (Attachment 3)

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

room 522-S Statehouse, at 9:00 a.m./p.m. on Wednesday, March 2, 1988

Ron Fox, Executive Director, Mined-Land Conservation and Reclamation Board, spoke on the bill. He submitted copies of testimony. (Attachment 4) He stated the issue paper referred to in the testimony would be forthcoming.* Mr. Fox said he felt comfortable with the bill that would, in effect, eliminate his position. There would be an amendment to the bill that would deal with the office of surface mining. The Department will get this amendment to the committee today.

The Chairman asked if there were any other conferees on the bill. As there were none, he closed the hearing on HB 3009.

The meeting was adjourned.

*Issue paper received and labeled (Attachment 5)

GUEST LIST

COMMITTEE: GOVERNMENTAL ORGANIZATION

DATE: MARCH 2, 1988

NAME	ADDRESS	COMPANY/ORGANIZATION
Terry Denker	Topoka	KDOC
Steve Pickett	Lawrence	KCCA
Don Lind	135 S. Kansas Ave Okla	Kansas Community Corrections Assoc.
Marjorie Van Buren	Topoka	OJA
Howard Schwartz	Topoka	OJA
Couvie Parish	heavenworth	Leav Sence
Ann Hebbeger	Overland PK.	LWVK
Ken Hales	Topoka	Sn. Ctg. P.O.C.
Sam Alway	Coffeyville	Comm. Cou.
Stan Grant	TOPEKA	KDHE
Dennis Murphy	Topoka	KDHE
Dennis Taylor	Topoka	KDHR
Frank Rine	Topoka	KC-MLB
Kenneth Swartz	Pittsburg	KMLRB
Murray J. BALK	Pittsburg	KMLCRB
DOUGLAS R. BARLET	PITTSBURG	KMLCRB
Joe Rusko	KC	WCCC
Rich McKee	Topoka	KFA
John Coslett	Topoka	State Field Marshal Office
Wilbur Leonard	Topoka	Comm on Ks Farm Org
Jerry Marshall	"	KSCFF
Robert L. Burdick	Topoka	Kansas Arts Commission
Wm. I. Shaker	Ou PK Ks	Ks Soc Land Surveyors
Helen Stephens	R.C.	Ks. Soc. for Land Surveyors
Boyd Jantzen	Dodge City -	

Testimony of
Howard P. Schwartz
Judicial Administrator

Before the House Committee on Governmental Organization

March 2, 1988

I appreciate the opportunity to appear today to discuss the Information System Policy Board which is included among a large group of boards and commissions which would be abolished by HB 3024.

The Information System Policy Board was established almost 8 years ago by the Legislature to insure that data processing needs of the legislative and judicial branch were recognized and accounted for. Prior to the creation of the Policy Board the Judicial branch was unable to secure assistance from DISC to meet our Data Processing needs. Since the board was created it has met regularly. Neither Representative Bill Bunten, the legislative appointee, nor I have ever missed a meeting of this Board and many significant issues have been dealt with.

Recently the Supreme Court of Kansas was recognized by the Foundation for the Improvement of Justice with an award for being the first state to develop and implement time standards for the disposition of cases in our trial courts. Without an automated case management system which tracks all cases filed in our courts and the ability to age these cases as they move thru the system this program would not have been possible. I mention this significant achievement because prior to the creation of the Policy Board the Judicial branch was having difficulty securing the computer assistance needed for such a program even though we had the financial resources.

Other benefits to state government have evolved. Since DISC participation in the Policy Board is required the Policy Board has been able to:

- represent the user's interest;
- bring important issues to the attention of DISC;
- freely discuss and evaluate the services provided by DISC;
- serve as a forum for technical conflict resolution among users.

I am certain that it is valuable from time to time to review and perhaps abolish boards and commissions that may have outlived their usefulness. However, I for one believe the Information System policy board is not in that category.

ATTACHMENT 1

G.O. Comm. 3/2/88

Committee of . . .

Kansas Farm Organizations

Wilbur G. Leonard
Legislative Agent
109 West 9th Street
Suite 304
Topeka, Kansas 66612
(913) 234-9016

March 2, 1988

STATEMENT WITH RESPECT TO HOUSE BILL NO. 3024

BEFORE THE HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

Mr. Chairman and Members of the Committee:

I am Wilbur Leonard, appearing for the Committee of Kansas Farm Organizations. Thank you for this opportunity to discuss further with you our position concerning the abolition of the agriculture labor relations board.

When this issue was considered by the committee in January we took the position that the board and the mechanism should be kept intact. We realize there are those persons in the administration who view the agency as excess baggage. There is merit to that viewpoint if we are to continue to insist on having a continuing board that is not active.

We, therefore, propose that the act be amended to provide a stand-by procedure where the board would be activated only when the need arises. Further, that it be constituted in the same manner as the present board, with two appointments made by the governor, one from a list representing agricultural labor and one from a list representing agricultural employers; that these two choose the third member. When it becomes apparent there are no matters for the board to consider it would be dissolved and remain dormant until such time as another controversy arises.

This procedure would assure agriculture a voice in the settlement of agriculturally related labor disputes. It would require no expenditure of public funds until such time as the board is organized and that obligation would cease when the board is disbanded.

Farm groups feel very strongly about this issue and they made a concerted effort to create this board in 1972. The legislature responded, even in the face of a governor's veto.

We respectfully now ask you to continue it on a stand-by basis.

ATTACHMENT 2
G.O. Comm. 3/2/88

STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT

Forbes Field

Topeka, Kansas 66620-0001

Phone (913) 296-1500

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*

Gary K. Hulett, Ph.D., *Under Secretary*

Testimony Presented to
House Government Organization Committee

by

The Kansas Department of Health and Environment

House Bill 3009

During the past seven years there has been considerable discussion regarding the structure and location of the mined-land program within state government in Kansas. In fact, the administrative structure of the mined-land program, i.e. Board control and appropriate agency placement for the mined-land program has been the subject of a legislative post audit report, various legislative committee studies, and a variety of legislative bills since its placement within the Corporation Commission. Consistent with the conclusions of the 1982 legislative post audit report, the bill before you today would transfer the Mined-Land Conservation and Reclamation Board's regulatory authority and functions to the Department of Health and Environment, and it would eliminate the Board.

The Mined-Land Conservation and Reclamation Board (MLCRB) was created by the Kansas Legislature in 1968 under the Mined-Land Conservation and Recovery Act. The Board was originally made a part of the Kansas Department of Labor, but was subsequently transferred to the KCC in 1974. In 1977, the National Surface Mining Act was passed and its provisions were more stringent and comprehensive than the state law. Consequently, the Kansas Act was amended in 1978, 1979, and 1981 to allow the MLCRB to administer the federal program in Kansas.

A legislative post audit conducted in 1981 concluded that the state's mined-land regulatory program could be significantly improved by transferring the MLCRB's decision-making authority to staff personnel, but that the technical expertise of staff at that time was lacking. The 1982 audit report recommended that this technical expertise could be strengthened by transferring the MLCRB's regulatory functions to KDHE which possessed related technical expertise. The report further concluded that administrative delegation to staff plus program transfer to KDHE could eliminate the MLCRB entirely, even as an advisory review panel, since KDHE has established review procedures for appeals of staff determinations.

On March 11, 1983, the federal Office of Surface Mining (OSM) initiated an administrative proceeding, a "733 Action", against the MLCRB to revoke state primacy for the mined-land program as a result of alleged program deficiencies adversely affecting implementation of the Kansas regulatory program. The "733 Action" was withdrawn in January 1986 after OSM determined that satisfactory program improvements had been made by the state. In the summer of 1986 the Special Committee on Energy and Natural Resources heard testimony from the mining industry, OSM officials, and the Chairman of the KCC regarding improvements in the mined-land program. The most significant area of program enhancement has been the acquisition of qualified technical staff to evaluate reclamation plans and oversee their implementation. In the last two and a half years six new technical personnel have joined the staff and have provided a substantial infusion of technical expertise into the program. As identified in the post audit report, the affiliation of the mined-land program with KDHE would provide further enhancement due to the related expertise of KDHE staff.

By virtue of its operation of a federally-authorized mined-land program, Kansas receives approximately \$2,000,000 per year from a federal tax on coal produced in Kansas. These funds can only be used to reclaim lands mined prior to passage of the 1977 National Surface Mining Act. Necessary reclamation of lands mined after 1977 must be performed by the operator or by the state using bonds forfeited by the operator.

The proposed amendments to the Mined-Land Conservation and Reclamation Act would:

- 1) abolish the Board and the office of the Executive Director.
- 2) transfer all current officers and employees of the mined-land program to KDHE as classified employees.
- 3) transfer all authority and responsibility for operation of the mined-land program to the Secretary of KDHE.
- 4) provide that KDHE will be the successor to all funds, property, rights, and records related to the mined-land program.

Consistent with the conclusions of the legislative post audit, the size of the Board (14 members) and its bimonthly meeting schedule make it difficult for the Board's staff to function efficiently and for the Board to make statutory findings and orders in the detail required by law and regulation. The program could be made more responsive by eliminating the Board, providing the authority for decision making to the Secretary of KDHE, and allowing the traditional opportunities for review and appeals of those decisions. The department would continue to coordinate mined-land activities with the agencies currently represented on the Board: the Kansas Water Office, the Department of Wildlife and Parks, the Department of Commerce, the Board of Agriculture, the Kansas Geological Survey, and the Conservation Commission. The department would also continue to pursue a positive working relationship with the local landowners and the mine operators.

Clearly, the mission of the mined-land program to regulate coal mining operations to promote the reclamation and conservation of lands and waters of the state is closely related to the missions of KDHE's Division of Environment and would be augmented through a closer working relationship with the Bureau of Waste Management, Bureau of Environmental Remediation, and Bureau of Water Protection. The functions of the mined-land program are very similar to those

of current programs within KDHE and the transfer of this program as proposed by KCC seems reasonable and appropriate.

The program transfer can be accomplished with no fiscal impact on the state. As contemplated by the proposed amendments to the Mined-Land Conservation and Reclamation Act, the program would be relocated from KCC to KDHE intact with no changes in authority, responsibility, or staff. We request your support for this bill.

Presented By:

Stanley C. Grant, Ph.D., Secretary
Kansas Department of Health and Environment
March 2, 1988

REMARKS BY RON FOX
EXECUTIVE DIRECTOR
MINED-LAND CONSERVATION AND RECLAMATION BOARD
March 2, 1988
HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION

I am here today on behalf of Chairman Keith Henley to voice strong support for passage of House Bill 3009. In July, 1987, the Corporation Commission filed an issue paper with the ~~Director~~ of the Budget wherein the Commission proposed the transfer of its mined-land program to the Kansas Department of Health and Environment and the subsequent elimination of the Mined-Land Conservation and Reclamation Board. The issue paper addressed two questions: (1) whether the structure of the Mined-Land Conservation and Reclamation Board should be amended/changed, and (2) whether the Kansas Corporation Commission is the appropriate agency for the administration of the Mined-Land Conservation and Reclamation program. I refer you to that issue paper which provides a description of the mined-land program and some historical information, and indentification of previous studies conducted in this regard, and listing of several organizational alternatives to the current structure. The Commission is of the opinion that state regulation could be significantly improved by transferring the Mined-Land Conservation and Reclamation Board's authority to the Kansas Department of Health and Environment and eliminating the Board entirely. The Commission's proposal is incorporated in the provisions of House Bill 3009. The proposal has received gubernatorial support and the endorsement of the Kansas Department of Health and Environment.

I thank you for your attention to this matter. I would be happy to answer any questions you might have.

MINED-LAND CONSERVATION
AND RECLAMATION BOARD

ISSUE PAPER

July 15, 1987

Submitted by:
Kansas Corporation Commission

To:
Division of the Budget

ATTACHMENT 5
G.O. COMMITTEE

3/2/88

I. ISSUES DEFINITION

- A. Whether the structure of the Mined-Land Conservation and Reclamation Board should be amended/changed.
- B. Whether the State Corporation Commission is the appropriate agency for the administration of the Mined-Land Conservation and Reclamation program.

II. BACKGROUND

The Mined-Land Conservation and Reclamation Board (hereinafter referred to as the "MLCR Board" or "Board") was created by the Kansas Legislature as a part of the Mined-Land Conservation and Reclamation Act (hereinafter referred to as "Kansas Act") in 1968. It was originally made a part of the then existing Kansas Department of Labor, but subsequently transferred in 1974, for administrative purposes, to the State Corporation Commission.

In 1977, the U.S. Congress enacted the National Surface Mining Act (hereinafter referred to as "federal act") which essentially superseded the Kansas Act. The provisions of federal act were more strict and comprehensive than the 1968 Kansas Act, which was amended in 1978, 1979, and 1981 to allow the MLCR Board to administer the federal act in Kansas.

The administrative structure of the mined-land program, i.e. Board control and the appropriate agency placement for the mined-land program has been the subject of a legislative post audit report, various legislative committee studies and legislative bills since its placement within the SCC. The Federal Office of Surface Mining (hereinafter referred to as "OSM") also initiated an administrative action to withdraw the state's primacy for enforcement of the mined-land program during its administration by SCC. A chronological review of these events follows.

In 1981 the mined-land program was subjected by the Legislative Division of Post Audit to a sunset audit. The audit, issued in March 1982, concluded the state should operate the program, but identified certain problems concerning the administration of the program.

The audit cites a 1980 memo, which is reprinted in full in the audit, from a staff attorney to Chairman of the SCC. The memo indicates the size of the Board (14 members) and its infrequent meeting (the Board meets every other month) make it difficult for the Board's staff to function efficiently and for the Board to

make statutory findings and orders in the detail required by law and regulation. The memo's recommended solution was to make the Board advisory and place the administration of the mined-land program under the SCC.

The post audit report concludes state regulation could be significantly improved by transferring the Board's decision-making authority to staff personnel, thus making the Board advisory rather than regulatory. However, the report concluded the technical expertise of staff personnel at that time was lacking and must first be strengthened and recommended this could be accomplished by transferring the Board's regulatory functions to the Department of Health and Environment, which contains related technical expertise. The report further finds administrative delegation to staff personnel plus program transfer to the Kansas Department of Health and Environment (hereinafter referred to as KDHE) could eliminate the Board entirely even as an advisory review panel since the Department has established review procedures for appeals to staff determinations.

OSM initiated an administration proceeding, a "733 Action," against the Board for revocation of state primacy for the mined-land program on March 11, 1983, through a letter to the Governor of Kansas alleging serious problems existed and were adversely affecting implementation of Kansas' regulatory program. During pendency of the "733 Action," various corrective measures were initiated and OSM continued to monitor the state's action through its oversight program. The "733 Action" against the state remained in effect until January 1986.

Several legislative reviews/proposals concerning the mined-land program were made during 1986. These reviews were nearly simultaneous to the withdrawal of the "733 Action" against the Kansas program. The 1986 Legislative reviews include:

- A. As the result of an interim study, the Special Committee on Energy and Natural Resources recommended H.B. 2650. This bill created the Oil, Gas, and Minerals Commission consisting of three members appointed by the Governor for staggered four-year terms. The bill granted to the Commission jurisdiction over the statutes that provide for the protection of surface and groundwater (K.S.A. 55-150 et seq.), over other statutes presently administered by the SCC that provide for the protection of groundwater from oil and gas activities, and over activities of the Oil Field and Environmental Geology Bureau of KDHE that pertain to the protection of groundwater (these functions have since been

transferred to the SCC). In addition, H.B. 2650 brought under the jurisdiction of the Commission the Mined-Land Conservation Reclamation Act (K.S.A. 49-491 et seq.), made the MLCR Board advisory to the Commission, and made the executive director an appointee of the Commission. The Bill died in the House without committee approval during the 1986 Session.

- B. As a part of the sunset review of the Department of Health and Environment, a subcommittee of the House Governmental Organization Committee issued a report dated February 28, 1986, recommending legislation to place the MLCR Board and its Executive Director under the provisions of the sunset law. The subcommittee recommended the functions of the Board and relationship between the Board and other state agencies be examined as a separate sunset review to determine whether the present arrangement is satisfactory.
- C. As a result of the February 28, 1986, report cited above, H.B. 3040 was introduced in the 1986 Session for the purpose of imposing the provisions of the sunset law upon MLCR Board and the executive director. The Bill passed the House but died in the Senate Committee.
- D. The final and most recent legislative review was completed during the summer of 1986, by the Special Committee of Energy and Natural Resources which was charged with assessing the effectiveness of the MLCR Board. Based on testimony by the industry, OSM officials, and the Chairman of the SCC regarding the program improvements leading to the vacation of the "733 Action," the current status of the mined-land program, etc., the Special Committee conducted no further studies and recommended no changes to the Board Structure or administration of the regulatory program.

IV. RECOMMENDATIONS

The various alternatives identified through past examination of the MLCR Board and the mined-land program include:

- (1) Elimination of state primacy for implementation and enforcement of the mined-land program.

Regulation would then continue through the federal OSM and would be no less strictive than that mandated upon the state.

- (2) Reorganize the authority for administration of the mined-land program, i.e. permit approvals, determinations of bond amounts/releases, issuance of civil penalties, etc. from the Board to the SCC, thus making the Board advisory rather than regulatory. This arrangement is comparable to the structure of the Oil and Gas Division of the SCC and its advisory board.
- (3) Transfer authority for mined-land program to KDHE and delegate authority for administrative decisions, i.e, permit approvals, determination of bond amounts/releases, issuance of civil penalties, to staff. The Board could then be eliminated entirely or retained as advisory for purpose of appeals to staff determinations, etc.
- (4) No statutory change in the Board structure or the administrative of the regulatory program.

The SCC supports the third alternative as the most appropriate placement for the mined-land program and recommends this option receive serious consideration.

Fiscal Implications and Impact on Other Agencies

The fiscal impact posed by the alternative set forth above is as follows:

- A. The fiscal impact of allowing the federal OSM to enforce the Act would be the elimination of a State agency and part of the overall state administrative burden. No general fund money would be saved, however, because the Board is fee-supported. Further, because the State has chosen to administer the program, it will get an estimated \$2,000,000 per year generated from a federal tax on coal produced in Kansas to reclaim lands mined prior to passage of the 1977 federal law. In Kansas, this money will primarily be used to reclaim the 46,000 acres of land mined prior to State regulation of strip mining in 1969. If the State declines to administer the program, there is no guarantee that the \$2,000,000 a year in federal coal taxes would be used to reclaim Kansas lands. The

OSM would decide how the money would be used. This option would have significant impact on OSM.

- B. The fiscal impact of reorganization within the SCC, i.e. making the SCC the administrative authority and the Board advisory, would be de minus. The Board is non-salaried and would continue to be paid on a per diem basis.
- C. Transfer of the mined-land program to the KDHE should also have minimum financial consequences since the mined-land program receives no general fund monies, but rather is supported by fees and/or federal monies. All positions related to the mined-land program are funded through such fees or grants and salaries must be allocated if personnel are utilized outside the program.
- D. Retention of the current status, of course, would have no additional fiscal impact.