Approved Ken Grotewiel
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Representative Ken Grotewiel at
Chairperson

3:35 a.m./p.m. on March 5, 1992 in room 526-S of the Capitol.

All members were present except:

Committee staff present:
Raney Gilliland, Principal Analyst, Legislative Research Department
Pat Mah, Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Lenore Olson, Committee Secretary

Conferees appearing before the committee:
Shaun McGrath - Kansas Natural Resource Council
Scott Andrews - Sierra Club
Don Low - Director, Utilities Division, KCC
Louis Stroup, Jr. - Kansas Municipal Utilities, Inc.
Hugh Taylor - Board of Public Utilities, Kansas City, KS
Mike Armstrong - Water District No. 1, Johnson County
Dennis Schwartz - Kansas Rural Water Association
Dick Pelton - Chairman, Water Utility Council, Kansas Section of
of American Water Works Association

Chairperson Grotewiel opened the hearing on HB 2983.

HB 2983 - An act concerning certain water utilities; requiring least-cost planning.

Representative Tom Thompson appeared before the Committee in support of HB 2983. He stated that this bill explores how to get the utilities and their customers to use less water, save money, and have less impact on the environment. (Attachment 1)

Shaun McGrath, Kansas Natural Resource Council, testified in support of HB 2983, stating that they support the concept of water utilities using least-cost planning in their operations.

Scott Andrews, Sierra Club, testified that they support the concept of HB 2983, but believe this bill as written needs a great deal of work. His recommendations are shown on (Attachment 2)

Don Low, Corporation Commission, testified on HB 2983, stating that they have no position on this bill, but have concerns about the appropriateness of giving the KCC the responsibility for overseeing such planning for all water utilities in the state - whether or not such entities are otherwise under the jurisdiction of the KCC. (Attachment 3)

Louis Stroup, Jr., Kansas Municipal Utilities, Inc., testified in opposition to HB 2983. They feel that the KCC does not have the necessary expertise in water management, and believe the ratepayer will be charged higher rates if the bill is passed. (Attachment 4)

Hugh Taylor, Board of Public Utilities, Kansas City, Kansas, testified in opposition to HB 2983, stating that this bill is unnecessary and contrary to the intent of other statutes to place the BPU under the jurisdiction of the KCC. They also believe the legislation is unnecessarily expensive, even for those utilities that would normally be governed by the KCC. (Attachment 5)

Mike Armstrong, Water District No. 1, Johnson County, testified in opposition to HB 2983. He said that this bill imposes another bureaucratic overlay where none is needed, places it with an administrative agency not designed to handle it, confuses the jurisdictional relationship among state agencies, and burdens ratepayers with wastful rate increases. (Attachment 6)

Dennis Schwartz, Kansas Rural Water Association, testified in opposition to HB 2983, suggesting that this bill impedes the authority of locally-elected officials to conduct functions for which they are responsible. (Attachment 7)

Dick Pelton, Kansas Section, American Water Works Association, testified in opposition to HB 2983. He stated that to place water utilities under the Corporation Commission would be contrary to the principle of home rule and remove the utility from local elected control. (Attachment 8)

Written testimony in opposition to HB 2983 was submitted by E.A. Mosher, League of Kansas Municipalities. (Attachment 9)

The Chair closed the hearing on HB 2983 and announced that there would be discussion and possible action on several bills.

HB 2888 - oil & gas; protection of water from pollution.

A motion was made by Representative Shore, seconded by Representative Glasscock, to pass HB 2888. The motion carried.

HB 2524 - Electric public utilities; requiring least-cost planning.

A motion was made by Representative Stephens, seconded by Representative McKechnie, to adopt the Sub. HB 2524. The motion carried.

A motion was made by Representative Patrick, seconded by Representative Lloyd, to table Sub. HB 2524. The motion failed.

A motion was made by Representative Lawrence, seconded by Representative Hendrix, to amend Sub. HB 2524 in the first paragraph on page 1, to strike the word "shall" and replace it with the word "may." The motion failed.

A motion was made by Representative Lawrence, seconded by Representative Gatlin , to amend Sub. HB 2524, on page 2, Subsection (f) regarding supply side management, to add the words "; and construction of new baseload generation capacity." The motion carried.

A motion was made by Representative Lawrence, seconded by Representative Corbin, to amend Sub. HB 2524 on page 3 in new Sec. 5, Subsections (a) & (b), to change the words "may" to "shall." The motion failed.

A motion was made by Representative Krehbiel, seconded by Representative Stephens, to remove natural gas utilities from Sub. 2524. The motion carried.

A motion was made by Representative Corbin, seconded by Representative Correll, to pass Sub. HB 2524 favorable as amended. The motion carried.

HB 3153 - Amending the Kansas Storage Tank Act.

A motion was made by Representative Rezac, seconded by Representative Lloyd, to amend HB 3153 to clarify that the bill is retroactive, but that payments can only be made to the individual who paid the deductible in the first place.

A substitute motion was made by Representative McKechnie, seconded by Representative Lawrence, to amend HB 3153 to specify that the payee is the record owner on a date specific. The motion carried.

A motion was made by Representative Gatlin, seconded by Representative McClure, to amend HB 3153 to set a cap of $100,000 as the highest deductible under the new system. The motion carried.

A motion was made by Representative McClure, seconded by Representative Gatlin, to offer Sub. HB 3153 which would include above ground tanks; and to include today's amendments to HB 3153. (Attachment 10)

A motion was made by Representative Shore, seconded by Representative Corbin, to recommend HB 3153 as amended favorable for passage. (Not the Sub. HB 3153). The motion carried. Representative Patrick requested to be recorded as voting "no."

The meeting adjourned at 5:25 p.m.

GUEST LIST

COMMITTEE: ENERGY & NATURAL RESOURCES DATE: 3/5/92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Louie Stroup	McPherson	Ks. Municipal Utilities
Don Low	KCC	
Carl Daugherty	Columbus	Empire District Electric
MIKE ARMSTRONG	OLATHE	WATER DIST #1
Burrod N. Johnson	MISSION KS	WTR DIST #1 of JoCo
Scott Andrews	Topeka	Sierra Club
Larry G. Hess	Topeka	Kan. Water Office
ELMER RONNEBAUM	SENECA	KANSAS RURAL WATER
Dennis F. Schwartz	Rt 1 Tecumseh Ks	Ks Rural Water Assoc
Eileen Kottel	W.D. #1 Johnson Co.	W.D. #1
Annabelle Simbaqueba	WD#1 JoCo Kansas	WD#1 of JoCo
Bill Anderson	Wat Dist #1 Jo Co.	
Dan Haas	Overland Park	KCPL
Jim Ludwig	TOPEKA	KPL GAS SERVICE
Dick Polton	Topeka	Kan. Section AWWA
Hugh Taylor	Kansas City	BPU
Ralph Wyss	Kansas City	WD#1
Terry Dwerall	~~109 SW 9th~~ 3rd Floor	Ks Water Office
Tim Knols	"	Ks Water Office
Jamie Schwartz	KN Energy	Topeka
[illegible]	[illegible]	Assoc of Ks [illegible]
Ion Day	TOPEKA	KCC
Steve Adams	Topeka	KDWP
Teresa Potter	"	People Nat. Gas
Alan Decker	"	CURB

GUEST LIST

COMMITTEE: ENERGY & NATURAL RESOURCES DATE:

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
JIM COOPER	ST LOUIS MO	QUIKTRIP
STEVE KEARNEY	TOPEKA	PETE McGILL
Lee Rolfs	Topeka	DWR - KSBA
Shawn McGrath	"	KNRC
PAUL Johnson	Topeka	PACK
Joe Lieber	Topeka	Ks. Corn Council
Charles Nicolay	Topeka	KOMA
Karl Mueldener	"	KDHE

TOM THOMPSON
REPRESENTATIVE, 24TH DISTRICT
JOHNSON COUNTY
5001 ROCK CREEK LANE
MISSION, KANSAS 66205
(913) 236-9161

STATE CAPITOL, ROOM 112-S
TOPEKA, KS 66612
(913) 296-7686

STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ENERGY AND NATURAL RESOURCES
LOCAL GOVERNMENTS
ELECTIONS

PROPONENT

HB 2983

Thank you Mr. Chair and members of the Energy & Natural Resources Committee for allowing me to testify on HB 2983 today.

HB 2983 may look and sound very familiar to you. I got the idea for the concepts found in this bill from other bills concerning demand side management that this committee recently investigated. These bills dealt with electric utilities. Certainly there are similarities and differences between water and electric utilities. Both are utilities that are monopolies that have peak usage periods during the summer and both of their products can be conserved and used more efficiently. Furthermore, they must both build facilities to make their product available and construct a distribution system to get their product to the consumer.

On the other hand, water utilities do not answer to stockholders requiring a dividend. Instead they only answer to the general public. Beyond this they must maintain themselves financially and keep bond ratings up. Energy utilities have some competitions at least in terms of the source of the energy they use. These being oil, natural gas, propane, coal, nuclear, solar, running water, geothermal, or wind. Water utilities essentially have no competition. There is no substitute for water.

As you read HB 2983 there are obvious problems with the bill that need to be changed before it would be acceptable even if you do agree with it conceptually. I am sure todays conferees will point these out as they address the various concepts proposed.

When we discussed least-cost planning before, we learned that it utilizes demand and supply management concepts. These are used when making plans for meeting the

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Attachment 1

needs of those using the product involved. Decreasing customer demand is used to decrease the need for developing new supplies or sources of supply. In the case of water it might mean encouraging conservation techniques like low flow plumbing to decrease the need for building new water processing plants if that is more cost effective.

With this bill I am not saying that water utilities do not use or encourage conservation. However, I do not believe they use conservation in their overall planning. The question this bill explores is how do we get the utilities and its customers to use less water, save money, and have less impact on the environment. The current system does not appear to have incentives for doing this. The free market forces only have an indirect influence on effeciency because of the utilities monopolistic nature.

One might say at this point, why should we use less water? If water were strictly sold in a free market system it would be interesting to see what it would really sell for on the world market. Certainly if the price were higher we would use it more efficiently. Perhaps this could be part of the plan.

I believe other reasons for using less water are obvious. The lines are being drawn today for the competition for water tomorrow. The lawsuit Kansas has with Colorado over the Arkansas River and requests for water transfers from one river basin to another illustrate this. Fifty years from now Dodge City could be half the size of Wichita. Wichita could be nearly the size of Kansas City, and Kansas City, who knows. Anyway, I'll be 62 years old then and it will be someone elses problem. Certainly the competition will be more keen than it is today.

Some other items I hope the conferees will address include who should review and approve least-cost plans. Perhaps the Kansas Water Authority is more appropriate than the Kansas Corporation Commission. What terms need to be defined more clearly or differently? Is there information that utilities need to protect as discussed in Sec. 2 (c)? What are some methods currently being used to decrease demand? Are least-cost planning methods already being used when quantifying future need? What water revenue adjustment mechanisms or alternatives are currently being used?

Once again I thank the committee and the conferees. I hope you look at this bill with an open mind and give it serious consideration.

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SIERRA CLUB

Kansas Chapter

Testimony to House Energy & Natural Resources

Planning for Water Conservation

The Kansas Chapter of the Sierra supports the concept of weighing supply and conservation options for water that is found in HB 2983. The bill as written, however, needs a great deal of work. A recurring theme today in resource management is the need to shift from supply oriented systems to using resources more efficiently. This approach is now being pursued in materials recycling, energy regulation and in water resources. HB 2983 follows an approach appropriate to energy resources, but water is dealt with by different regulatory bodies and in different methods.

We would suggest basing future water management decisions on a benefit/cost analysis of supply vs conservation options. This approach was included by this committee and the legislature last year in regard to the small multi-purpose lakes program. The same approach could be expanded to all water supply projects that are state funded and possibly to major water transfer proposals. Additionally, the Water Office must develop guidelines for real water conservation. At this time in Kansas "water conservation" usually means drought contingency plans for short-term emergencies, rather than actual increases in water use efficiency.

Real water conservation, in cities, would include:

1) Leak detection and repair programs.

2) Peak shaving programs.

3) Residential consumer education and incentives.

4) Recycling and Reuse in industry cooling and processing, and public landscape watering.

We would urge the members of this committee to keep these ideas in mind as you seek solutions to the state's water resources problems in future legislation.

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Attachment 2

Residential Water Use and Conservation

Outdoor: Xeriscaping programs encourage drought tolerant landscaping. Largely responsible for 27% reduction in per capita water use in Tucson, AZ.

Indoor: Water efficient technology can easily lower household use by 20%. Best available technology can lower use by 50%-70%.

Water savings also save energy costs (pumping, treating, heating) and lower need to build additional sewage treatment capacity.

Table 3-6. United States: Potential Water Savings with Available Water-Efficient Household Fixtures

Fixture	Water Use	Water Savings Over Conventional Fixtures
	(liters/use)	(percent)
Toilets		
Conventional	19	—
Common low-flush	13	32
Washdown	4	79
Air-assisted	2	89
Clothes Washers		
Conventional	140	—
Wash recycle	100	29
Front-loading	80	43
	(liters/minute)	
Showerheads		
Conventional	19	—
Common low-flow	11	42
Flow-limiting	7	63
Air-assisted	2	89
Faucets		
Conventional	12	—
Common low-flow	10	17
Flow-limiting	6	50

SOURCES: Figures for common low-flush and low-flow fixtures from Brown and Caldwell (Inc.), *Residential Water Conservation Projects* (Washington, D.C.: U.S. Department of Housing and Urban Development, 1984). All others from Robert L. Siegrist, "Minimum-Flow Plumbing Fixtures," *Journal of the American Water Works Association*, July 1983.

PRESENTATION BEFORE
THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
ON HB 2983

BY THE CORPORATION COMMISSION
DON LOW - DIRECTOR, UTILITIES DIVISION
MARCH 5, 1992

THE COMMISSION DOES NOT TAKE A POSITION ON THE UNDERLYING ISSUE RAISED BY THIS BILL CONCERNING THE NEED FOR LEAST COST PLANNING FOR WATER SUPPLIERS. HOWEVER, WE HAVE CONCERNS ABOUT THE APPROPRIATENESS OF GIVING THE KCC THE RESPONSIBILITY FOR OVERSEEING SUCH PLANNING FOR ALL WATER "UTILITIES" IN THE STATE - WHETHER OR NOT SUCH ENTITIES ARE OTHERWISE UNDER THE JURISDICTION OF THE KCC.

THE COMMISSION CURRENTLY HAS REGULATORY JURISDICTION OVER 9 WATER UTILITIES WITH APPROXIMATELY 1200 CUSTOMERS. WE DO NOT HAVE JURISDICTION OVER SINGLE-CITY OR MUNICIPAL WATER UTILITIES, RURAL WATER DISTRICTS AND SMALL NONPROFIT ENTITIES. CONSEQUENTLY, THE COMMISSION HAS INFREQUENT CASES INVOLVING WATER UTILITIES AND THOSE CASES NORMALLY FOCUS ONLY ON THE RATES CHARGED AND NOT SUPPLY OR CAPACITY PLANNING ISSUES. THE COMMISSION STAFF THEREFORE DOES NOT HAVE THE EXPERTISE CONCERNING WATER RESOURCE ISSUES WHICH OTHER AGENCIES, LIKE THE WATER AUTHORITY, HAVE.

WE HAVE NOT DETERMINED HOW MANY ENTITIES WOULD BE REQUIRED TO SUBMIT LEAST COST PLANS TO THE KCC UNDER THIS BILL BUT PRESUME IT WOULD BE IN THE HUNDREDS. CONSEQUENTLY, IMPLEMENTATION OF THE BILL WOULD REQUIRE THE ADDITION OF SUBSTANTIALLY MORE STAFF WITH EXPERTISE IN BOTH SUPPLY AND DEMAND SIDE PLANNING OF WATER USE.

THE LARGER CONCERN WITH THIS BILL, HOWEVER, IS WHETHER THE KCC COULD EFFECTIVELY IMPLEMENT LEAST COST PLANNING FOR WATER UTILITIES. AS THIS COMMITTEE KNOWS, THE KCC HAS INITIATED A PROCEEDING FOR INTEGRATED RESOURCE PLANNING BY GAS AND ELECTRIC COMPANIES. IMPLEMENTATION OF THESE PLANS CAN BE EFFECTIVELY OVERSEEN BY THE KCC BECAUSE IT HAS AUTHORITY OVER BOTH THE CONSTRUCTION OF ADDITIONAL GENERATING CAPACITY AND THE RATE IMPLICATIONS OF BOTH SUPPLY AND DEMAND-SIDE DECISIONS MADE BY GAS AND ELECTRIC UTILITIES. THIS IS NOT TRUE OF THE LEAST COST PLANS ENVISIONED BY THIS BILL. THE KCC WOULD NO AUTHORITY CONCERNING ANY RATE IMPLICATIONS OF THE PLANS OF NON-JURISDICTIONAL WATER UTILITIES AND OTHER STATE AGENCIES HAVE AUTHORITY OVER THEIR SOURCES OF WATER SUPPLY. THUS, THE KCC WOULD BE IN THE POSITION OF DICTATING INTEGRATED PLANS WITHOUT HAVING AUTHORITY OVER IMPLEMENTATION OR RESPONSIBILITY FOR THEIR CONSEQUENCES.

FINALLY, THE KCC WOULD HAVE THE SAME CONCERNS ABOUT SOME OF THE DETAILED MANDATES IN THE BILL AS IT PREVIOUSLY EXPRESSED WITH REGARD TO THE BILL ON GAS AND ELECTRIC LEAST COST PLANNING.

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Attachment 3

Comments on HOUSE BILL 2983
March 5, 1992
House Energy & Natural Resources Committee

Mr. Chairman, members of the committee, I am Louis Stroup, Jr., executive director of Kansas Municipal Utilities, Inc., a statewide organization of cities that operate municipal water, gas and electric systems.

Our membership is strongly opposed to this bill for many reasons, including:

(1) The measure would place 434* municipal water cities, plus other entities such as Johnson County Water District No. 1, under the jurisidiction of the Kansas Corporation for rate approval and water supply planning purposes. This would:

a) Take away the authority of locally-elected officials to perform the functions for which they were elected and are responsible for.

b) Add another layer of bureaucracy and an additional layer of costs on the cities and their ratepayers.

c) Place an extremely heavy workload on the KCC staff.

(2) Many of the cities can not afford the planning costs required by the bill nor the costs associated with rate cases before the KCC. As an example, the gross 1990 water revenues for 10 cities is shown below:

Scandia	$21,022
Maple Hill	$22,779
Mount Hope	$26,523
Garden Plain	$27,446
Pretty Prairie	$34,059
Delphos	$34,503
Cunningham	$35,139
Holyrood	$36,227
Galva	$36,598
Glen Elder	$58,403

Studies required by the bill that address "quantifying the environmental and societal impacts and economic costs of each source of water supply..." cost many, many times the amount of the annual water revenues for those cities and also for most of the other 434 municipal systems. Such increases in costs would have a tremendous negative impact on the rates of most municipal water systems and lead to unnecessary higher rates for water users.

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(3) The bill requires plans to be developed by three parties: One by the utility, a second by the KCC and a third by CURB. This duplication is a waste of time, effort and funds.

(4) It is our opinion that:

a) The KCC does not have the necessary expertise in water management.

b) The existing state agencies responsible for water planning, development, conservation and pollution protection -- the Kansas Department of Health & Environment, Kansas Water Office, Department of Agriculture and the Division of Water Resources are doing an effective job and these efforts need not be duplicated by the KCC and

c) Locally-elected officials are in the best position to know what their own community needs are and how to best address those needs.

A key question is "what does the water customer, the ratepayer, get from this bill?" And the answer is simple -- higher rates.

* From "Utility Systems Serving Kansas Cities" published by League of Kansas Municipalities July 15, 1986.

TESTIMONY OF HUGH J. TAYLOR
OF THE BOARD OF PUBLIC UTILITIES
IN OPPOSITION TO HOUSE BILL NO. 2983

My name is Hugh J. Taylor. I am Manager of Rates and Regulations for the Board of Public Utilities of Kansas City, Kansas. I am here on behalf of the Board in opposition to House Bill No. 2983, concerning required least cost planning for water utilities. The Board is strongly opposed to this legislation for the following reasons.

First, by virtue of the definition of a water utility in the proposed statute, the Board of Public Utilities of Kansas City would be required to file and have approved by the commission a least cost resource plan. This legislation would in effect place the Board of Public Utilities, a municipal water operation, under the jurisdiction of the KCC, which is a major change in the statutes and control over municipally owned utilities. To assist in understanding this statement, it should be known that the Board of Public Utilities, as do many other utilities, uses its planning documents to establish its revenue requirements and hence its level of rates. Having to acquire KCC approval for its plans thus places the approval of its revenue requirements, and hence its rates, under KCC jurisdiction.

The second objection is the additional expense this legislation would cause. It proposes that two other, three in all, least cost resource plans be developed for comparative purposes, one by the

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Utility, one by the commission, and one by the Citizens' Utility Ratepayer Board. Planning, and particularly least cost planning, done correctly for a utility of our size is expensive and time consuming. It requires many man years of effort to determine and evaluate system condition, system needs, market requirements, least cost funding and rate options, new technologies, environmental impact, economic costs and societal impact, and a number of other elements. A least cost resource plan for a utility the size of BPU can cost over a million dollars and require many disciplines, such as economists, engineers, statisticians, market researchers, along with the conventional utility staff. To require three least cost plans is unnecessary and to impose these costs on the ratepayer can mean unduly high rates; rates which are far higher than the savings resulting from the development and comparison of three plans.

The final objection is the inclusion of the Citizens' Utility Ratepayer Board as an oversight agency funded by revenues from a municipal utility. The Board of Public Utilities has as its mission low rates and quality service. It is governed by the public through its elected Board, and has traditionally involved the community in its planning processes. The community is our rate board. As far as least cost planning involving demand-side management concepts, the Board of Public Utilities was the first municipal utility in the nation to undertake such a process. This process at BPU was started in 1987.

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In summary, we believe it unnecessary and contrary to the intent of other statutes to place the BPU under the jurisdiction of the KCC. We further believe the legislation is unnecessarily expensive, even for those utilities that would normally be governed by the KCC.

Thank you for your time and consideration in this matter. On behalf of the Board, I ask for your denial of this legislation.

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TESTIMONY TO THE HOUSE COMMITTEE
ON ENERGY AND NATURAL RESOURCES

March 5, 1992

Mr. Chairman and representatives:

My name is Mike Armstrong and I'm an attorney from Johnson County. I am appearing today on behalf of Water District No. 1 of Johnson County. This utility supplies water to approximately 289,000 people in 17 cities throughout Johnson County as well as a small portion of Miami County. I am here to speak in opposition to House Bill 2983.

The draft legislation which is now before you would have a negative effect on Water District No. 1 and all other water utilities throughout the State. Although I can only speak for this water district, I can assure you that the practices encouraged by this Bill are already utilized, and we see no benefit in requiring the labor and expense of compiling these studies for a periodical review by the State Corporation Commission. The process of submitting a 20 year long term plan to the KCC every three years would duplicate many practices currently performed by Water District No. 1 and would not only be repetitious and confusing, but also a senseless waste of money and other resources.

I understand this Bill closely resembles House Bill 2524 which requires least-cost plans to be submitted by electrical utilities. House Bill 2524 may be a very appropriate review

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mechanism for electrical utilities since they are already regulated by the KCC, however it does not make sense to extend this oversight to water utilities.

House Bill 2983 fails to make the key distinction between these two types of utilities-most water utilities like Water District No. 1 are operated by publicly elected officials and are non-profit, quasi-municipal entities. These public water utilities serve the public, for the public benefit, in the manner most appropriate for that particular region of the State. It is unnecessary to add another level of bureaucratic review on their policies. Water District No. 1 is operated by a seven member board of directors who are elected by the District's customers. This Board is responsible for making all policy decisions including future planning and water rates, and they are directly accountable to those customers.

Because of the complex requirements of obtaining water rights, design, engineering and building treatment facilities, water utilities must anticipate several year's lead time to increase production for future water needs. This requires considerable long term planning and Water District No. 1 currently accomplishes this planning by engaging Black & Veatch and other consulting firms to assist in the formulation of the District's master plans.

In addition to the obvious internal planning, numerous state agencies currently regulate the use of the state's water

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resources, including the Division of Water Resources, the Kansas Water Office and the Kansas Department of Health & Environment. Each water utility must obtain permission to use water sources from the Division of Water Resources, and is required to file extensive water use reports and comply with various other DWR regulations. The Kansas Water Office also retains substantial oversight of water utilities, including requiring utilities to adopt conservation plans and practices consistent with guidelines promulgated by that agency. The Water Office also monitors the utility's per capita water usage and unsold water percentages very closely. KDHE administers both federal and state laws regarding water quality and water treatment to ensure the utilities provide quality drinking water with the least negative impact. Thus, there is already adequate regulation in place to assure utilities utilize the most appropriate water sources in the most efficient manner possible.

This Bill suggests that utilities should compile a comprehensive plan including all of these same considerations for review by the KCC. While the KCC has considerable experience regulating gas and electrical utilities, this body has little if any expertise in this subject matter and no direct accountability to the utility's customers. I would submit to you that the officials making the policy decisions for the water utility and the various state agencies already in place are more than adequate to assure sufficient long term planning, and efficient

use of the State's water resources.

Finally I would submit to you that if there were any deficiencies in the State's water resource planning, they should be addressed by the Kansas Water Authority or the Kansas Water Office through the State Water Plan. That agency was specifically established to review plans for the development, management and use of the water resources of this state and would be a more appropriate method to address any deficiencies which are perceived to exist in the current water management scheme.

House Bill 2983 in effect imposes another bureaucratic overlay where none is needed, places it with an administrative agency not designed to handle it, confuses the jurisdictional relationship among state agencies, and burdens ratepayers with wasteful rate increases.

6-4

KANSAS
RURAL
WATER
association
Quality water, quality life

P.O. Box 226 • Seneca, KS 66538 • 913/336-3760 • FAX 913/336-2751

TESTIMONY IN OPPOSITION OF HOUSE BILL 2983
BEFORE THE HOUSE ENERGY & NATURAL RESOURCES COMMITTEE
March 5, 1992

The Kansas Rural Water Association opposes House Bill 2983 and its requirements that all water utilities provide least-cost resource plans to the Kansas Corporation Commission.

According to the Kansas Department of Health & Environment, there are 1127 water utilities currently performing the requirements for monitoring water quality standards. HB 2983 requires each of these utilities to file a 20-year least-cost resource plan on or before July 1, 1993 and every third year thereafter. It is impractical to assume that each of these systems has the capabilities or the resources to fulfill such requirements, must less provide statements quantifying environmental and societal impacts of options concerning various water supply sources. We are confident the Kansas Corporation Commission would find the responsibilities in reviewing and approving each of these plans insurmountable.

Water utility planning is now provided through local autonomy. Numerous state water-related agencies and federal agencies provide oversight on various aspects of these utilities such as water rights, water quality and assistance with funding. These include the Kansas Department of Health & Environment, the Division of Water Resources of the State Board of Agriculture, the Kansas Water Office, the Kansas Department of Commerce, and the Farmers Home Administration -- soon to be changed to the Rural Development Administration. Others such as the Bureau of Indian Affairs and Indian Health Service also are involved in some projects. EPA SuperFund is involved in several projects in Kansas.

The intent of HB 2983 is not clear. Generally, rural water districts and cities are doing a good job in meeting the needs of their communities. Water utilities have resources available to them to obtain additional on-site assistance. Various organizations, including the Kansas Rural Water Association, offer numerous training programs aimed at improving the operation, management and maintenance of water utilities. Our Association also provides direct on-site assistance to water utilities such as leak detection and water conservation or other operation reviews. Based upon our familiarity with hundreds of specific systems across the state, we suggest that HB 2983 impedes the authority of locally-elected officials to conduct functions for which they are responsible. Because of the uniqueness of each water utility, we believe HB 2983 would place requirements on water utilities which would be impossible to fulfill.

Respectfully submitted,

Dennis F. Schwartz

Dennis F. Schwartz
President, Board of Directors
Kansas Rural Water Association

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Attachment 7

HOUSE BILL 2983
TESTIMONY - HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
MARCH 5, 1992

Chairman Grotewiel and committee members thank you for the opportunity to present testimony on House Bill 2983.

I am Dick Pelton, Chairman of the Water Utility Council of the Kansas Section American Water Works Association. Water utilities in Kansas support and are currently practicing long-range planning and conservation.

The Kansas Department of Health and Environment, the Kansas Water Office and the Division of Water Resources require water utilities to submit and implement long-range source plans and water conservation plans as part of the state's permitting, regulating, and administrating process.

To further require water utilities to comply with House Bill 2953 and submit plans to the Corporation Commission would be redundant and impose a non-beneficial expense on the rate payer.

Most water utilities in Kansas are administered by local elected municipal governments or boards and are operated not for profit, but at cost for the rate payers. To place water utilities under the Corporation Commission would be contrary to the principle of home rule and remove the utility from local elected control.

For water utilities the issue of quality and quantity for the protection of their customers' health and safety must be the primary objective. To require water utilities to function under least-cost resource planning will only divert limited resources from our primary goal.

In summary, the Kansas Section American Water Works Association supports long-rang planning and conservation policies and feels the current state/local partnership of administrating water utilities is preferable and superior to the provisions of House Bill 2983.

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Attachment 8

THE LEAGUE OF KANSAS MUNICIPALITIES

AN INSTRUMENTALITY OF KANSAS CITIES 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

Municipal Legislative Testimony

TO: House Committee on Energy and Natural Resources
FROM: E.A. Mosher, Research Counsel, League of Kansas Municipalities
RE: HB 2983--Least-cost Planning for Municipal Water Systems
DATE: March 5, 1992

On behalf of the League and its member cities, I appear in opposition to HB 2983, which would mandate a "least-cost planning" process, under the jurisdiction of the Kansas Corporation Commission, on all municipal water systems in Kansas. Our convention-adopted "Statement of Municipal Policy" provides: "We believe the operation and control of municipally-owned utilities should be subject to local control. We strongly oppose any state legislative or administrative action subjecting such municipal utilities to state regulation."

In addition to our opposition to the bill as a matter of principle, we think a state-mandated imposition of a least-cost planning process would be a very expensive, and time-consuming process, requiring the employment of outside consultants. We also question whether there would be any significant public benefits from this elaborate process. We have not seen the fiscal note on the cost impact to the state and the KCC, but observe that just the process of filing and reviewing the plans of over 500 municipal water systems imposes a substantial burden. We recommend the bill be killed.

written only

3/5/92
House E&NR
Attachment 9

To: Representative John McClure

From: Mary Torrence, Assistant Revisor of Statutes

Date: March 5, 1992

Re: Proposed Substitute for House Bill No. 3153

Summary of Proposed Substitute for House Bill No. 3153

Section 1. Definitions (pages 1-5)

(a)(2) & (z): Clarifies that a tank in a basement or other underground area is treated as an aboveground tank; current exemption in section 2 on page 6 is stricken.

(b) & (bb): Adds definitions of "aboveground fund" and "underground fund" to distinguish the two different funds for aboveground tanks and underground tanks.

(k)(2)(C) & (D): Adds to definition of "owner" a person who owns an aboveground storage tank on or after July 1, 1992, or who owned an aboveground tank at the time use of the tank was discontinued before July 1, 1992.

(t): Defines "responsible party" to include tank owners or operators or a person who owns land where a tank is located. This is for the purpose of allowing the land owner access to the fund even though not technically an owner or operator.

Section 2. Exemptions from act (pages 5-6)

old (h): Deletes exemption of tanks in underground areas.

(j): Exempts pipeline terminals.

(k): Exempts aboveground tanks smaller than 660 gallons; but they can access the fund under section 15(f)(2) on page 34.

Section 3. Secretary's powers (pages 6-9)

Makes a number of amendments to include aboveground tanks and distinguish between the effective date of the original act and the effective date of this bill.

3/6/92
House E+NR

Attachment 10

(a)(10): Provides for registration, permit and other fees for aboveground tanks and provides that all fees go into a new storage tank fee fund.

Section 4. Storage tank fee fund (pages 9-11)

Establishes a fund to be used in enforcement of tank standards and registration requirements, release prevention and administration of the act.

Section 5. Permits (pages 11-12)

Clarifies that a permit is needed to install a storage tank and extends permit provisions to aboveground tanks.

Section 6. Records and inspections (pages 12-13)

Extends requirements to aboveground tanks.

Section 7. Unlawful acts (pages 13-14)

Extends provisions to aboveground tanks; deletes element of knowledge from (a)(1).

Section 8. Civil penalties (pages 14-17)

Extends provisions to aboveground tanks.

Section 9. Underground fund (pages 17-20)

Maintains current fund for reimbursement of corrective costs incurred in response to leaking underground petroleum tanks. Updates fund investment language.

Section 10. Aboveground fund (pages 20-23)

Creates new fund for reimbursement of corrective costs incurred in response to leaking aboveground petroleum tanks.

Section 11. Liability of owner or operator (page 23)

Extends to aboveground tanks except with regard to financial responsibility, which is not required under federal law for aboveground tanks.

Section 12. Advisory board (pages 23-24)

Provides for board to advise secretary with regard to both aboveground and underground funds.

Section 13. Environmental assurance fee (pages 24-26)

Provides for revenues from the fee to be collected and placed

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in the aboveground fund beginning July 1, 1992. If at any time the underground fund drops below $2 million, revenues will be placed in the underground fund instead. Otherwise, the revenues are placed in the aboveground fund until it reaches $10 million. If revenues are switched to the underground fund before the aboveground fund reaches $10 million, the revenues will again be placed in the aboveground fund when the underground fund reaches $5 million.

Section 14. Corrective action costs (pages 26-29)

Makes applicable to both aboveground and underground tanks.

Section 15. Eligibility for reimbursement (pages 29-36)

Clarifies that all responsible parties may be eligible, not just owners and operators and extends to aboveground petroleum tanks.

(b)(1): Provides for same deductibles as House Bill No. 3153 ($3000 plus $500 per tank; no $100,000 deductible for self-insurers).

(b)(12) & (13): Maintains exclusion of petroleum producers and refiners for both aboveground and underground tanks.

(c): As in House Bill No. 3153, provides that each state agency has a separate deductible.

(f)(2): Covers those small aboveground tanks otherwise excluded from the act under section 2.

(g): Extends coverage to a responsible party without any deductibles if the party has not used the tank and files a corrective action plan before a specified deadline, acquired the tank before December 22, 1988, or inherited the tank.

(h): As in House Bill No. 3153, allows a responsible party to choose between the old or new deductible.

Section 16. Aboveground tanks, retroactive coverage (pages 36-38)

Allows reimbursement of aboveground tank corrective action costs incurred before July 1, 1992, subject to specified limitations on the individual and total amounts. Provides that corrective action costs incurred after July 1, 1992, are reimbursable even if the leak was discovered before that date.

Section 17. Underground tanks, retroactive coverage (pages 38-40)

Clarifies that underground tank corrective action costs incurred after April 1, 1990, are likewise reimbursable even if

the leak was discovered before that date.

Section 18. Maximum fund liability (pages 40-42)

(b): As in House Bill No. 3153, maintains the current $1 million total cap with regard to underground tanks for self-insurers except for coops.

(c): Places same caps on aboveground tank liability as for underground tanks but does not have the $1 million total cap for self-insurers because federal law doesn't apply self-insurance standards to aboveground tanks.

Section 19. Annual report on fund (page 42)

Makes conforming amendments

Section 20. Sunset provision (pages 42)

Makes conforming amendments

Section 21. Third party liability coverage (pages 42-47)

Makes conforming amendments; third party liability coverage is required by federal law for only underground tanks.

Proposed Substitute for HOUSE BILL NO. 3153

By Committee on Energy and Natural Resources

AN ACT amending and supplementing the Kansas storage tank act; amending K.S.A. 1991 Supp. 65-34,102, 65-34,103, 65-34,105, 65-34,106, 65-34,108, 65-34,109, 65-34,113, 65-34,114, 65-34,115, 65-34,116, 65-34,117, 65-34,118, 65-34,119, 65-34,119a, 65-34,120, 65-34,121, 65-34,123 and 65-34,126 and repealing the existing sections.

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

Section 1. K.S.A. 1991 Supp. 65-34,102 is hereby amended to read as follows: 65-34,102. As used in ~~K.S.A. 1989 Supp. 65-34,101 through 65-34,124~~ the Kansas storage tank act:

(a) "Aboveground storage tank" means:

(1) Any storage tank in which greater than 90% of the tank volume, including volume of the piping, is not below the surface of the ground; or

(2) any storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

(b) "Aboveground fund" means the aboveground petroleum storage tank release trust fund.

(c) "Board" means the petroleum storage tank release compensation advisory board~~,~~.

~~(c)~~ (d) "Department" means the Kansas department of health and environment~~,~~.

~~(d)~~ (e) "Facility" means all contiguous land, structures and other appurtenances and improvements on the land used in connection with one or more storage tanks~~,~~.

~~(e)~~ (f) "Federal act" means the solid waste disposal act, 42 U.S.C. sections 3152 et seq., as amended, particularly by the

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hazardous and solid waste amendments of 1984, P.L. 98-616, 42 U.S.C. sections 6991 et seq., as amended by P.L. 99-499, 1986, and rules and regulations adopted pursuant to such federal laws and in effect on the effective date of this act~~,~~.

~~(f)~~ (g) "Financial responsibility" means insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the secretary to provide for taking corrective action, including cleanup and restoration of any damage to the land, air or waters of the state, and compensating third parties for cleanup, bodily injury or property damage resulting from a sudden or nonsudden release of a regulated substance arising from the construction, relining, ownership or operation of an underground storage tank and in the amount specified in the federal act~~,~~.

~~(g)--"fund"-means-the-petroleum-storage--tank--release--trust fund,~~

(h) "Guarantor" means any person, other than an owner or operator, who provides evidence of financial responsibility for an owner or operator~~,~~.

(i) "Operator" means any person in control of or having responsibility for the daily operation of a storage tank, but such term shall not include a person whose only responsibility regarding such storage tank is filling such tank with a regulated substance and who does not dispense or have control of the dispensing of regulated substances from the storage tank~~,~~.

(j) "Own" means to hold title to or possess an interest in a storage tank or the regulated substance in a storage tank~~,~~.

(k) (1) "Owner" means any person who: (A) Is or was the owner of any underground storage tank which was in use on November 8, 1984, or brought into use subsequent to that date~~,~~ ~~and-it-also-means-any-person-who,~~; (B) in the case of ~~a~~ an underground storage tank in use prior to November 8, 1984, owned such tank immediately prior to the discontinuation of its use; (C) is or was the owner of any aboveground storage tank which was

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in use on July 1, 1992, or brought into use subsequent to that date; or (D) in the case of an aboveground storage tank in use prior to July 1, 1992, owned such tank immediately prior to the discontinuation of its use.

~~Such term~~ (2) Owner does not include: ~~(1)~~ (A) A person who holds an interest in a petroleum storage tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the storage tank; and ~~(2)~~ (B) any city or county which obtains a storage tank or regulated substance as a result of tax foreclosure proceedings~~;~~.

(l) "Person" means an individual, trust, firm, joint venture, consortium, joint-stock company, corporation, partnership, association, state, interstate body, municipality, commission, political subdivision or any agency, board, department or bureau of this state or of any other state or of the United States government~~;~~.

(m) "Petroleum" means petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pound per square inch absolute), including but not limited to, gasoline, gasohol, diesel fuel, fuel oils and kerosene~~;~~.

(n) "Petroleum product" means petroleum other than crude oil~~;~~.

(o) "Petroleum storage tank" means any storage tank used to contain an accumulation of petroleum~~;~~.

(p) "Regulated substance" means petroleum or any element, compound, mixture, solution or substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 of the United States as in effect on January 1, 1989, but not if regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Secs. 6921 through 6939b), as in effect on January 1, 1989~~;~~.

(q) "Release" means any spilling, leaking, emitting,

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discharging, escaping, leaching or disposing from a storage tank into groundwater, surface water or soils~~;~~.

(r) "Removal" means the process of removing ~~and~~ or disposing of a storage tank, no longer in service, and also shall mean the process of abandoning such tank, in place~~;~~.

(s) "Repair" means modification or correction of a storage tank through such means as relining, replacement of piping, valves, fillpipes, vents and liquid level monitoring systems, and the maintenance and inspection of the efficacy of cathodic protection devices, but the term does not include the process of conducting a tightness test to establish the integrity of a tank~~;~~.

(t) "Responsible party" means an owner or operator of any petroleum storage tank or any person who owns property where any petroleum storage tank is located.

(u) "Secretary" means the secretary of health and environment~~;~~.

~~(u)~~ (v) "Storage tank" means any one or combination of tanks used to contain an accumulation of regulated substances, the associated piping and ancillary equipment and the containment system~~;~~.

~~(v)~~ (w) "Tank" means a stationary device designed to contain an accumulation of substances and constructed of non-earthen materials such as concrete, steel or plastic, that provide structural support~~;~~.

~~(w)~~ (x) "Terminal" means a bulk storage facility for storing petroleum supplied by pipeline or marine vessel~~;~~.

~~(x)~~ (y) "Trade secret" means, but is not limited to, any customer lists, any formula, compound, production data or compilation of information which is not patented and which is known only to certain individuals within a commercial concern using it to fabricate, produce or compound an article of trade, or any service having commercial value, which gives its user an opportunity to obtain a business advantage over competitors who

do not know or use it~~;~~.

~~(y)~~ (z) "Underground storage tank" means any storage tank in which 10% or more of the tank volume, including volume of the piping, is below the surface of the ground~~;~~. Underground storage tank does not include any storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

~~(z)~~ (aa) "Underground storage tank contractor" or "contractor" means a business which holds itself out as being qualified to install, repair or remove underground storage tanks~~; and~~.

(bb) "Underground fund" means the underground petroleum storage tank release trust fund.

(cc) "Underground storage tank installer" or "installer" means an individual who has an ownership interest or exercises a management or supervisory position with an underground storage tank contractor. The term shall include the crew chief, expediter, engineer, supervisor, leadman or foreman in charge of a tank installation project.

Sec. 2. K.S.A. 1991 Supp. 65-34,103 is hereby amended to read as follows: 65-34,103. Except as provided in K.S.A. ~~1989~~ 1991 Supp. 65-34,119~~; K.S.A. 1989 Supp. 65-34,101 through 65-34,124~~ and amendments thereto, the Kansas storage tank act shall not apply to:

(a) Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) tanks used for storing heating oil for consumptive use on a single family residential premise where stored;

(c) a pipeline facility, including gathering lines, regulated under:

(1) The natural gas pipeline safety act of 1968; and

(2) the hazardous liquid pipeline safety act of 1979; or

(3) state laws relating to intrastate pipelines comparable

to the provisions of law referred to in subsections (c)(1) and (2);

(d) surface impoundments, pits, ponds, septic tanks or lagoons;

(e) storm water or waste water collection systems;

(f) flow-through process tanks;

(g) liquid traps, storage tanks or associated gathering lines directly related to oil or gas production and gathering operations;

~~(h) storage tanks situated in an underground area, such as a basement, cellar, mine working, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor;~~

~~(i)~~ (h) aboveground storage tanks of agricultural materials regulated by the state board of agriculture; ~~and~~

~~(j)~~ (i) aboveground storage tanks located at a petroleum refining facility;

(j) pipeline terminals; and

(k) aboveground tanks of less than 660 gallons capacity.

Sec. 3. K.S.A. 1991 Supp. 65-34,105 is hereby amended to read as follows: 65-34,105. (a) The secretary is authorized and directed to adopt rules and regulations necessary to administer and enforce the provisions of this act. Any rules and regulations so adopted shall be reasonably necessary to preserve, protect and maintain the waters and other natural resources of this state, and reasonably necessary to provide for the prompt investigation and cleanup of sites contaminated by a release from a storage tank. In addition, any rules and regulations or portions thereof which pertain to underground storage tanks or the owners and operators thereof shall be adopted for the purpose of enabling the secretary and the department to implement the federal act, and such rules and regulations so adopted shall be consistent with the federal act. Consistent with these purposes, the secretary shall adopt rules and regulations:

(1) Establishing performance standards for underground

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storage tanks first brought into use on or after ~~the effective date of this act~~ May 18, 1989. The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection and product compatibility standards;

(2) establishing performance standards for aboveground storage tanks brought into use after ~~the effective date of this act~~ May 18, 1989. The performance standards for new aboveground storage tanks shall include, but are not limited to, design, construction, installation, release detection and product compatibility standards;

(3) establishing performance standards for the inground repair of underground storage tanks. The performance standards shall include, but are not limited to, specifying under what circumstances an underground storage tank may be repaired and specifying design, construction, installation, release detection, product compatibility standards and warranty;

(4) establishing performance standards for maintaining spill and overfill equipment, leak detection systems and comparable systems or methods designed to prevent or identify releases. In addition, the secretary shall establish standards for maintaining records and reporting leak detection monitoring, inventory control and tank testing or comparable systems;

(5) establishing requirements for reporting a release and for reporting and taking corrective action in response to a release;

(6) establishing requirements for maintaining evidence of financial responsibility to be met by owners and operators of underground storage tanks;

(7) establishing requirements for the closure of ~~underground~~ storage tanks including the removal and disposal of ~~underground~~ storage tanks and regulated substance residues contained therein to prevent future releases of regulated substances into the environment;

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(8) for the approval of tank tightness testing methods, including determination of the qualifications of persons performing or offering to perform such testing;

(9) establishing site selection and clean-up criteria regarding corrective actions related to a release ~~and--which,~~ which criteria address the following: The physical and chemical characteristics of the released substance, including toxicity, persistence and potential for migration; the hydrogeologic characteristics of the release site and the surrounding land; the proximity, quality and current and future uses of groundwater; an exposure assessment; the proximity, quality and current and future use of surface water; and the level of the released substance allowed to remain on the facility following cleanup;

(10) prescribing fees for the following with regard to ~~underground~~ storage tanks: Registration, issuance of permits, approval of plans for new installations and conducting of inspections. The ~~total--amount--of--fees--shall~~ fees shall be established in such amounts that revenue from such fees does not exceed the amount of revenue required for the ~~proper administration--of--the--provisions--of--this--act~~ the purposes provided by subsection (b) of section 4. All fees shall be deposited in the ~~state-general~~ storage tank fee fund;

(11) for determining the qualifications, adequacy of performance and financial responsibility of persons desiring to be licensed as underground storage tank installers or contractors. In adopting rules and regulations, the secretary may specify classes of specialized activities, such as the installation of corrosion protection devices or inground relining of underground storage tanks, and may require persons wishing to engage in such activities to demonstrate additional qualifications to perform these services;

(12) prescribing fees for the issuance of licenses to underground storage tank installers and contractors. The fees shall be established in such amounts that revenue from such fees

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does not exceed the amount of revenue determined by the secretary to be required for administration of the provisions of K.S.A. ~~1989~~ 1991 Supp. 65-34,110 and amendments thereto; and

(13) adopting schedules requiring the retrofitting of underground storage tanks in existence on ~~the effective date of this act~~ May 18, 1989, and aboveground storage tanks in existence on July 1, 1992, and for the retirement from service of underground storage tanks placed in service prior to ~~the effective date of this act~~ May 18, 1989, and aboveground storage tanks placed in service prior to July 1, 1992. Such schedules shall be based on the age and location of the storage tank and the type of substance stored. Such retrofitting shall include secondary containment, corrosion protection, linings, leak detection equipment and spill and overfill equipment.

(b) In adopting rules and regulations under this section, the secretary shall take notice of rules and regulations pertaining to fire prevention and safety adopted by the state fire marshal pursuant to subsection (a)(1) of K.S.A. 31-133, and amendments thereto.

(c) Nothing in this section shall interfere with the right of a city or county having authority to adopt a building or fire code from imposing requirements more stringent than those adopted by the secretary pursuant to subsections (a)(1), (2), (3), (7) and (13), or affect the exercise of powers by cities, counties and townships regarding the location of storage tanks and the visual compatibility of above ground storage tanks with surrounding property.

New Sec. 4. (a) There is hereby established as a segregated fund in the state treasury the storage tank fee fund. Revenue from the following sources shall be deposited in the state treasury and credited to the fund:

(1) Moneys collected from fees for registration of storage tanks, issuance of storage tank permits, approval of plans for new storage tank installations and conducting of storage tank

inspections;

(2) any moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for the purposes of the fund; and

(3) interest attributable to investment of moneys in the fund.

(b) Moneys in the storage tank fee fund shall be expended only for:

(1) Enforcement of storage tank performance standards and registration requirements;

(2) programs intended to prevent releases from storage tanks; and

(3) administration of the provisions of the Kansas storage tank act.

(c) On or before the 10th day of the month following the month in which moneys are first credited to the storage tank fee fund, and monthly thereafter on or before the 10th day of the month, the director of accounts and reports shall transfer from the state general fund to the storage tank fee fund, the amount of money certified by the pooled money investment board in accordance with this subsection. Prior to the 10th day of the month following the month in which moneys are first credited to the storage tank fee fund, and monthly thereafter prior to the 10th day of the month, the pooled money investment board shall certify to the director of accounts and reports the amount of money equal to the proportionate amount of all the interest credited to the state general fund for the preceding month, pursuant to K.S.A. 75-4210a and amendments thereto, that is attributable to moneys in the storage tank fee fund. Such amount of money shall be determined by the pooled money investment board based on: (A) The average daily balance of moneys in the storage tank fee fund during the preceding month as certified to the board by the director of accounts and reports and (B) the average interest rate on time deposit, open accounts for that period as

determined under K.S.A. 75-4212 and amendments thereto. On or before the fifth day of the month following the month in which moneys are first credited to the storage tank fee fund, and monthly thereafter on or before the fifth day of the month, the director of accounts and reports shall certify to the pooled money investment board the average daily balance of moneys in the storage tank fee fund during the preceding month.

(d) All expenditures from the storage tank 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 secretary for the purposes set forth in this section.

(e) This section shall be part of and supplemental to the Kansas storage tank act.

Sec. 5. K.S.A. 1991 Supp. 65-34,106 is hereby amended to read as follows: 65-34,106. (a) ~~On and after the effective date of this act,~~ No person shall construct, install, modify or operate ~~an underground~~ a storage tank unless a permit or other approval is obtained from the secretary. Applications for permits shall include proof that the required performance standards will be met and applications for underground storage tank permits shall include evidence of financial responsibility. For purposes of administering this section, any underground storage tank registered with the department on ~~the effective date of this act~~ May 18, 1989, and any above ground storage tank registered with the department on July 1, 1992, shall be deemed to be a permitted ~~underground~~ storage tank so long as the owner or operator shall comply with all applicable provisions of this act.

(b) Permits may be transferred upon acceptance of the permit obligations by the person who is to assume the ownership or operational responsibility of the ~~underground~~ storage tank from the previous owner or operator. The department shall furnish a transfer of permit form providing for acceptance of the permit obligations. A transfer of permit form shall be submitted to the

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department not less than seven days prior to the transfer of ownership or operational responsibility of the ~~underground~~ storage tank.

(c) The secretary may deny, suspend or revoke any permit issued or authorized pursuant to this act if the secretary finds, after notice and the opportunity for a hearing conducted in accordance with the Kansas administrative procedure act, that the person has:

(1) Fraudulently or deceptively obtained or attempted to obtain ~~an underground~~ a storage tank permit;

(2) failed at any time to maintain ~~an underground~~ a storage tank in accordance with the requirements of this act or any rule and regulation promulgated hereunder;

(3) failed at any time to comply with the requirements of this act or any rule and regulation promulgated hereunder; or

(4) failed at any time to make any retrofit or improvement to ~~an underground~~ a storage tank which is required by this act or any rule and regulation promulgated hereunder.

(d) Any person aggrieved by an order of the secretary may appeal the order in accordance with provisions of the act for judicial review and civil enforcement of agency actions.

Sec. 6. K.S.A. 1991 Supp. 65-34,108 is hereby amended to read as follows: 65-34,108. (a) For the purposes of developing or assisting in the development of any rule and regulation, conducting any study or enforcing the provisions of this act:

(1) It shall be the duty of any owner or operator of ~~an underground~~ a storage tank, upon the request of any duly authorized representative of the secretary made at any reasonable time, to furnish information relating to the storage tank, including tank equipment and contents, to conduct monitoring or testing, to permit such authorized representative to have access to and to copy all records relating to such tank.

(2) Any ~~officer, employee or other~~ authorized representative of the secretary is authorized to enter at reasonable times any

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establishment or place where ~~an underground~~ a storage tank is located, to inspect and obtain samples from any person of any regulated substance contained in such storage tank, and to conduct or require the owner or operator to conduct monitoring or testing of such storage tank, associated equipment, tank contents or surrounding soils, air, surface water or groundwater.

(b) Each inspection shall be commenced and completed with reasonable promptness.

(c) Any records, reports, documents or information obtained from any person under this act shall be available to the public except as provided in this section.

(d) Any person submitting any records, reports, documents or information required by this act, may, upon a showing satisfactory to the secretary, claim any portion of such record, report, document or information confidential as a trade secret. The department shall establish procedures to insure that trade secrets are utilized by the secretary or any authorized representative of the secretary only in connection with the responsibilities of the department pursuant to this act. Trade secrets shall not be otherwise used or disseminated by the secretary or any representative of the secretary without the consent of the person furnishing the information.

(e) Notwithstanding any limitation contained in this section, all information reported to, or otherwise obtained by the department under this act, shall be made available to the administrator of the United States environmental protection agency, or an authorized representative of the administrator, upon written request. In submitting any trade secrets to such administrator or the authorized representative of such administrator, the secretary shall submit the claim of confidentiality to the administrator or authorized representative of the administrator.

Sec. 7. K.S.A. 1991 Supp. 65-34,109 is hereby amended to read as follows: 65-34,109. (a) It shall be unlawful for any

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person to:

(1) ~~Knowingly~~ Deposit, store or dispense, or permit any person to deposit, store or dispense, any regulated substance into any ~~underground~~ storage tank which does not comply with the provisions of this act, the rules and regulations promulgated hereunder, or any order of the secretary;

(2) construct, install, modify or operate ~~an--underground~~ a storage tank without ~~a~~ any required permit or other written approval from the secretary or otherwise be in violation of the rules and regulations, standards or orders of the secretary;

(3) prevent or hinder a properly identified officer or employee of the department or other authorized agent of the secretary from entering, inspecting or sampling at a facility on which a storage tank is located or from copying records concerning such storage tank as authorized by this act;

(4) knowingly make any false material statement or representation in any application, record, report, permit or other document filed, maintained or used for purposes of compliance with this act;

(5) knowingly destroy, alter or conceal any record required to be maintained by this act or rules and regulations promulgated hereunder; or

(6) knowingly allow a release, knowingly fail to report a release or knowingly fail to take corrective action in response to a release of a regulated substance in violation of this act or rules and regulations promulgated hereunder.

(b) Any person who violates any provision of subsection (a) shall be guilty of a class A misdemeanor and, upon conviction thereof, shall be punished as provided by law.

Sec. 8. K.S.A. 1991 Supp. 65-34,113 is hereby amended to read as follows: 65-34,113. (a) Any person who violates any provisions of K.S.A. ~~1989~~ 1991 Supp. 65-34,109 or 65-34,110, and amendments thereto, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of up to $10,000

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for every such violation, and in case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The director of the division of environment, upon a finding that a person has violated any provision of K.S.A. ~~1989~~ 1991 Supp. 65-34,109 or 65-34,110, and amendments thereto, may impose a penalty within the limits provided in subsection (a), which penalty shall constitute an actual and substantial economic deterrent to the violation for which it is assessed.

(c) No penalty shall be imposed pursuant to this section except upon the written order of the director of the division of environment to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Within 15 days after service of the order, any such person may make written request to the secretary for a hearing thereon in accordance with the Kansas administrative procedure act.

(d) Any action of the secretary pursuant to subsection (c), (e)(1) or (e)(2) is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(e) Notwithstanding any other provision of this act, the secretary, upon receipt of information that the storage or release of a regulated substance may present a hazard to the health of persons or to the environment, may take such action as the secretary determines to be necessary to protect the health of such persons or the environment. The action the secretary may take shall include, but is not limited to:

(1) Issuing an order, subject to review pursuant to the Kansas administrative procedure act, directing the owner or operator of the ~~underground~~ storage tank, or the custodian of the regulated substance which constitutes such hazard, to take such steps as are necessary to prevent the act, to eliminate the practice which constitutes such hazard, to investigate the extent of and remediate any pollution resulting from the storage or

release. Such order may include, with respect to a facility or site, permanent or temporary cessation of operation.

(2) Issuing an order, subject to review pursuant to the Kansas administrative procedure act, directing an owner, tenant or holder of any right of way or easement of any real property affected by a known release from ~~an underground~~ a storage tank to permit entry on to and egress from that property, by officers, employees, agents or contractors of the department or of the person responsible for the regulated substance or the hazard, for the purposes of monitoring the release or to perform such measures to mitigate the release as the secretary shall specify in the order.

(3) Commencing an action to enjoin acts or practices specified in this subsection or requesting the attorney general or appropriate county or district attorney to commence an action to enjoin those acts or practices. Upon a showing that a person has engaged in those acts or practices, a permanent or temporary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this subsection shall have precedence over other cases in respect to order of trial.

(4) Applying to the appropriate district court for an order of that court directing compliance with the order of the secretary pursuant to the act for judicial review and civil enforcement of agency actions. Failure to obey the court order shall be punishable as contempt of the court issuing the order. The application under this subsection shall have precedence over other cases in respect to order of trial.

(f) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought it shall be sufficient to show that a violation of the provisions of this act, or the rules and regulations adopted thereunder has occurred or is imminent. It shall not be necessary to allege or prove at any stage of the

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proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate.

Sec. 9. K.S.A. 1991 Supp. 65-34,114 is hereby amended to read as follows: 65-34,114. (a) There is hereby established as a segregated fund in the state treasury the underground petroleum storage tank release trust fund, ~~to~~ which shall be a continuation of the petroleum storage tank release trust fund. The underground fund shall be administered by the secretary. Revenue from the following sources shall be deposited in the state treasury and credited to the underground fund:

(1) The applicable proceeds of the environmental assurance fee imposed by this act;

(2) any moneys recovered by the state under the provisions of this act relating to underground storage tanks, including administrative expenses, civil penalties and moneys paid under an agreement, stipulation or settlement;

(3) interest attributable to investment of moneys in the underground fund;

(4) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for the purposes of the underground fund, but excluding federal grants and cooperative agreements; and

(5) amounts transferred to the underground fund by the plan adopted pursuant to K.S.A. ~~1990~~ 1991 Supp. 65-34,126 and amendments thereto, as provided by K.S.A. ~~1990~~ 1991 Supp. 65-34,126 and amendments thereto.

(b) The underground fund shall be administered so as to assist owners and operators of underground petroleum storage tanks in providing evidence of financial responsibility for corrective action required by a release from any such tank. Moneys deposited in the underground fund may be expended for the purpose of reimbursing ~~owners and operators~~ responsible parties for the costs of corrective action and for transfers to the plan

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adopted pursuant to K.S.A. ~~1990~~ 1991 Supp. 65-34,126 and amendments thereto, as provided by K.S.A. ~~1990~~ 1991 Supp. 65-34,126 and amendments thereto subject to the conditions and limitations prescribed by this act, but moneys in the underground fund shall not otherwise be used for compensating third parties for bodily injury or property damage caused by a release from an underground petroleum storage tank, other than property damage included in a corrective action plan approved by the secretary. In addition, moneys ~~deposited in the~~ credited to the underground fund may be expended for the following purposes:

(1) To permit the secretary to take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or potential release from an underground petroleum storage tank;

(2) to permit the secretary to take corrective action where the release or potential release presents an actual or potential threat to human health or the environment, if the owner or operator has not been identified or is unable or unwilling to perform corrective action, including but not limited to, providing for alternative water supplies;

(3) payment of the state's share of the federal leaking underground storage tank trust fund cleanup costs, as required by the resource conservation and recovery act, 42 U.S.C. 6991b(h)(7)(B); and

(4) payment of the administrative, technical and legal costs incurred by the secretary in carrying out the provisions of K.S.A. ~~1989~~ 1991 Supp. 65-34,114 through 65-34,124, and amendments thereto, with respect to underground storage tanks, including the cost of any additional employees or increased general operating costs of the department attributable thereto, which costs shall not be payable from any moneys other than those credited to the underground fund.

(c) The ~~petroleum storage tank release trust~~ underground fund shall be used for the purposes set forth in this act and for

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no other governmental purposes. It is the intent of the legislature that the underground fund shall remain intact and inviolate for the purposes set forth in this act, and moneys in the underground fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and amendments thereto.

(d) Neither the state of Kansas nor the ~~petroleum--storage tank--release--trust~~ underground fund shall be liable to ~~an owner or operator~~ a responsible party for the loss of business, damages or taking of property associated with any corrective or enforcement action taken pursuant to this act.

~~(e)--The---pooled--money--investment--board--may--invest--and reinvest-moneys-in-the--fund-established-under--this--section--in obligations-of-the-United-States-or-obligations-the-principal-and interest--of--which--are--guaranteed--by--the-United-States-or-in interest-bearing-time-deposits-in-any-commercial--bank--or--trust company--located-in-Kansas-or,-if-the-board-determines-that-it-is impossible-to-deposit-such--moneys--in--such--time--deposits,--in repurchase--agreements--of--less--than--30--days'-duration-with-a Kansas-bank-or-with-a-primary-government-securities-dealer--which reports--to--the--market--reports-division-of-the-federal-reserve bank-of-New-York-for-direct-obligations-of,-or--obligations--that are--insured--as--to-principal-and-interest-by,-the-United-States government-or-any-agency-thereof.--Any-income-or-interest--earned by-such-investments-shall-be-credited-to-the-fund.~~

(e) On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the underground fund, the amount of money certified by the pooled money investment board in accordance with this subsection. Prior to the 10th day of each month, the pooled money investment board shall certify to the director of accounts and reports the amount of money equal to the proportionate amount of all the interest credited to the state general fund for the preceding month, pursuant to K.S.A. 75-4210a and amendments thereto, that is attributable to moneys in the underground fund. Such amount of

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money shall be determined by the pooled money investment board based on: (A) The average daily balance of moneys in the underground fund during the preceding month as certified to the board by the director of accounts and reports and (B) the average interest rate on time deposit, open accounts for that period as determined under K.S.A. 75-4212 and amendments thereto. On or before the fifth day of the month following the month in which moneys are first credited to the underground fund, and monthly thereafter on or before the fifth day of the month, the director of accounts and reports shall certify to the pooled money investment board the average daily balance of moneys in the underground fund during the preceding month.

(f) All expenditures from the underground fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

New Sec. 10. (a) There is hereby established as a segregated fund in the state treasury the aboveground petroleum storage tank release trust fund, to be administered by the secretary. Revenue from the following sources shall be deposited in the state treasury and credited to the aboveground fund:

(1) The applicable proceeds of the environmental assurance fee imposed by this act;

(2) any moneys recovered by the state under the provisions of this act relating to aboveground storage tanks, including administrative expenses, civil penalties and moneys paid under an agreement, stipulation or settlement;

(3) interest attributable to investment of moneys in the aboveground fund; and

(4) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for the purposes of the aboveground fund, but excluding federal grants and cooperative agreements.

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(b) Moneys deposited in the aboveground fund may be expended for the purpose of reimbursing responsible parties for the costs of corrective action subject to the conditions and limitations prescribed by this act, but moneys in the aboveground fund shall not otherwise be used for compensating third parties for bodily injury or property damage caused by a release from an aboveground petroleum storage tank, other than property damage included in a corrective action plan approved by the secretary. In addition, moneys credited to the aboveground fund may be expended for the following purposes:

(1) To permit the secretary to take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or potential release from an aboveground petroleum storage tank;

(2) to permit the secretary to take corrective action where the release or potential release presents an actual or potential threat to human health or the environment, if the owner or operator has not been identified or is unable or unwilling to perform corrective action, including but not limited to, providing for alternative water supplies; and

(3) payment of the administrative, technical and legal costs incurred by the secretary in carrying out the provisions of K.S.A. 1991 Supp. 65-34,114 through 65-34,124, and amendments thereto, with respect to aboveground storage tanks, including the cost of any additional employees or increased general operating costs of the department attributable thereto, which costs shall not be payable from any moneys other than those credited to the aboveground fund.

(c) The aboveground fund shall be used for the purposes set forth in this act and for no other governmental purposes. It is the intent of the legislature that the aboveground fund shall remain intact and inviolate for the purposes set forth in this act, and moneys in the aboveground fund shall not be subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and

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amendments thereto.

(d) Neither the state of Kansas nor the aboveground fund shall be liable to a responsible party for the loss of business, damages or taking of property associated with any corrective or enforcement action taken pursuant to this act.

(e) On or before the 10th day of the month following the month in which moneys are first credited to the aboveground fund, and monthly thereafter on or before the 10th day of the month, the director of accounts and reports shall transfer from the state general fund to the aboveground fund, the amount of money certified by the pooled money investment board in accordance with this subsection. Prior to the 10th day of the month following the month in which moneys are first credited to the aboveground fund, and monthly thereafter prior to the 10th day of the month, the pooled money investment board shall certify to the director of accounts and reports the amount of money equal to the proportionate amount of all the interest credited to the state general fund for the preceding month, pursuant to K.S.A. 75-4210a and amendments thereto, that is attributable to moneys in the aboveground fund. Such amount of money shall be determined by the pooled money investment board based on: (A) The average daily balance of moneys in the aboveground fund during the preceding month as certified to the board by the director of accounts and reports and (B) the average interest rate on time deposit, open accounts for that period as determined under K.S.A. 75-4212 and amendments thereto. On or before the fifth day of the month following the month in which moneys are first credited to the aboveground fund, and monthly thereafter on or before the fifth day of the month, the director of accounts and reports shall certify to the pooled money investment board the average daily balance of moneys in the aboveground fund during the preceding month.

(f) All expenditures from the aboveground fund shall be made in accordance with appropriation acts upon warrants of the

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director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

(g) This section shall be part of and supplemental to the Kansas storage tank act.

Sec. 11. K.S.A. 1991 Supp. 65-34,115 is hereby amended to read as follows: 65-34,115. Except as otherwise provided in this act, an owner or operator of ~~an underground~~ a petroleum storage tank, or both, shall be liable for all costs of corrective action taken in response to a release from such petroleum storage tank. Eligibility to participate in the ~~petroleum storage tank release trust~~ underground fund may be submitted as evidence of financial responsibility required of owners and operators of underground petroleum storage tanks.

Sec. 12. K.S.A. 1991 Supp. 65-34,116 is hereby amended to read as follows: 65-34,116. (a) There is hereby established the petroleum storage tank release compensation advisory board composed of seven members, including the state fire marshal or the state fire marshal's designee, the director of the division of environment of the department, two representatives from the petroleum industry, at least one of which shall be a petroleum marketer, one representative from the insurance industry, one member of the governing body of a city and one county commissioner. The governor shall appoint the appointive members of the board, and the members so appointed shall serve for terms of two years. The governor also shall designate a member of the board as its chair, to serve in such capacity at the pleasure of the governor. The secretary shall provide staff to support the activities of the board.

(b) Appointed members of the board attending meetings of such board, or attending a subcommittee meeting thereof, when authorized by such board, shall receive the amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto.

(c) The board shall provide advice and counsel and make

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recommendations to the secretary regarding the rules and regulations to be promulgated by the secretary regarding the financial responsibility of owners and operators required by this act and, upon request of the secretary, shall provide advice and counsel to the secretary with respect to the disbursement of moneys from the aboveground fund and underground fund.

Sec. 13. K.S.A. 1991 Supp. 65-34,117 is hereby amended to read as follows: 65-34,117. (a) There is hereby established on and after July 1, 1992, an environmental assurance fee of $.01 on each gallon of petroleum product, other than aviation fuel, manufactured in or imported into this state. The environmental assurance fee shall be paid by the manufacturer, importer or distributor first selling, offering for sale, using or delivering petroleum products within this state. The environmental assurance fee shall be paid to the department of revenue at the same time and in the same manner as the inspection fee established pursuant to K.S.A. 55-426, and amendments thereto, is paid. The secretary of revenue shall remit daily the environmental assurance fees paid hereunder to the state treasurer, who shall deposit the same in the state treasury to the credit of ~~the--petroleum--storage--tank--release--trust--fund~~ either the aboveground fund or underground fund, as provided by subsection (b). Exchanges of petroleum products on a gallon-for-gallon basis within a terminal and petroleum product which is subsequently exported from this state shall be exempt from this fee.

(b) ~~Environmental--assurance-fees-as-specified-in-subsection (a)-shall-be-paid-until-the-unobligated-principal-balance-of--the fund-equals-or-exceeds-$5,000,000,-at-which-time~~ Moneys collected from the environmental assurance fee imposed by this section shall be credited as follows:

(1) At any time when the unobligated principal balance of the underground fund is equal to $2,000,000 or less, the moneys shall be credited to the underground fund until the unobligated

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principal balance of underground fund equals or exceeds $5,000,000.

(2) At any time when the unobligated principal balance of the aboveground fund is equal to $2,000,000 or less and the moneys are not required to be credited to the underground fund under subsection (b)(1), such moneys shall be credited to the aboveground fund until the unobligated principal balance of the aboveground fund equals or exceeds $10,000,000 or until subsection (b)(1) requires moneys to be credited to the underground fund, whichever occurs first.

(3) At any time when the moneys cease to be credited to aboveground fund before the unobligated principal balance of the aboveground fund equals or exceeds $10,000,000, such moneys shall again be credited to the aboveground fund when the unobligated principal balance of the underground fund equals or exceeds $5,000,000. Such moneys shall continue to be credited to the aboveground fund until the unobligated principal balance of the aboveground fund equals or exceeds $10,000,000 or until subsection (b)(1) requires moneys to be credited to the underground fund, whichever occurs first.

(c) At any time when subsections (b)(1), (b)(2) and (b)(3) do not require moneys to be credited to either the underground fund or the aboveground fund, no environmental assurance fees shall be levied unless and until such time as the balance in ~~the~~ either the underground fund or the aboveground fund is less than or equal to an unobligated balance of $2,000,000, in which case the collection of the environmental assurance fee will resume within 90 days following the end of the month in which such unobligated balance occurs. If no environmental assurance fees are being levied, the director of accounts and reports shall notify the secretary of revenue whenever the unobligated balance in ~~the~~ either the underground fund or the aboveground fund is $2,000,000, and the secretary of revenue shall then give notice to each person subject to the environmental assurance fee as to

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the imposition of the fee and the duration thereof.

The director of accounts and reports shall cause to be published each month, in the second issue of the Kansas register published in such month, the amount of the unobligated ~~balance in the~~ balances in the underground fund and the aboveground fund on the last day of the preceding calendar month.

~~(c)~~ (d) Every manufacturer, importer or distributor of any petroleum product liable for the payment of environmental assurance fees as provided in this act, shall report in full and detail before the 25th day of every month to the secretary of revenue, on forms prepared and furnished by the secretary of revenue, and at the time of forwarding such report, shall compute and pay to the secretary of revenue the amount of fees due on all petroleum products subject to such fee during the preceding month.

~~(d)~~ (e) All fees imposed under the provisions of this section and not paid on or before the 25th day of the month succeeding the calendar month in which such petroleum products were subject to such fee shall be deemed delinquent and shall bear interest at the rate of 1% per month, or fraction thereof, from such due date until paid. In addition thereto, there is hereby imposed upon all amounts of such fees remaining due and unpaid after such due date a penalty in the amount of 5% thereof. Such penalty shall be added to and collected as a part of such fees by the secretary of revenue.

~~(e)~~ (f) The secretary of revenue is hereby authorized to adopt such rules and regulations as may be necessary to carry out the responsibilities of the secretary of revenue under this section.

Sec. 14. K.S.A. 1991 Supp. 65-34,118 is hereby amended to read as follows: 65-34,118. (a) Whenever the secretary has reason to believe that there is or has been a release into the environment from ~~an underground~~ a petroleum storage tank~~,~~ and has reason to believe that such release poses a danger to human

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health or the environment, the secretary shall obtain corrective action for such release from the owner or operator, or both, or from any past owner or operator who has contributed to such release. Such corrective action shall be performed in accordance with a plan approved by the secretary. Upon approval of such plan, the owner or operator shall obtain and submit to the secretary at least three bids from persons qualified to perform the corrective action except that, the secretary may waive this requirement upon a showing that the owner or operator has made a good faith effort but has not been able to obtain three bids from qualified bidders.

(b) If the owner or operator is unable or unwilling to perform corrective action as provided for in subsection (a) or no owner or operator can be found, the secretary may undertake appropriate corrective action utilizing funds from the ~~petroleum storage tank release trust fund~~ underground fund, if the release was from an underground petroleum storage tank, or from the aboveground fund, if the release was from an aboveground petroleum storage tank. Costs incurred by the secretary in taking a corrective action, including administrative and legal expenses, are recoverable from the responsible party and may be recovered in a civil action in district court brought by the secretary. Corrective action costs recovered under this section shall be deposited in the ~~petroleum storage tank release trust fund~~ underground fund, if the release was from an underground petroleum storage tank, or from the aboveground fund, if the release was from an aboveground petroleum storage tank. Corrective action taken by the secretary under this subsection need not be completed in order to seek recovery of corrective action costs, and an action to recover such costs may be commenced at any stage of a corrective action.

(c) An owner or operator shall be liable for all costs of corrective action incurred by the state of Kansas as a result of a release from ~~an underground~~ a petroleum storage tank, unless

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the owner or operator, or both, enter into a consent agreement with the secretary in the name of the state within a reasonable period of time, which time period may be specified by rule and regulation. At a minimum, the owner or operator, or both, must agree that:

(1) The owner or operator shall be liable for the appropriate amounts pursuant to K.S.A. ~~1989~~ 1991 Supp. 65-34,119 and amendments thereto;

(2) the state of Kansas and the ~~petroleum--storage--tank release-trust~~ respective fund are relieved of all liability to an owner or operator for any loss of business, damages and taking of property associated with the corrective action;

(3) the department or its contractors may enter upon the property of the owner or operator, at such time and in such manner as deemed necessary, to monitor and provide oversight for the necessary corrective action to protect human health and the environment;

(4) the owner or operator shall be fully responsible for removal, replacement or retrofitting of ~~underground~~ petroleum storage tanks and the cost thereof shall not be reimbursable from the respective fund;

(5) the owner or operator shall effectuate corrective action according to a plan approved by the secretary pursuant to subsection (a);

(6) the liability of the state and the ~~petroleum--storage tank--release--trust~~ respective fund shall not exceed $1,000,000, less the ~~appropriate~~ deductible amount, for any release from ~~an underground~~ a petroleum storage tank; and

(7) such other provisions as are deemed appropriate by the secretary to ensure adequate protection of human health and the environment.

(d) For purposes of this act, corrective action costs shall include the actual costs incurred for the following:

(1) Removal of petroleum products from ~~underground~~ petroleum

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storage tanks, surface waters, groundwater or soil;

(2) investigation and assessment of contamination caused by a release from ~~an underground~~ a petroleum storage tank;

(3) preparation of corrective action plans approved by the secretary;

(4) removal of contaminated soils;

(5) soil treatment and disposal;

(6) environmental monitoring;

(7) lease, purchase and maintenance of corrective action equipment;

(8) restoration of a private or public potable water supply, where possible, or replacement thereof, if necessary; and

(9) other costs identified by the secretary as necessary for proper investigation, corrective action planning and corrective action activities to meet the requirements of this act.

Sec. 15. K.S.A. 1991 Supp. 65-34,119 is hereby amended to read as follows: 65-34,119. (a) ~~An owner or operator of an underground petroleum storage tank, other than~~ Subject to the provisions of subsection (b), a responsible party is entitled to reimbursement of reasonable costs of corrective action taken in response to a release from a petroleum storage tank if: (1) The responsible party is not the United States government or any of its agencies~~,~~ ~~who~~; (2) the responsible party is in substantial compliance, as provided in subsections ~~(d) and (e),~~ ~~and who~~ (e) and (f); (3) the responsible party undertakes corrective action, either through personnel of the owner or operator or through response action contractors or subcontractors~~,~~ ~~is entitled to reimbursement of reasonable corrective action costs from the fund,~~; and (4) the corrective action is not in response to a release from an aboveground storage tank described in subsection (g) or (h) of K.S.A. 1991 Supp. 65-34,103 and amendments thereto. If the release is from an underground petroleum storage tank, reimbursement shall be from the underground fund and, if the release is from an aboveground petroleum storage tank,

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reimbursement shall be from the aboveground tank.

(b) Reimbursement pursuant to subsection (a) is subject to the following provisions:

~~(1) Except as provided in subsection (a)(5), an owner or operator who is not a petroleum marketer and who owns or operates not more than four underground petroleum storage tanks shall be liable for the first $5,000 of costs of corrective action taken in response to a release from any such petroleum storage tank, provided all petroleum or petroleum products are not stored for purposes of resale;~~

~~(2) Except as otherwise provided by subsections (a)(1) and (a)(5), the owner or operator of not more than 12 underground petroleum storage tanks shall be liable for the first $10,000 of costs of corrective action taken in response to a release from any such petroleum storage tank;~~

~~(3) except as provided by subsection (a)(5), the owner or operator of at least 13 and not more than 99 underground petroleum storage tanks shall be liable for the first $20,000 of costs of corrective action taken in response to a release from any such petroleum storage tank;~~

~~(4) except as provided by subsection (a)(5), the owner or operator of more than 99 underground petroleum storage tanks shall be liable for the first $60,000 of costs of corrective action taken in response to a release from any such petroleum storage tank;~~

~~(5) an owner or operator who complies with the provisions of subsection (a)(16)(B) shall be liable for the first $100,000 of costs of corrective action taken at any one location of one or more underground petroleum storage tanks unless the owner or operator submits to the secretary proof, satisfactory to the secretary, that: (A) Such owner or operator is an association organized under the cooperative marketing act (K.S.A. 17-1601 et seq. and amendments thereto); (B) all businesses in which such association's underground petroleum storage tanks are used are~~

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~~owned-and-operated-by-such-association;-and-(C)-such--association is-not-engaged-in-production-or-refining-of-petroleum-products;~~

~~(6)--the--owner--or-operator-shall-be-liable-for-all-costs-of corrective--action--related--to--a--release--if---the---secretary determines--that-such-owner-or-operator-allowed,-failed-to-report or-failed-to-take-corrective-action-in-response-to-such--release, knowing--or-having-reason-to-know-of-such-release~~ subsections (g) and (h), the responsible party shall be liable for costs of corrective action taken in response to a release from any petroleum storage tank in an amount equal to the first $3,000 plus $500 for each such tank in Kansas owned or operated by the responsible party;

~~(7)--the-owner-or-operator~~ (2) the responsible party must submit to and receive from the secretary approval of the proposed corrective action plan, together with projected costs of the corrective action;

~~(8)~~ (3) the secretary may, in the secretary's discretion, determine those costs which are allowable as corrective action costs and those which are attributable or ancillary to removal, replacement or retrofitting of ~~underground~~ storage tanks;

~~(9)--the-owner-or-operator-or-any~~ (4) the responsible party, or agents thereof, shall keep and preserve suitable records demonstrating compliance with the approved corrective action plan and all invoices and financial records associated with costs for which reimbursement will be requested;

~~(10)~~ (5) within 30 days of receipt of a complete corrective action plan, or as soon as practicable thereafter, the secretary shall make a determination and provide written notice as to whether the ~~owner-or-operator-responsible-for--corrective--action~~ responsible party is eligible or ineligible for reimbursement of corrective action costs~~,~~ and, should the secretary determine the ~~owner--or-operator~~ responsible party is ineligible, the secretary shall include in the written notice an explanation setting forth in detail the reasons for the determination;

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~~(11)--the--owner-or-operator~~ (6) the responsible party shall submit to the secretary a written notice that corrective action has been completed within 30 days of completing corrective action;

~~(12)~~ (7) no later than 30 days from the submission of the notice as required by subsection ~~(a)(11),-the-owner-or-operator~~ (b)(6), the responsible party must submit an application for reimbursement of corrective action costs in accordance with criteria established by the secretary, and the application for reimbursement must include the total amount of the corrective action costs and the amount of reimbursement sought. In no case shall the total amount of reimbursement exceed the lesser of the actual costs of the corrective action or the amount of the lowest bid submitted pursuant to K.S.A. ~~1989~~ 1991 Supp. 65-34,118 and amendments thereto and approved by the secretary, less the appropriate deductible amount;

~~(13)~~ (8) interim payments shall be made to ~~an--owner--or-operator~~ a responsible party in accordance with the plan approved by the secretary pursuant to K.S.A. ~~1989~~ 1991 Supp. 65-34,118 and amendments thereto, except that the secretary, for good cause shown, may refuse to make interim payments or withhold the final payment until completion of the corrective action;

~~(14)--the--owner-or-operator~~ (9) the responsible party shall be fully responsible for removal, replacement or retrofitting of ~~underground~~ petroleum storage tanks and the cost thereof, and costs attributable or ancillary thereto, shall not be reimbursable from the respective fund;

~~(15)--the-owner-or-operator~~ (10) the responsible party shall provide evidence satisfactory to the secretary that corrective action costs equal to the appropriate deductible amount have been paid by the ~~owner-or-operator~~ responsible party, and such costs shall not be reimbursed to the ~~owner-or-operator~~ responsible party;

~~(16)--the--owner--or--operator~~ (11) with regard to an

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underground petroleum storage tank, the responsible party submits to the secretary proof, satisfactory to the secretary, that: (A) such owner or operator is unable to satisfy the criteria for self-insurance under the federal act; or (B) such ~~owner-or-operator~~ responsible party is able to satisfy the criteria for self-insurance under the federal act but is not engaged in production or refining of petroleum products;

(12) with regard to an aboveground petroleum storage tank, the responsible party submits to the secretary proof, satisfactory to the secretary, that such responsible party is not engaged in production or refining of petroleum products; and

~~(11)--the-owner-or-operator~~ (13) the responsible party shall be liable for all costs which are paid by or for which the ~~owner-or--operator~~ responsible party is entitled to reimbursement from insurance coverage, warranty coverage or any other source.

~~(b)~~ (c) For the purpose of determining ~~an--owner's--or-operator's~~ a responsible party's eligibility for reimbursement ~~pursuant--to-subsection-(a)~~ and the applicable deductible of such ~~owner-or-operator~~ responsible party, the secretary shall consider all ~~owners-and-operators~~ responsible parties owned or controlled by the same interests to be a single ~~owner--or--operator~~ responsible party, except that each state agency to which moneys are appropriated shall be considered individually as an owner or operator for such purpose.

~~(c)~~ (d) Notwithstanding the provisions of subsection (c) of K.S.A. ~~1989~~ 1991 Supp. 65-34,118 and amendments thereto, should the secretary find that any of the following situations exist, ~~the--owner--or--operator,-or-both,~~ any or all responsible parties shall, in the discretion of the secretary, be liable for 100% of costs associated with corrective action necessary to protect health or the environment, if:

(1) The release was due to willful or wanton actions by the ~~owner-or-operator~~ responsible party;

(2) the ~~owner--or--operator~~ responsible party is in arrears

for moneys owed, other than environmental assurance fees, to ~~the petroleum--storage-tank-release-trust~~ either the underground fund or the aboveground fund;

(3) the release was from a tank not registered with the department;

(4) the ~~owner-or-operator~~ responsible party fails to comply with any provision of the agreement specified in subsection (c) of K.S.A. ~~1989~~ 1991 Supp. 65-34,118 and amendments thereto;

(5) the ~~owner-or-operator~~ responsible party moves in any way to obstruct the efforts of the department or its contractors to investigate the presence or effects of a release or to effectuate corrective action; ~~or~~

(6) the ~~owner--or--operator~~ responsible party is not in substantial compliance with any provision of this act or rules and regulations promulgated hereunder; or

(7) the responsible party allowed, failed to report or failed to take corrective action in response to such release, knowing or having reason to know of such release.

~~(d)~~ (e) Except as otherwise provided in subsections ~~(e)--and (f),--an--owner--or--operator-of-an-underground-petroleum-storage tank~~ (f) and (g), a responsible party is in substantial compliance with this act and the rules and regulations adopted hereunder, if:

(1) ~~On-and-after-January-1,--1990,~~ Each petroleum storage tank owned or operated by such ~~owner-or-operator~~ responsible party has been registered with the secretary, in accordance with the applicable laws of this state and any rules and regulations adopted thereunder;

(2) the ~~owner-or-operator~~ responsible party has entered into an agreement with the secretary, as provided in subsection (c) of K.S.A. ~~1989~~ 1991 Supp. 65-34,118 and amendments thereto;

(3) the ~~owner-or-operator~~ responsible party has complied with any applicable financial responsibility requirements imposed by the Kansas storage tank act and the rules and regulations

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adopted thereunder; and

(4) the ~~owner-or-operator~~ responsible party has otherwise made a good faith effort to comply with the federal act if applicable, this act, any other law of this state regulating petroleum storage tanks and all applicable rules and regulations adopted under any of them.

~~(e)--Prior-to-July-1,-1990,-an-owner-or-operator--of--any--of the---following---underground---petroleum--storage--tanks~~ (f) A responsible party shall be deemed to be in substantial compliance with this act with respect to the following tanks if such responsible party has notified the department, on forms provided by the department, of the tank's existence, including age, size, type, location, associated equipment and uses:

(1) Any farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) any aboveground tank of less than 660 gallons capacity; and

~~(2)~~ (3) any tank used for storing heating oil for consumptive use on the single family residential premise where stored.

~~On--and--after--July--1,--1990,--an--owner-or-operator-of-any petroleum-storage-tanks-specified-above-shall-be-deemed-to-be--in substantial--compliance-with-this-act,-if-each-such-tank-has-been registered-with-the-secretary-in-accordance-with--the--applicable laws--of--this--state--and--any--rules--and--regulations--adopted thereunder.~~

~~(f)--Any--owner--of-an-underground-petroleum-storage-tank-who at-no-time--has--placed--petroleum--in--such--tank--or--withdrawn petroleum---from---such---tank~~ (g) (1) Except as provided by subsection (g)(2), a responsible party shall not be required to register ~~such~~ a tank to be eligible for reimbursement from the respective fund of all costs of any necessary corrective action taken in response to a release from such tank and shall not be subject to the provisions of ~~subsections-(a)(1),--(2),--(3),--(4)~~

~~and (5) if such owner submits~~ subsection (b)(1) if such party has at no time placed petroleum in such tank or withdrawn petroleum from such tank and such party:

(A) Submitted a corrective action plan prior to July 1, 1990, with respect to an underground petroleum storage tank, or prior to July 1, 1993, with respect to an aboveground petroleum storage tank; (B) acquired such tank before December 22, 1988; or (C) acquired such tank by intestate succession or testamentary disposition.

(2) A responsible party who is not an owner or operator shall not be eligible for reimbursement under subsection (g)(1) unless the owner or operator is unable or unwilling to perform corrective action or cannot be found, in which case the secretary may recover all reimbursement paid, and any related administrative and legal expenses, from the owner or operator as provided by subsection (b) of K.S.A. 65-34,118 and amendments thereto.

(h) A responsible party shall be entitled, upon written notification to the secretary, to elect between the deductible provided by this section before July 1, 1992, and the deductible provided by this section on and after July 1, 1992, with respect to costs of corrective action taken on or after April 1, 1990, if such responsible party has applied before July 1, 1992, for reimbursement of such costs from the fund.

New Sec. 16. (a) A responsible party shall be entitled to reimbursement from the aboveground fund for the costs of corrective action taken before July 1, 1992, in response to a release from an aboveground petroleum storage tank which was discovered on or after December 22, 1988, and for which written approval of any corrective action taken prior to July 1, 1992, has been granted by the secretary, subject to the following:

(1) Such responsible party shall be entitled to reimbursement pursuant to this section only to the extent that such responsible party would be entitled to reimbursement if the

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release had been discovered on or after the effective date of this act, including application of all applicable deductibles and conditions of reimbursement imposed by K.S.A. 1991 Supp. 65-34,119 and amendments thereto;

(2) such owner or operator shall be entitled to reimbursement pursuant to this section only if the owner or operator submits to the secretary proof, acceptable to the secretary, that is not engaged in production or refining of petroleum products;

(3) the aggregate of all reimbursement paid pursuant to this section shall not exceed $3,200,000;

(4) the aggregate of all reimbursement paid to an owner or operator pursuant to this section shall not exceed $100,000, after all applicable deductibles; and

(5) any claim for reimbursement pursuant to this section must be submitted to the secretary not later than December 31, 1992;

(b) If the aggregate of all reimbursement to which responsible parties would be otherwise entitled pursuant to this section exceeds $3,200,000, reimbursement shall be paid from the aboveground fund as follows:

(1) Any responsible party who owns or operates not more than 12 aboveground petroleum storage tanks and whose aggregate claims for reimbursement pursuant to this section do not exceed $20,000, before applicable deductibles, shall receive full payment of the reimbursement to which such responsible party is entitled unless the aggregate of all reimbursement to which all such responsible parties are entitled exceeds $3,200,000. In that case, such responsible parties shall be paid on a pro rata basis and no payments shall be paid to other responsible parties.

(2) If the aggregate of all reimbursement paid pursuant to subsection (b)(1) is less than $3,200,000, responsible parties other than those described in subsection (b)(1) shall receive full payment of the reimbursement to which they are entitled

unless the aggregate of all reimbursement to which all such responsible parties are entitled, when added to the amount paid pursuant to subsection (b)(1), exceeds $3,200,000. In that case, such responsible parties shall be paid on a pro rata basis.

(c) All reimbursement payable pursuant to this section shall be paid by the secretary prior to May 1, 1993.

(d) Subject to the provisions of K.S.A. 65-34,119 and amendments thereto, a responsible party shall be entitled to reimbursement from the aboveground fund for the costs of corrective action taken on or after July 1, 1992, in response to a release from an aboveground petroleum storage tank which was discovered on or after December 22, 1988, if such responsible party is entitled to reimbursement under subsection (a) for corrective action taken before July 1, 1992, with respect to such release.

(e) This section shall be part of and supplemental to the Kansas storage tank act.

Sec. 17. K.S.A. 1991 Supp. 65-34,119a is hereby amended to read as follows: 65-34,119a. (a) ~~An--owner-or-operator-of-an underground-petroleum-storage-tank~~ A responsible party shall be entitled to reimbursement from the underground fund for the costs of corrective action taken on or after April 1, 1990, in response to a release from ~~such~~ an underground petroleum storage tank which was discovered on or after December 22, 1988, ~~and-for-which written-approval-of-any-corrective-action-taken-prior-to-April-1, 1990,--has--been--granted--by--the--secretary,--subject--to---the following:~~

~~(1)--Such---owner---or---operator---shall---be---entitled--to reimbursement-pursuant-to-this-section-only-to--the--extent--that such--owner-or-operator~~ to the extent that such responsible party would be entitled to reimbursement if the release had been discovered on or after April 1, 1990, including application of all applicable deductibles and conditions of reimbursement imposed by K.S.A. ~~1989~~ 1991 Supp. 65-34,119 and amendments

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thereto;.

~~(2)--such--owner---or---operator---shall---be---entitled---to reimbursement--pursuant--to--this--section--only--if-the-owner-or operator-submits--to--the--secretary--proof,--acceptable--to--the secretary,--that:-(A)-Such-owner-or-operator-is-unable-to-satisfy the-criteria-for-self-insurance-under-the--federal--act,--or--(B) such--owner--or--operator--is--able--to--satisfy-the-criteria-for self-insurance-under-the--federal--act--but--(i)--such--owner--or operator--is--an--association--organized--under--the--cooperative marketing--act--(K.S.A.--17-1601-et-seq.-and-amendments-thereto), (ii)-all--businesses--in--which--such--association's--underground petroleum--storage--tanks-are-used-are-owned-and-operated-by-such association--and--(iii)--such--association--is--not--engaged---in production-or-refining-of-petroleum-products;~~

~~(3)--the-aggregate-of-all-reimbursement-paid-pursuant-to-this section-shall-not-exceed-$3,200,000;~~

~~(4)--the--aggregate--of-all-reimbursement-paid-to-an-owner-or operator-pursuant-to-this--section--shall--not--exceed--$100,000, after-all-applicable-deductibles;-and~~

~~(5)--any--claim--for--reimbursement--pursuant-to-this-section must-be-submitted-to-the-secretary-not-later-than--September--30, 1990;~~

~~(b)--If--the--aggregate--of-all-reimbursement-to-which-owners and-operators--would--be--otherwise--entitled--pursuant--to--this section--exceeds-$3,200,000,-reimbursement-shall-be-paid-from-the fund-as-follows:~~

~~(1)--Any-owner-or-operator-who-owns-or-operates-not-more-than 12-underground-petroleum-storage-tanks-and-whose-aggregate-claims for-reimbursement-pursuant-to-this-section-do-not-exceed-$20,000, before-applicable-deductibles,-shall-receive-full-payment-of--the reimbursement--to-which-such-owner-or-operator-is-entitled-unless the-aggregate-of-all-reimbursement-to-which-all-such--owners--and operators--are--entitled--exceeds--$3,200,000.-In-that-case,-such owners-and-operators-shall-be-paid-on-a-pro--rata--basis--and--no~~

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~~payments shall be paid to other owners or operators.~~

~~(2) If the aggregate of all reimbursement paid pursuant to subsection (b)(1) is less than $3,200,000, owners and operators other than those described in subsection (b)(1) shall receive full payment of the reimbursement to which they are entitled unless the aggregate of all reimbursement to which all such owners and operators are entitled, when added to the amount paid pursuant to subsection (b)(1), exceeds $3,200,000. In that case, such owners and operators shall be paid on a pro rata basis.~~

~~(c) All reimbursement payable pursuant to this section shall be paid by the secretary prior to February 1, 1991.~~

~~(d)~~ (b) This section shall be part of and supplemental to the Kansas storage tank act.

Sec. 18. K.S.A. 1991 Supp. 65-34,120 is hereby amended to read as follows: 65-34,120. (a) Nothing in this act shall establish or create any liability or responsibility on the part of the board, the secretary, the department or its agents or employees, or the state of Kansas to pay any corrective action costs from any source other than the respective fund created by this act.

(b) In no event shall the underground fund be liable for the payment of corrective action costs in an amount in excess of the following, less any applicable deductible amounts of the ~~owner or operator~~ responsible party:

(1) For costs incurred in response to any one release from an underground petroleum storage tank, $1,000,000;

(2) subject to the provisions of subsection (a)(4), for an owner or operator of 100 or fewer underground petroleum storage tanks, an annual aggregate of $1,000,000;

(3) subject to the provisions of subsection (a)(4), for an owner or operator of more than 100 underground petroleum storage tanks, an annual aggregate of $2,000,000; and

(4) ~~for an owner or operator subject to the amount deductible pursuant to subsection (a)(5) of K.S.A. 1989 Supp.~~

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~~65-34,119--and-amendments-thereto,~~ an aggregate of $1,000,000 for the period of time that the fund exists, for a responsible party who complies with the provisions of subsection (b)(11)(B) of K.S.A. 1991 Supp. 65-34,119 and amendments thereto unless the responsible party submits to the secretary proof, satisfactory to the secretary, that: (A) Such responsible party is an association organized under the cooperative marketing act (K.S.A. 17-1601 et seq. and amendments thereto); and (B) all businesses in which such association's underground petroleum storage tanks are used are owned and operated by such association.

(c) In no event shall the aboveground fund be liable for the payment of corrective action costs in an amount in excess of the following, less the deductible amounts of the responsible party:

(1) For costs incurred in response to any one release from an aboveground petroleum storage tank, $1,000,000;

(2) for an owner or operator of 100 or fewer aboveground petroleum storage tanks, an annual aggregate of $1,000,000; and

(3) for an owner or operator of more than 100 aboveground petroleum storage tanks, an annual aggregate of $2,000,000.

~~(b)~~ (d) This act is intended to assist ~~an-owner-or--operator~~ a responsible party only to the extent provided for in this act, and it is in no way intended to relieve the ~~owner--or--operator~~ responsible party of any liability that cannot be satisfied by the provisions of this act.

~~(c)~~ (e) Neither the secretary nor the state of Kansas shall have any liability or responsibility to make any payments for corrective action if the respective fund created herein is insufficient to do so. In the event the respective fund is insufficient to make the payments at the time the claim is filed, such claims shall be paid in the order of filing at such time as moneys are paid into the respective fund.

~~(d)~~ (f) No common law liability, and no statutory liability which is provided in a statute other than in this act, for damages resulting from a release from ~~an-underground~~ a petroleum

storage tank is affected by this act. The authority, power and remedies provided in this act are in addition to any authority, power or remedy provided in any statute other than a section of this act or provided at common law.

~~(e)~~ (g) If a person conducts a corrective action activity in response to a release from ~~an underground~~ a petroleum storage tank, whether or not the person files a claim against the respective fund under this act, the claim and corrective action activity conducted are not evidence of liability or an admission of liability for any potential or actual environmental pollution or third party claim.

Sec. 19. K.S.A. 1991 Supp. 65-34,121 is hereby amended to read as follows: 65-34,121. On or before March 1 of each year, the secretary shall prepare and submit a report to the governor and each member of the legislature regarding the receipts and disbursements from the underground fund and the aboveground fund during the preceding calendar year, indicating the extent of the corrective action taken under this act.

Sec. 20. K.S.A. 1991 Supp. 65-34,123 is hereby amended to read as follows: 65-34,123. Except as provided in K.S.A. 74-7246, and amendments thereto, the board ~~and the~~, the underground fund and the aboveground fund shall be and are hereby abolished on July 1, 1994.

Sec. 21. K.S.A. 1991 Supp. 65-34,126 is hereby amended to read as follows: 65-34,126. (a) The commissioner of insurance shall adopt and implement a plan for applicants for insurance who are in good faith entitled to insurance necessary to achieve compliance with the financial responsibility requirements for third party liability imposed by 40 CFR part 280, subpart H, and part 281 adopted by the federal environmental protection agency. Insurers undertaking to transact the kinds of insurance specified in subsection (b) or (c) of K.S.A. 40-1102 and amendments thereto and rating organizations which file rates for such insurance shall cooperate in the preparation and submission to the

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commissioner of insurance of a plan or plans for the insurance specified in this section. Such plan shall provide:

(1) Insurance necessary to achieve compliance with the financial responsibility requirements for third party liability imposed by 40 CFR part 280, subpart H, and part 281;

(2) for the appointment by the plan of a servicing carrier which shall be: (A) An insurance company authorized to transact business in this state; (B) an insurance company which is listed with the commissioner pursuant to K.S.A. 40-246e and amendments thereto; or (C) a risk retention group, as defined by K.S.A. 40-4101 and amendments thereto, which meets the requirements established under the federal liability risk retention act of 1986 (15 U.S.C. 3901 et seq.) and has registered with the commissioner pursuant to K.S.A. 40-4103 and amendments thereto;

(3) reasonable rules governing the plan, including provisions requiring, at the request of the applicant, an immediate assumption of the risk by an insurer or insurers upon completion of an application, payment of the specified premium and deposit of the application and the premium in the United States mail, postage prepaid and addressed to the plan's office;

(4) rates and rate modifications applicable to such risks, which rates shall be established as provided by subsection (b);

(5) the limits of liability which the insurer shall be required to assume;

(6) coverage for only underground storage tanks located within this state;

(7) coverage for at least 12 months from the date of the original application with respect to any underground storage tank which has been installed for less than 10 years, and may provide such coverage with respect to any such tank which has been installed 10 or more years, without requiring tank integrity tests, soil tests or other tests for insurability if, within six months immediately preceding application for insurance, the tank has been made to comply with all provisions of federal and state

law, and all applicable rules and regulations adopted pursuant thereto, but the plan may provide for renewal or continuation of such coverage to be contingent upon satisfactory evidence that the tank or tanks to be insured continue to be in compliance with such laws and rules and regulations;

(8) exclusion from coverage of any damages for noneconomic loss and any damages resulting from intentional acts of the insured or agents of the insured;

(9) to the extent allowed by law, subrogation of the insurer to all rights of recovery from other sources for damages covered by the plan or plans;

(10) an optional deductible of the first $2,500, $5,000 or $10,000 of liability per occurrence at any one location for compensation of third parties for bodily injury and property damage caused by either gradual or sudden and accidental releases from underground petroleum storage tanks, but no such deductible shall apply to reasonable and necessary attorney fees and other reasonable and necessary expenses incurred in defending a claim for such compensation;

(11) coverage only of claims for occurrences that commenced during the term of the policy and that are discovered and reported to the insurer during the policy period or within six months after the effective date of the cancellation or termination of the policy;

(12) a method whereby applicants for insurance, insureds and insurers may have a hearing on grievances and the right of appeal to the commissioner;

(13) a method whereby adequate reserves are established for open claims and claims incurred but not reported based on advice from an independent actuary retained by the plan at least annually, the cost of which shall be borne by the plan;

(14) a method whereby the plan shall compare the premiums earned to the losses and expenses sustained by the plan for the preceding fiscal year and if, for that year: (A) There is any

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excess of losses and expenses over premiums earned, plus amounts transferred pursuant to subsection (a)(15), an amount equal to such excess losses and expenses shall be transferred from the ~~petroleum-storage-tank-release~~ underground fund established by K.S.A. ~~1989~~ 1991 Supp. 65-34,114 and amendments thereto to the plan ~~or~~; or (B) there is any surplus of premiums earned, plus amounts transferred pursuant to subsection (a)(15), over losses, including loss reserves, and expenses sustained, an amount equal to such surplus shall be transferred to such fund from the plan; and

(15) a method whereby, during any fiscal year, whenever the losses and expenses sustained by the plan exceed premiums earned, an amount equal to the excess of losses and expenses shall be transferred from the ~~petroleum-storage-tank-release~~ underground fund established by K.S.A. ~~1989~~ 1991 Supp. 65-34,114 and amendments thereto to the plan upon receipt by the secretary of health and environment of evidence, satisfactory to the secretary, of the amount of the excess losses and expenses.

(b) The commissioner of insurance shall establish rates, effective January 1 of each year, for coverage provided under the plan adopted pursuant to this section. Such rates shall be reasonable, adequate and not unfairly discriminatory. Such rates shall be based on loss and expense experience developed by risks insured by the plan and shall be in an amount deemed sufficient by the commissioner to fund anticipated claims based upon reasonably prudent actuarial principles, except that:

(1) Due consideration shall be given to the loss and expense experience developed by similar plans operating or trust funds offering third party liability coverage in other states and the voluntary market; and

(2) before January 1, 1992, the annual rate shall be not more than $500 for each tank for which coverage is provided under the plan with selection of a $10,000 deductible.

In establishing rates pursuant to this subsection, the

commissioner shall establish, as appropriate, lower rates for tanks complying with all federal standards, including design, construction, installation, operation and release detection standards, with which such tanks are or will be required to comply by 40 C.F.R part 280 as in effect on the effective date of this act.

(c) The commissioner of insurance shall appoint a governing board for the plan. The governing board shall meet at least annually to review and prescribe operating rules of the plan. Such board shall consist of five members appointed as follows: One representing domestic or foreign insurance companies, one representing independent insurance agents, one representing underground storage tank owners and operators and two representing the general public. No member representing the general public shall be, or be affiliated with, an insurance company, independent insurance agent or underground storage tank operator. Members shall be appointed for terms of three years, except that the initial appointment shall include two members appointed for two-year terms and one member appointed for a one-year term, as designated by the commissioner.

(d) Before adoption of a plan pursuant to this section, the commissioner of insurance shall hold a hearing thereon.

(e) An insurer participating in the plan adopted by the commissioner of insurance pursuant to this section may pay a commission with respect to insurance assigned under the plan to an agent licensed for any other insurer participating in the plan or to any insurer participating in the plan.

(f) The commissioner of insurance may adopt such rules and regulations as necessary to administer the provisions of this section.

(g) The department of health and environment and the plan shall provide to each other such information as necessary to implement and administer the provisions of this section. Any such information which is confidential while in the possession of the

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department or plan shall remain confidential after being provided to the other pursuant to this subsection.

(h) This section shall be part of and supplemental to the Kansas storage tank act.

Sec. 22. K.S.A. 1991 Supp. 65-34,102, 65-34,103, 65-34,105, 65-34,106, 65-34,108, 65-34,109, 65-34,113, 65-34,114, 65-34,115, 65-34,116, 65-34,117, 65-34,118, 65-34,119, 65-34,119a, 65-34,120, 65-34,121, 65-34,123 and 65-34,126 are hereby repealed.

Sec. 23. This act shall take effect and be in force from and after its publication in the statute book.

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