

Approved 3-13-89 Ginger Barr, Chair
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Representative Ginger Barr at
Chairperson

1:30 ~~am~~ /p.m. on March 1, 1989 in room 526-S of the Capitol.

All members were present except:
Representative Aldie Ensminger - Excused
Representative Mike Peterson

Committee staff present:
Mary Torrence, Revisor of Statutes Office
Mary Galligan, Kansas Department of Legislative Research
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:
Richard Pankratz, Director, Historic Preservation Department, Kansas State
Historical Society
M.S. Mitchell, Legislative Chairman, Home Builders Association of Kansas
Tom Witty, State Archeologist, Kansas State Historical Society

HB 2379

Richard Pankratz explained how conservation easements would be employed; and though the bill was requested by the historical society, it is supportive of this bill or HB 2351, a similar bill heard February 28, 1989, in the Energy and Natural Resources Committee, Attachment No. 1.

M.S. Mitchell opposed the bill stating it would permit structures not in compliance with the criteria for the National Register of Historic Places to be included in conservation easements, Attachment No. 2.

HB 2380

Tom Witty spoke as a proponent of the bill citing the protection of private landowners as the primary reason for the bill, Attachment No. 3.

In response to questions from the committee it was established that:

1. The private landowner has unrestricted usage of the site as there are no state or federal laws governing the owner in regard to archeological sites.
2. A prospective buyer, unaware of a site, is not governed by any rules. The bill is intended as a record keeping device by the society. It is used when highway routes are planned. The government is not supposed to destroy sites on which there are government funded activities.
3. Burial sites, once put on a register, must be considered by a board before being removed which would restrict the use of the property. It is in the law that if it is on the registry, the owner must be notified.
4. A landowner is not required to report an archeological site. However, the law states he must report a known burial site or face a criminal penalty.
5. Conservation easements proposed in HB 2379 would be required to be recorded with the register of deeds.

There were no opponents to the bill.

Representative Eckert moved to approve minutes of the February 15, 1989, meeting, seconded by Representative Jones. The motion carried on a voice vote.

The chairman noted copies of the March, 1989, National Geographic article supplied to members of the committee by Mary Galligan. The article had been noted by Tom Witty, State Archeologist, in his February 22, 1989, appearance before the committee and by Representative Charlton on February 27, 1989.

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 FEDERAL AND STATE AFFAIRS,
room 526-S, Statehouse, at 1:30 ~~am~~ p.m. on March 1, 1989.

Representative King made a motion to introduce two proposed bills from Kansas Department of Health and Environment (KDHE) as committee bills. The first bill deals with public water supply systems, Attachment No. 4. The second bill concerns State Environmental Protection Grants to local health departments, Attachment No. 5. Representative Douville seconded the motion which carried on voice vote.

The meeting adjourned at 2:08 p.m. The next meeting of the committee will be March 2, 1989, 1:30 p.m. in Room 526-S.

Presentation to the Federal and State Affairs Committee on House Bill 2379
by Richard D. Pankratz, Director, Historic Preservation Department
Kansas State Historical Society
March 1, 1989

House Bill 2379, which was introduced by the Federal and State Affairs Committee at the request of the State Historical Society, is very similar to House Bill 2351, which was introduced by Representative Freeman and heard Tuesday by the Energy and Natural Resources Committee. Both propose modifications to the conservation easement bill enacted in 1987. The State Historical Society would support enactment of either bill.

A conservation easement constitutes an interest in real property. Kansas law presently recognizes "conservation easements" only in connection with wetlands and riparian areas. Around the country conservation easements are also being used to protect properties of historical, architectural, archeological, and cultural significance.

House Bill 2379 (and 2351) would permit the granting of easements in Kansas on properties of historical, archeological, architectural, and cultural significance.

A property owner concerned about the long term preservation of a historic resource in his or her ownership could by sale or donation transfer the development rights on that property to an easement holding entity. That entity would thus be given the right to protect the identified historic features of that historic property. For example, a property owner of a historic downtown

office building could donate a facade easement to an easement holding entity. The owner would be free to continue to use or to reuse that building to meet his or her own economic goals, but he or she would have given up the right unilaterally to alter, remove, or otherwise change the historic features, elements, and materials of the exterior. The easement holder would act as watchdog over that facade to insure that it was maintained and preserved and that its historic appearance continued to establish a sense of place as part of the heritage of that community.

Conservation easements could also preserve archeological sites by maintaining or establishing a beneficial land use. For example, keeping a site area in pasture as opposed to cultivation would prevent plowing from destroying shallow buried features such as hearths or cache pits. Easements could provide archeological site preservation even though land ownership might change. The vast majority of the state's archeological sites are buried and not readily visible. Conservation easements would alert new owners or even potential purchasers to a site's presence and inform them of its scientific value.

The use of conservation easements for historic properties could enhance historic preservation efforts in communities; a local government or preservation organization could acquire an easement instead of fee simple title to a property. Thus, control over the historic features would be acquired at much less, if any, cost, and the owner would continue to use the property, maintain it, and pay taxes on it. (Donations of easements for historic properties can be advantageous for the donor's federal income tax liability.) The conservation easement would provide a useful tool to encourage protection of the state's historic resources.

The Historical Society endorses the enactment of a bill permitting the use of conservation easements. In evaluating the two bills that address the issue, we recognize that 2351 provides a definition that 2379 omits, i.e., the definition of historic properties on which easements could be granted. We think it is a good idea to include that definition and for that reason HB 2351 may be a better vehicle than 2379.

TESTIMONY BEFORE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

ON HOUSE BILL 2379

CONCERNING CONSERVATION EASEMENTS

BY M. S. MITCHELL, LEGISLATIVE CHAIRMAN

HOME BUILDERS ASSOCIATION OF KANSAS

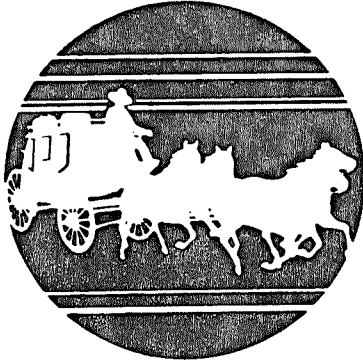
House Bill 2379 is one of the two bills introduced in this session of the Kansas Legislature having to do with conservation easements.

Lines 31 thru 37 increase the potential impact of conservation easements by making it possible to include "properties of historical, architectural, archeological or cultural significance". The basis for conflict with the Building Industry will be the ability to include structures in conservation easements which do not comply with the criteria set out for the national register of historic places or the state register of historic properties or which designate landmarks by local governments or commissions.

The second addition to current law proposed by House Bill 2379 is found on lines 63 thru 69 which would permit ANY organization which can obtain exemption from federal income taxes under section 501(c)(3) to solicit and acquire conservation easement rights. As originally proposed conservation easements would be obtained only by the state in exchange for the state's expert advice and assistance in preparing and implementing management plans of the crucial wildlife habitat found in some wetlands and riparian areas. Ability to obtain income tax exemption is no indicator that an organization has the expertise to prepare or manage wetlands, riparian areas or historical properties to the best advantage of the state. Since conservation easements are transferable, it would be possible for ANY EXEMPT organization to acquire and assemble them in a pattern which could restrict extension of public facilities such as streets, sewers and other utilities to areas which are not subject to such easements and thereby prohibit all growth and expansion of municipal services.

Clearly, this was not the intent of the framers of the Kansas Water Plan section on Fish, Wildlife and Recreation when the concept of conservation easements was proposed. I respectfully request that House Bill 2379 be amended by committee to eliminate the ability of 501(c)(3) organizations to acquire conservation easements and to restrict conservation easements on historical properties to those listed on federal or state registries.

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 2
March 1, 1989



KANSAS STATE HISTORICAL SOCIETY

CENTER FOR HISTORICAL RESEARCH

120 West Tenth ▪ Topeka, Kansas 66612-1291 ▪ 913/296-3251

KANSAS MUSEUM OF HISTORY

6425 South West Sixth ▪ Topeka, Kansas 66615-1099 ▪ 913/272-8681

February 28, 1989

Representative Ginger Barr, Chairperson
Committee on Federal and State Affairs
Room 115-S, Statehouse
Topeka, Kansas 66612

RE: H.B. 2380, Open Records Act Amendment, Archeological Site Location
Information

Representative Barr and Members of the Committee:

I am Tom Witty. I wish to provide the following testimony in support of the adoption of an amendment to the Open Records Act (K.S.A. 1988 Supp. 45-221, Line 187) to control public access to information concerning the precise locations of archeological sites in this state. In doing so I represent the Kansas State Historical Society, the Kansas Antiquity Commission (K.S.A. 74-5402) as well as myself as State Archeologist.

An archeological site is a place where some evidence of past human activity has been identified and has the potential for providing information on early lifeways. Under the existing Open Records Act, the public has access to information on the location of recorded archeological sites on file principally at the Kansas State Historical Society and the major universities. Such access would allow relic hunters, collectors and vandals to readily visit these sites and remove important artifacts and potentially destroy subsurface features by random excavation. The majority of these known sites are on private property and many have been reported to us by sincere amateurs interested in site preservation and the sharing of knowledge. The landowners and informants in allowing us to make these records do expect confidentiality.

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 3
March 1, 1989

RAMON POWERS, Executive Director
RUTH A. SHERRER, Associate Executive Director
TERRY MARMET, Director of Facilities Planning
MARK A. HUNT, Director of Museums and Historic Properties
PATRICIA A. MICHAELIS, Curator of Manuscripts
RICHARD D. PANKRATZ, Director Historic Preservation Dept.

PORTIA ALLBERT, Library Director
EUGENE D. DECKER, State Archivist
THOMAS A. WITTY, State Archeologist
MARILYN HOLT, Director of Publications
LARRY JOCHIMS, Research Historian
JENNIE CHINN, Folklorist
RON PARKS, Public Relations Director

The archeological site records are maintained principally as paper files although the creation of electronic files is underway. The Archeology Department of the Society is the principal depository for all the agencies in the state and currently has over 7,000 sites recorded. Files also exist at the University of Kansas, Kansas State University and Wichita State University. There are also master map sets, one by county and another on U.S. Geological Survey quadrangle maps upon which the location of every site is plotted. The primary document is the archeological site form (example attached) which along with other information does provide the legal description, owners name, a map and in some cases instructions for approach to the site. It is that specific information which needs to be controlled.

The recorded sites in the site files deal with both the Native American and Euro- or Afro-American cultures in Kansas. This spans a time range possibly as early as 12,000 B.C. to the early twentieth century. The kinds of sites included may be camps, villages, quarries, kill sites, burials, petroglyphs, forts, trading posts, towns, etc.

The sources of that information reflect a variety of activities. These include federal and state funded survey work on proposed water projects, highways, etc., specific institutional research and reports by amateurs and private citizens. The majority of those recorded sites are on private property.

I wish to emphasize that it is the precise location description that we are concerned with. The other information concerning culture, age, and artifacts would still be open. The location information would remain available to those on a need to know basis. This would include bonafide researchers, consultants working on government projects, governmental agencies and in some cases planning developers.

Our concern in reality has been more one of potential than actual problem. We have perhaps three to four individuals a year coming in and asking for this information. When questioned we find usually the individual doesn't really need location but is seeking the numbers of sites, or the ages and the identification of cultures represented. This we have been and will still continue to provide.

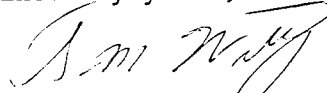
In summary, there are three reasons why we wish this information restricted. The first is the scientific integrity of the site by the prevention of loss of important artifacts and information; two, there is the need to protect the privacy and property of the landowner from encroachment by others; three, the amateur archeologist usually has a very proprietary interest in the sites which he has reported to us. In many cases they have maintained records and cataloged their collections, thus maintaining the scientific integrity of the material and the site. For us to allow this information to be indiscriminately circulated violates a trust and could destroy years of established rapport.

Prior to passage of the Open Records Act such archeological site location information was considered by us to be privileged. The act removed

the control and it has concerned us greatly. While we have yet to encounter an instance of misuse of the information the potential does exist. It is on the basis of that concern that we urge the passage of this bill.

Thank you for your consideration.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "T. A. Witty, Jr.", written in dark ink.

Thomas A. Witty, Jr.
State Archeologist

TAW:dlb
Attachment

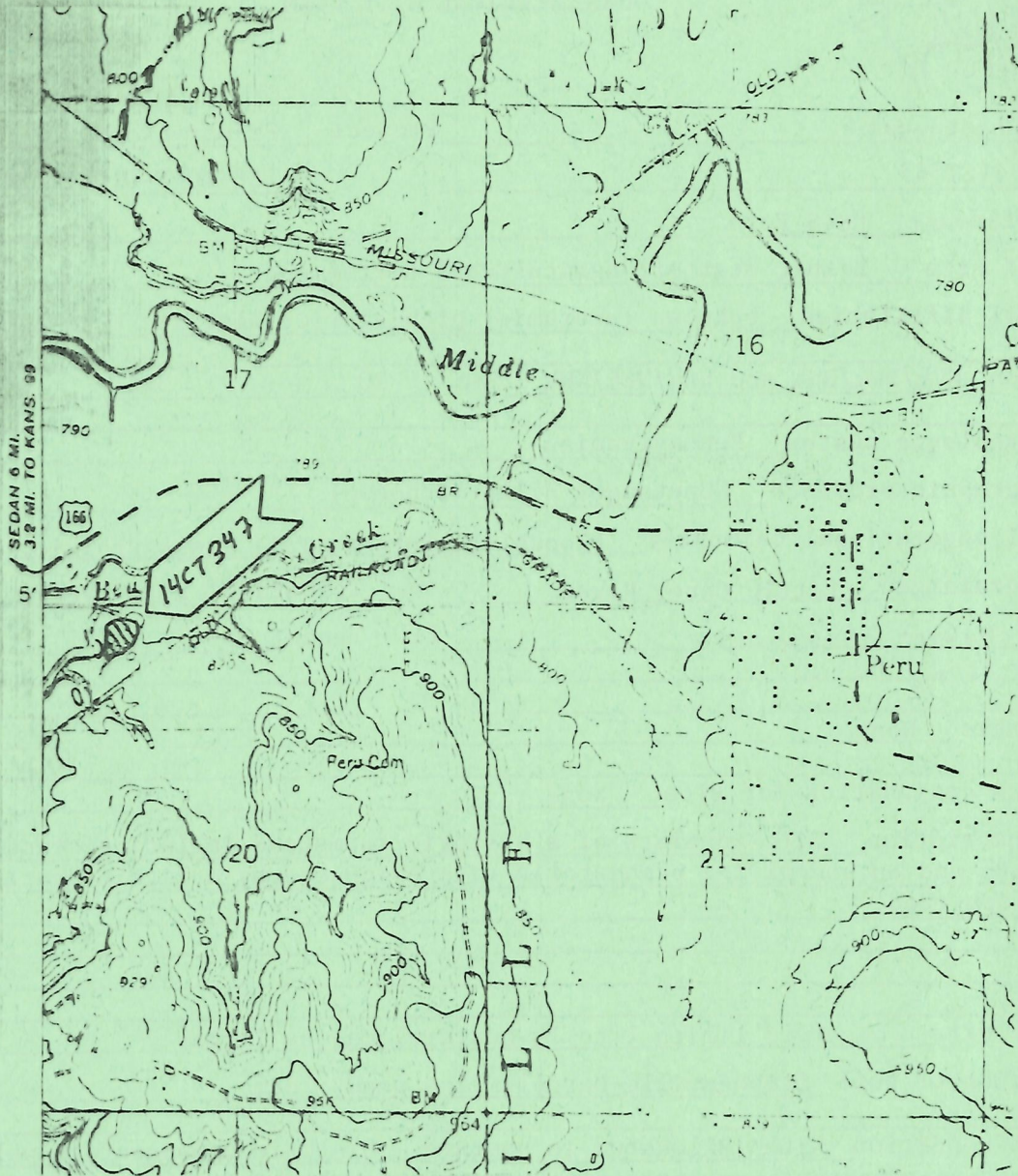


KANSAS STATE HISTORICAL SOCIETY

ARCHEOLOGICAL SITE FORM

- County Chautauqua Project Primary Road
Site No. 14CT347 166-10-F-010-1 (34)
1. Map reference USGS Peru
 2. Type of site Lithic scatter; agricultural settlement
 3. Cultural affiliation Unknown (aceramic) prehistoric; historic Euro-American
 4. Location NE $\frac{1}{4}$ /NW $\frac{1}{4}$ /NW $\frac{1}{4}$ and NE $\frac{1}{4}$ /NE $\frac{1}{4}$ /NW $\frac{1}{4}$ Sec. 20 T 34S R 12E
 5. Local geologic system Pennsylvanian
 6. Physiographic province Chautauqua Hills (Schoewe)
 7. Natural vegetational community Floodplain Forest, Tall Grass Prairie, Cross Timbers
 8. Major drainage Little Caney River 9. Tributary Bear Creek Mosaic
 10. Owner Robert Powers 11. Tenant _____
Peru, Ks.
 12. Informants None
 13. Previous designation for site None
 14. Site description Site consists of a historic farmstead including standing dwelling and barn and an underlying prehistoric site evidenced by a lithic scatter exposed in a farm road.
 15. Area of site observed limits 1 to 1 $\frac{1}{2}$ hectare, may be larger
 16. Discussion of soil Stephenville-Darnell fine sandy loam
 17. Present condition Site is located in pasture. Historic component is well preserved, prehistoric component has certainly been impacted by historic component but may be
 18. Previous excavations None well preserved overall.
 19. Material collected 2 cortical flakes; 11 secondary flakes, some probably utilized, one biface
 20. Material retained by KSHS
 21. Material observed lithic debitage and historic artifacts (glass and ceramics primarily)
 22. Previous material reported and owner None
 23. Photograph numbers 1 black and white photograph
- Recorded by William B. Lees Date March 4, 1985

↑
N



Scale 1:24,000

24. UTM

14

7	5	5	8	2	5
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4	1	0	7	6	6	0
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 -SR
Zone Easting Northing
25. Longitude _____ West Latitude _____ North
degrees min. sec. degrees min. sec.
26. Elevation 800 feet (meters) How determined? USGS
27. Approach to site From Peru proceed west about 1 1/4 miles on county road to bridge across Bear Creek. Site is on bluff to southeast of the bridge.
28. Recommendations for further work Test
29. Remarks Site received extensive excavation in September and October 1986. Site area destroyed by realignment of US166 later.

2-23-89

BILL NO. _____

BY _____

AN ACT relating to water; concerning public water supply systems; amending K.S.A. 65-163 and repealing the existing sections.

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

Section 1. K.S.A. 65-163 is hereby amended to read as follows: 65-163.

(a) (1) No person shall operate a public water supply system within the state without a public water supply system permit from the secretary. An application for a public water supply system permit shall be submitted for review and approval prior to construction and shall include: (A) A copy of the plans and specifications for the construction of the public water supply system or the extension thereof; (B) a description of the source from which the water supply is to be derived; (C) the proposed manner of storage, purification ~~or~~ treatment or distribution for the supply; and (D) such other data and information as required by the secretary of health and environment. No source of water supply in substitution for or in addition to the source described in the application or in any subsequent application for which a public water supply system permit is issued shall be used by a public water supply system, nor shall any change be made in the manner of storage, purification ~~or~~ treatment or distribution of the water supply without ~~an additional public water supply system permit obtained in a manner similar to that prescribed by this section from~~ prior approval of the secretary.

(2) Whenever application is made to the secretary for a public water supply system permit under the provisions of this section, it shall be the duty of the secretary to examine the application without delay and, as soon as possible thereafter, to grant or deny the public water supply system permit subject to any conditions which may be imposed by the secretary to protect the public health and welfare. On and after April 1, 1991, a permit to operate a public water supply system shall be issued for a term not to exceed ten years and may be modified, suspended or revoked upon a finding by the secretary that (A) permit conditions have been violated or (B) any applicable laws, rules and regulations

or design standards adopted in accordance with the provisions of this act, and amendments thereto, have been violated.

(b) (1) Whenever a complaint is made to the secretary by any city of the state, by a local health officer, or by a county or joint board of health concerning the sanitary quality of any water supplied to the public within the county in which the city, local health officer or county or joint board of health is located, the secretary shall investigate the public water supply system about which the complaint is made. Whenever the secretary has reason to believe that a public water supply system within the state is being operated in violation of an applicable state law or an applicable rule and regulation of the secretary, the secretary may investigate the public water supply system.

(2) Whenever an investigation of any public water supply system is undertaken by the secretary, it shall be the duty of the supplier of water under investigation to furnish to the secretary information to determine the sanitary quality of the water supplied to the public and to determine compliance with applicable state laws and rules and regulations. The secretary may issue an order requiring changes in the source or sources of the public water supply system or in the manner of storage, purification or treatment utilized by the public water supply system before delivery to consumers, or distribution facilities, collectively or individually, as may in the secretary's judgment be necessary to safeguard the sanitary quality of the water and bring about compliance with applicable state law and rules and regulations. The supplier of water shall comply with the order of the secretary.

(c) Any action of the secretary pursuant to this section 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.

(d) The secretary shall adopt rules and regulations for the issuance of a renewable public water supply system permit not to exceed a ten year term, and for the development and implementation of a public water supply protection plan to be submitted as part of a public water supply permit application. The secretary shall assure water supply utilities are involved in and have opportunity to comment on any rules and regulations adopted under this section. The rules and regulations will be applicable to new public water supply systems or within two years when any part of an existing supply is modified an application for a new permit shall be submitted for the entire system. In the

submittal of an application for a public water supply system the applicant may request a waiver for the development and implementation of a public water supply protection plan for hydrologic, geohydrologic financial or legal reasons. If the secretary grants the waiver the secretary may require additional monitoring in order to protect public health.

Sec. 2. K.S.A. 65-163 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

BILL NO. _____

BY _____

AN ACT concerning State Environmental Protection grants to Local Health Departments.

New Section 1. (a) "Local health department" means any county, city-county or multicounty department of health.

(b) "Secretary" means secretary of health and environment.

(c) "Fiscal year" means the period commencing January 1 of any year and ending December 31 of the same year.

(d) "State environmental protection grant" means the total amount of money available for distribution to local health departments under this act.

New Sec. 2. (a) For the purpose of insuring that adequate environmental protection services are available to all inhabitants of the state of Kansas, the state shall participate, from and after January 1, 1990, in the financing of the operation of local health departments. Subject to appropriations therefor each local health department which applies for state environmental protection grant under this act shall receive an amount of money, except that state environmental protection grant to any one local health department shall not exceed (1) an amount equal to \$1.00 multiplied by the number equal to the population of the county, if the local health department is a county or city-county department of health, or counties, if the local health department is a multicounty department of health, in which the local health department is located or (2) an amount equal to \$7,000, if the local health department is a county or city-county department of health, or \$7,000 multiplied by a number equal to the number of counties in which the local health department is located, if the local health department is a multicounty department of health, whichever amount computed under (a)(1) or (a)(2) is the larger amount.

(b) Notwithstanding any limitation placed by subsection (a) on the amount of state environmental protection grant which any one local health department may receive, if any money remains after the first computation of state grant under subsection (a), such money shall be distributed to each local health department which will receive state grant under subsection (a) in proportion that the number equal to the population of the county, if the local health

department is a county or city-county department of health, or counties, if the local health department is a multicounty department of health, in which the local health department is located bears to the total population of all counties in which local health departments which will receive state grant under subsection (a) are located.

(c) If the amount of money appropriated for state grant under subsection (a) of this section is not adequate to provide each local health department which applies for state grant with the maximum amount of state environmental protection grant the local health department is eligible to receive under subsection (a), the secretary shall prorate the money appropriated for such purpose among all local health departments applying for such grant in proportion that the amount of state environmental protection grant each such local health department would have received if the amount of money appropriated for state environmental protection grant under subsection (a) had been adequate to provide each such local health department with the maximum amount of state environmental protection grant the local health department was eligible to receive under subsection (a) bears to the total amount of money which would need to be appropriated under subsection (a) to provide all such local health departments with the maximum amount of state environmental protection grant the local health departments were eligible to receive under subsection (a).

(d) In the event any local health department is paid more than it is entitled to receive under any distribution made under this act, the secretary shall notify the governing board of the local health department of the amount of such overpayment, and such governing board shall remit the same to the secretary. The secretary shall remit any moneys so received to the state treasurer, and the state treasurer shall deposit the same in the state treasury. If any such governing board fails to remit, the secretary shall deduct the excess amount paid from future payments becoming due to such local health department. In the event any local health department is paid less than the amount to which it is entitled under any distribution made under this act, the secretary shall pay the additional amount due at any time within the year in which the underpayment was made or within 60 days after the end of such year.

(e) The first two annual grants made by the secretary will not require a match by the local health department. The third annual grant shall require a ten percent match in environmental protection services by the local health

department, and, thereafter each annual match shall increase by ten per cent until the match by the local health department shall be fifty percent.

New Sec. 3. (a) The governing board of any local health department may apply for the environmental protection grant provided under Section 1, by submitting annually to the secretary a grant application to implement the environmental protection strategy, water quality element of the state water plan which includes, but not be limited to, county sanitary code, subdivision water and wastewater plan, solid waste management plan, hazardous waste management plan, public water supply protection plans, and non point source pollution control plans. The plan shall be approved by the secretary according to criteria contained in department rules and regulations.

(b) The secretary shall use official state population figures based upon population figures available from the United States bureau of the census to determine the population of counties for computing state grant under Section 1.

(c) The state environmental protection grant to each local health department shall be paid in four quarterly installments based upon the approved grant application. The moneys received in any quarter may be used at any time during the year. Installments shall be paid as follows: January 1 for the quarter beginning January 1 and ending March 31; April 1 for the quarter beginning April 1 and ending June 30; July 1 for the quarter beginning July 1 and ending September 30; and October 1 for the quarter beginning October 1 and ending December 31.

(d) The secretary shall certify to the director of accounts and reports the total amount of state environmental protection grant due each quarter to each local health department which has applied for such grant. The director of accounts and reports shall draw warrants on the state treasurer payable to the governing board of each such local health department upon vouchers executed as provided by law and approved by the secretary.

(e) Each local health department shall have the authority to enter into contracts to carry out any element of the environmental health protection program authorized under this act.

(f) At such time, not to exceed three consecutive years since the first grant was made to a local health department shall request certification by the secretary that said local health department has an approved environmental protection plan as required in paragraph (a) and is prepared to assume delegation for permitting, inspection, compliance and enforcement of specified elements of

the county environmental protection plan in Section 3a. The secretary certify the local health department program for a period not to exceed five years. The department shall provide multi-year guidance on achieving environmental results for certification of local health department programs. The department shall annually audit the local health department programs based on achieving environmental results. Continuation of department certification for state grants shall be based upon achieving environmental results.

(g) The secretary may adopt rules and regulations necessary for the administration of this act.

New Sec. 4. Moneys available under this act to local health departments shall not be substituted for or used to reduce or eliminate moneys available to local health departments from the federal government or substituted for or used to reduce or eliminate moneys available from local tax revenues. Nothing in this act shall be construed to authorize a reduction or elimination of moneys available to local health departments from the federal government or to authorize the reduction or elimination of moneys made available by the state to local health departments in addition to moneys available under this act.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.