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ENERGY: THE STATES' RESPONSE IN 1978

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PREFACE

The Energy Project of the National Conference of State Legislatures under contract to the U.S. Department of Energy Office of Intergovernmental Affairs (contract number CR-16-70393-00) has prepared the fourth edition of Energy: The States' Response. This volume compiles all state legislative energy enactments for legislatures which were in session during 1978.

The purpose of this publication is to provide source material to legislators and their staff. In many instances, legislation and the ideas it embodies are transferable from state to state. To facilitate this reference use, each bill is seperated into one or more of the thirty-seven subject categories. When a bill is clearly relevant to more than one category, it is listed in each.

Publication of a document as comprehensive as Energy: The States' Response-1978 is the result of the efforts of a number of people. Bill Mitchell coordinated the effort, Holly Higgins compiled, categorized, and abstracted the legislation, and Nancy Redmond typed the copy. The staff of the Energy Project would like to thank all of the legislative staff members who sent us copies of bills, kept us informed of activities in their states and provided us with final enactments. Without their help Energy: The States' Response-1978 would never be published.

James Matthews
Director
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BREAKDOWN BY CATEGORY

1. Utilities/Public Power
2. Utilities/Rate Regulation
3. Utilities/Fuel Costs
4. Utilities/Consumer Protection
5. Utilities/Tax Exemption
6. Utilities/Tax Application
7. Utilities/Miscellaneous
8. Tax Exemption-Incentive/Building Efficiency
9. Tax Exemption/Solar Heating and Cooling
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12. Tax Application/Depletion Allowance
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16. Franchise Protection
17. Conservation/Energy Price Labeling
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28. Resource Development/Revenue
29. Resource Development/Impact Amelioration
30. Resource Development/Renewable Resources
30a. Solar Easements/Access
31. Resource Development/Financial Incentive
32. Mineral Extraction Regulation
33. Management/Organization
34. Emergency Powers/Responses
35. Anti-trust
36. Anti-environment
37. Miscellaneous Legislation

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
1. UTILITIES/PUBLIC POWER			
AK	CH 156	1	Amends purpose, membership and powers of the Alaska Power Authority. Enumerates qualifications, powers and duties of officers and directors. Allows the Authority to provide methods for developing power contracts. Invests the Governor with review power over project proposals.
KS	SB 804	6	Repeals repetitive language regarding electric cold storage plants and regarding provisions for calling meetings of the board of trustees of electric cooperatives.
LA	ACT 83	9	Allows police juries to grant franchises for the construction, maintenance and operation of wires utilized in transmitting electric current for heat, light or power. Franchises shall be awarded to the highest bidder and shall be nonexclusive.
LA	ACT 108	11	Relating to electric cooperatives, providing for the adoption of bylaws by the board of directors. Authorizes voting by mail except with matters concerning the sale or lease of cooperative property. The bylaws shall prescribe rights and duties of members and directors and may contain other regulatory provisions.
LA	ACT 109	13	Classifies the board of directors of electric cooperatives into three classes for purposes of staggered elections over three annual meetings.
LA	ACT 110	15	Five percent of all members of electric cooperatives must be present at meetings to constitute a quorum. Members voting by mail are considered present in person, if voting by mail is authorized in the bylaws.
LA	ACT 560	17	Allocates funds for costs incurred in relocating publicly owned utility lines within the right of way of new highway construction.
MN (2)	CH 795	93	

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
1. UTILITIES/PUBLIC POWER (cont.)			
MO	HB 1126	18	Permits municipalities, by joint contract, to form a joint municipal utility commission to effect the joint development of water, gas, electric light works, heating and power plants. Enumerates specifications of the joint contract establishing the commission and the general powers of the commission. Provides for the issuance of revenue bonds pending voter approval of a constitutional amendment.
NY	CH 644	26	Authorizes improvement and/or rehabilitation of hydroelectric or energy storage projects to conserve fuel or to contribute to the adequacy, economy and reliability of electric power and energy supply. Allows contractual agreements between municipal corporations and power authorities with respect to the development and output of hydroelectric generating facilities.
OH (1,4, 7)	HB 577	28	Relating to certified territory of electric suppliers. Requires maps of existing distribution lines and proposed boundaries of certified territory. Confers electric suppli with exclusive rights to furnish electric service within the certified territory. However, municipal corporations may still require franchises or contracts for the provision of electric service within their boundaries. Electric suppliers must furnish adequate facilities to meet customer needs. Creates the Public Utilities Territorial Administration Fund.
OK	HB 1462	34	Requires membership composition of the board of directors of the Grand River Dam Authority to include an official of a rural electric cooperative and a municipal official. No director can have been employed by a privately owned utility three years prior to appointment.
PA	SB 1268	38	Authorizes the Public Utilities Commission to levy limited assessments against public utilities for the purpose of funding the Office of Consumer Advocate.

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
1. UTILITIES/PUBLIC POWER (cont.)				
SC		R 539/ S 187	41	Authorizes municipalities to jointly own and operate electric generation and transmission facilities and permits municipalities to own electric distribution facilities. Provides for membership of joint agencies, requires a petition prior to acquisition of a project, directs that management and control of the joint agency shall be rested in a board of directors and allows for creation of an executive committee. Designates powers and duties of the joint agency. Allows municipalities to contract to buy power. Allows joint agencies to issue bonds, secured by a trust agreement, and to collect rents, rates, fees and charges for electric energy. Authorizes bond investment, issuance of refunding bonds and exempts bonds from taxes. Withdraws from joint agencies their immunity from legal action.
SD		HB 1292	53	Grants any consumer power district permission to contract in cooperation with others in an electric generation and transmission facility. Exempts parties to the contract from negligence, provides for nonpartitionment and governing by the laws of the state within the content of the contract.
VT	(1,31)	ACT M-12	54	Grants permission to Burlington, Vermont to issue revenue bonds for improvement of it's electric plant. The bonds are to aid in the utilization of alternate fuel sources, including wood and solid waste. Amends certain provisions of the city charter relating to the issuance of bonds and amends the city authority in relation to the New England power pool.
WI	(6)	CH 418/ SEC 527	191	
2. UTILITIES/RATE REGULATION				
CT		PA 78-100	73	Provides that securities issued by public service companies shall be valid and binding unless such issuance has been stayed or suspended prior to issuance.

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
2. UTILITIES/RATE REGULATION (cont.)				
CT		PA 78-119	74	Requires that historical data on energy use and peak loads be reported and used in determining energy loan forecasts.
CT	(3)	PA 78-370	100	
DE		SB 142	76	Allows the Public Utilities Commission seven months to approve a rate change. If no decision is reached within that time period, the rate change takes effect providing a bond of reasonable amount is filed with the Commission. The rate increase must not exceed 15 percent of the public utility's gross intrastate operating revenues.
HI	(2,30)	ACT 132	78	Establishment of the rate payable by a public utility to the producer of geothermal steam or electricity generated from geothermal steam shall be made by agreement between the supplier and the public utility, with the consensus of the Public Utilities Commission. The definition of "public utility" shall not include any producer of geothermal steam or electricity generated from geothermal steam, for purposes of regulation by the Public Utilities Commission.
IN		S 256	80	Includes in the proceedings of the Public Service Commission that any report, audit, examination or analysis prepared by the commission staff may be made part of the record. It may also be subject to cross examination.
KS		HB 2070	82	Construction-work-in-progress may not be considered a factor in determining utility property value when fixing public utility rates.
KS		HB 3206	83	Exclusive jurisdiction of review of public utility rate hearing orders or decisions is given to the court of appeals.
LA	(2,4)	ACT 77	87	The Public Service Commission may not subject to regulation any aspect of direct sales of natural gas to industrial users for fuel or manufacturing processes. Electric cooperative rates previously approved by the electric cooperative's board of directors shall not be subject to approval by the PSC.

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
2. UTILITIES/RATE REGULATION (cont.)				
MD	(3)	CH 173	108	
MD		CH 542	89	Clarifies existing language regarding proceedings upon suspension of a public service company's proposed new rates.
MD	(2,4)	CH 374	91	Public service companies must consider and be consistent with the public good when determining "just and reasonable rates."
MN	(2,1)	CH 795	93	Cooperative electric associations are subject to rate regulation only if they elect so. Specifies details for elections to approve rate regulation.
NY		CH 394	95	Invests the Public Service Commission with the power to refund revenues of gas and electric corporations in excess of the authorized rate of return. The Commission may enact refund proceedings on a yearly basis.
TN	(2,3)	CH 615	96	Utility companies or services must provide their customers the opportunity to pay fuel bills on an average monthly basis. To participate, a customer may be required to pay outstanding bills and may be removed from the program if an average monthly payment is missed. The utility company may adjust average monthly payments in the event of significant increases in fuel or power costs.
VA	(3)	CH 636	119	
WI		CH 418/ SEC 518	97	Allows auditing of municipal electric utilities by their governing body.
WI		CH 418/ SEC 559-566	98	Adjusts utility rates as a result of income and distribution of revenue.
3. UTILITIES/FUEL COSTS				
CT	(3,2)	PA 78-370	100	Removes the gross earnings tax from fossil fuel and gas costs for the purpose of fuel adjustment and purchased gas adjustment calculations.
DE		HB 183	102	Repeals the requirement that the Public Service Commission hold public hearings on applications to change the fuel adjustment rate. The hearings served only to verify a utility's calculations and had no application to the basic tariff provisions permitting the fuel adjustment charge.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
3. UTILITIES/FUEL COSTS (cont.)			
DE	HB 539	103	Requires quarterly hearings before the Public Utilities Commission with respect to increases in fuel adjustments by electric utilities that burn fuel unless adjustments in a given month exceed a specified limit. Specifies procedures in the event the Commission does not act before the adjustment goes into effect.
HI (3,29)	SR 41/ SCR 12	106	Requests state exemption from the federal mandate requiring conversion of new and existing power plants to coal, relief from the fuel oil penalty user tax, the loss of accelerated depreciation and investment tax credit on new boilers using fuel oil.
MD (3,2)	CH 173	108	The Public Service Commission may permit gas or electric utilities to establish a sliding scale for adjustment of fuel costs, purchased power costs, or purchased gas costs. Requires gas and electric utilities to justify increased charges based on increased fuel, purchased power, or purchased gas costs. Allows an electric company to charge customers for its actual costs of fuel. Provides for investigation and hearings regarding rate adjustment based on fuel costs. Provides for annual audits of fuel procurement and purchasing practices of utilities.
MS	HB 581	113	Limits items of fuel cost that can be included in a public utilities fuel adjustment clause. Provides for continuous audit of all fuel adjustment clauses.
TN (2)	CH 615	96	
VA (3,2)	CH 636	119	Prospective estimated annual fuel costs and the tariff provisions necessary to recover the estimated amount from customers during the year must be submitted annually by all electric utilities to the State Corporation Commission. The Commission will direct appropriate tariff provisions for a one year period, to be reviewed quarterly. To insure public confidence and to minimize abrupt changes in charges to customers, the Commission shall not allow over-recovery or under-recovery of incurred fuel costs by electric utilities.

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4. UTILITIES/CONSUMER PROTECTION				
CT		PA 78-184	120	Provides for an emergency fuel assistance program on behalf of low income families. Assistance is not to exceed $100 per family per year.
DE		SB 715	121	Guarantees the Public Advocate access to public utility information and to public hearings and meetings of the Public Utilities Commission with the right to be heard.
DE	(34)	SJR 14 (v)	1216	
FL	(7)	SB 7	201	
IL		HB 3053	122	In the event of curtailment or discontinuance of public utility service, preference shall be given to those customers serving essential human needs and governmental agencies performing law enforcement functions.
IA	(30)	SF 2209	826	
KS		HB 2531	124	Requires utilities to pay an interest rate on security deposits of not less than five percent per annum credited once a year. Regulates handling of security deposits of customers who have discontinued service with municipally owned utilities.
KY		CH 185	126	Establishes an energy cost assistance program for the elderly poor for household use. The program will be administered by the department for human resources.
LA	(2)	ACT 77	87	
MD	(2)	CH 374	91	
MD	(4,22)	CH 497	128	Permits submetering for each individual dwelling unit of an apartment house. Only charges authorized by the Public Service Commission may be imposed on individual dwelling units for utility costs. Requires the Public Service Commission to develop specifications for intermittent ignition device certification. They may determine

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
4. UTILITIES/CONSUMER PROTECTION (cont.)			
			there is no feasible alternative to the use of a pilot light. Prescribes means for intermittent ignition device certification. Provides penalties.
MD	CH 788	133	Any individual who intervenes, with a relevant issue, at any meeting of the Public Service Commission, need not be represented by an attorney.
MD	CH 860	135	Creates the Utility Consumer Advisory Panel within the Public Service Commission. Prescribes duties and composition. The panel will advise and assist the people's counsel on problems of utility consumers.
MN	CH 746	138	The consumer services section of the Department of Commerce shall represent residential utility consumers before the Public Service Commission, particularly in matters related to utility rates and adequacy of utility services. Creates a board of residential utility consumers to review and comment on utility related activities of the consumer services section.
OH (1)	HB 577	28	
OH	HB 1073	140	Directs the tax commissioner to promulgate a rule designating the manner in which propane is distributed by pipeline. Makes changes relative to temporary heating credits including deadlines, eligibility and reimbursements. Provides easier access for persons wishing to obtain information concerning energy credits. Increases appropriations for energy credit programs.
TN	CH 871	150	Establishes minimum procedures for discontinuing certain utility services. Following a mailed notice, a utility representative must make a reasonable effort to notify the utility user. When the user pays his arrearage after discontinuation, service must be resumed.
VA	H 294 (v)	151	Electric utilities must advise customers of the date on which their bill was prepared and the due date for payment. The time between bill preparation and the receipt of payment due date must not be less than 28 days.

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
4. UTILITIES/CONSUMER PROTECTION (cont.)				
VA		CH 392	152	Authorizes the State Corporation Commission to allow owners of apartment houses lacking individual electric meters to install sub-metering equipment so that individual dwelling unit electrical consumption may be more fairly allocated. A service charge may be collected to cover administrative costs and billing, not to exceed one dollar per unit per month. No apartment house shall be considered a public utility.
WI		CH 393	154	In regards to the sale of liquefied petroleum gas in vapor form, installation with a self-sealing automatic temperature compensating mechanism is required.
WI	(34)	CH 418/ SEC 331 p,x	1229	
WI		CH 418/ SEC 621 m	155	Notice of discontinuance of utility service to a residential customer must be accompanied with a notification of the existence of the emergency fuel and utilities program.
5. UTILITIES/TAX EXEMPTIONS				
FL	(5,6)	SB 1	156	Certain allowable tax exemptions for the purchase or use of machinery or equipment shall not apply to purchases or use made by electric utility companies, mining and oil and gas exploration. Allows tax exemption in the sale of any aircraft regulated by the Public Service Commission. Also exempts boiler fuel purchases from taxation so long as they are not boiler fuels used by firms regulated by the Hotel and Restaurant Division of the Department of Business Regulation. Exempts tax on electricity purchased for residential use for the first 50 kilowatt hours each month.
LA		ACT 599	170	Authorizes direct tax credits for municipally owned or regulated natural gas distributors and electric generating plants provided fuel

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
5. UTILITIES/TAX EXEMPTIONS (cont.)				
				costs have increased as a result of transportation and marketing cost increases. Provides for issuance of tax warrants. Establishes maximum tax credits and regulations regarding tax credits and tax warrants.
MD		CH 829	174	Exempts the fuel rate adjustment, that amount of the scale above the base rate, from retail sales tax. Contingent on enactment of legislation imposing a retail sales tax on food.
MD		CH 951	176	Excludes from sales tax and use tax any sales or service tax imposed on the sale of natural or artificial gas, oil, electricity, coal, nuclear fuel assemblies or steam. Also excludes the environmental surcharge placed on sales of electricity which may be added to customers' bills.
VA		CH 786	179	Allows deduction of the state franchise tax from gross receipts of any electric cooperative which purchases electricity for resale to other cooperatives.
6. UTILITIES/TAX APPLICATIONS				
FL	(5)	SB 1	156	
WV		SB 163	181	Establishes tax rates and conditions for taxing income derived from the production of electric power. Establishes rates for taxing electric light and power companies supplying public service but not producing electric power. Amends other tax related measures.
WI	(6,1)	CH 418/ SEC 527	191	Subjects electric utility plants to a certain manner of taxation different from taxation of cooperative electric utilities.
7. UTILITIES/MISCELLANEOUS				
CT		PA 78-86	192	The commissioner of transportation may enter into an agreement with the owner or operator of a public service facility providing for the

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
7. UTILITIES/MISCELLANEOUS				
				longtitudinal use of the right-of-way of a limited access highway to accomodate trunk-line or transmission type utility facilities.
CT		PA 78-378	193	Stipulates technical procedural changes whereby public service companies sell land.
DE	(34)	SJR 18	1218	
FL	(7,4)	SB 7	201	Increases membership of the Public Service Commission and provides for appointment, vacancy filling, and length of term of commissioners. Provides for selection of chairman and specifies duties. Regulates commission proceedings. Requires compliance with the Sunshine Law.
ID		CH 176	209	Redefines the term "rehabilitate existing electrical generating facilities." Facilities enhanced for environmental improvement, public recreational use, fish and wildlife development, and for purposes of flood control are included in the definition. Allows municipal governing bodies to issue revenue bond anticipation notes in a prescribed manner detailed in the bill.
ID		CH 362	211	Provides a uniform definition of public utility in relation to taxation of operating property.
KS	(22)	HB 2698	521	
KS	(30)	HB 2842	832	
KY	(7,33)	CH 379	217	Provides for reorganization of the Public Service Commission. The Energy Regulatory Commission shall have jurisdiction over energy utilities (i.e. electricity, gas and pipelines). Regulation of non-energy utilities (i.e. water, telephone, telegraph and sewage treatment) shall be the responsibility of the Utility Regulatory Commission.
LA	(7,27)	HB 1129	237	The owner of a utility line shall bear the cost of lowering said utility line whenever a highway, road, street, or drainage canal is con-

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
7. UTILITIES/MISCELLANEOUS (cont.)				
				structed across the existing underground utility line.
LA		ACT 297	238	Sets reimbursement fees for board of commissioners of gas utility districts for meeting attendance. Allows additional compensation for proper expenditures. No board of commissioner shall be paid a salary for services performed.
MD		CH 377	240	Authorizes the Public Service Commission to close yard tracks alongside railroads that pose immediate dangers to the public or railroad employees until the dangerous condition is alleviated.
MD		CH 748	242	Extends the deadline for the final report on the Public Service Commission law prepared by a Gubernatorial Commission.
NY	(33)	CH 707	1205	
NC		SJR 966	243	Resolves that the General Assembly, in joint session, shall vote to confirm nominations made by the Governor to fill membership vacancies in the North Carolina Utilities Commission.
OH	(7,34)	HB 261	246	Requires biannual reports filed with the Public Utilities Commission from gas, natural gas, and electric light companies. The report shall state projected demands, projected fuel and gas supply, details of contracts with pipeline companies, and the means that will be employed if supply exceeds demand.
OH	(1)	HB 577	28	
OK		SB 400	248	Prohibits tampering or injuring of utility equipment or metering devices. Prohibits unlawful diversion of electricity. Provides penalties.
TN	(7,27)	CH 692	252	The location of all underground utilities must be ascertained prior to excavation or demolition activities. Enumerates filing requirements of

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
7. UTILITIES/MISCELLANEOUS (cont.)				
				utility operators having underground facilities. Establishes guidelines for notice of intent to excavate or demolish. Provides color coding for temporary markers of underground facilities. Notice requirements need not be complied with in the event of emergency evacuation or demolition. Requires precautions to avoid damage. Designates appropriate action in the event of damage to utilities. Provides violation penalties.
TN		CH 746	257	Establishes civil and criminal liabilities and penalties for diversion of electrical power with the intent of depriving proper payment to the electric power supplier. The supplier may recover the value of electrical power fraudently taken.
VA		CH 700	259	The State Corporation Commission may audit and investigate uneconomical, inefficient and wasteful practices within electric public utilities. The Commission is directed to take measures to correct or eliminate such practices.
WI		CH 311	261	Provides penalties for fraudulent tapping of electricity, gas or watermeters, and pipes.
WI		CH 350	262	Requires color coding for underground transmission facilities. Coding applies to electric power and natural gas facilities.
WI	(22)	CH 369	533	
WI		CH 418/ SEC 704	263	Provides the Public Service Commission with legal rights. The PSC may participate in any proceedings of regulatory agencies of other states. They may sue and be sued.
8. TAX EXEMPTION-INCENTIVE/BUILDING EFFICIENCY				
AZ	(9)	CH 112	283	
HI		ACT 19	264	Provides an income tax credit not to exceed $30 for the installation of insulation material

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
8.	TAX EXEMPTION-INCENTIVE/BUILDING EFFICIENCY (cont.)			
				for hot water tanks and exposed hot water pipes, as an aid in heat loss reduction and energy conservation. Defines "insulation material."
IA	(8,9)	HF 602	266	Allows property improvement loans to finance solar or other renewable energy systems or to increase the energy efficiency of housing. As a condition of a property improvement loan, the Iowa Housing Authority may require compliance with existing or new thermal efficiency standards.
KS		SB 546	273	Redefines buildings eligible for income tax exemption from costs incurred as a result of insulation.
SD	(8,30)	HB 1354	276	Allows a property tax assessment credit for the attachment or inclusion of a renewable resource energy system to residential or commercial real property. Specifies the time period for credit application and the means by which application for credit shall be made.
TN		CH 884	280	Makes available insured loans for low and moderate income families for residential energy saving improvements. The loans may also serve to purchase solar hot water heaters.
VA		CH 631	282	The Virginia Housing Development Authority may make loans for the financing and purchasing of energy saving devices. They may be secured by a mortgage or unsecured. Such loans are limited to low and moderate income families.
9.	TAX EXEMPTION/SOLAR HEATING AND COOLING			
AZ	(9,8)	CH 112	283	Provides an income tax credit for the installation of residential insulation and energy saving devices. Specifically allows a tax credit for solar energy devices with a 36 month amortization period.
CO		HB 1019	292	Allows income tax deductions for the installation of alternative energy devices in buildings owned by the taxpayer, including the utilization of solar radiation, wind, or geothermal resources. The tax deduction shall be divided in proportion to ownership interest.

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
9.	TAX EXEMPTION/SOLAR HEATING AND COOLING (cont.)			
DE		HB 475	295	Allows a tax credit of $200 for the cost and installation of solar energy devices designed to produce hot water in a residence. The device must have specific warranty provisions to be eligible for the tax credit.
DE	(9, 20,30)	SB 242	298	Permits a property tax exemption for the installation and use of solar energy heating and cooling units in residential or non-residential buildings. Also exempt from assessment for property tax purposes are energy conservation improvements involving conversion of energy through wind, solid wastes and organic wastes.
GA		ACT 1309	300	Amends the beneficiary of sales tax exemptions for the installation of solar devices. The owner is entitled to a sales tax refund rather than the purchaser (e.g. contractor).
IA	(30)	SF 2209	826	
IA	(8)	HF 602	266	
KS		SB 545	304	Technical amendments to the solar property tax law. Provides penalties for excessive or fraudulent claims made towards solar energy property tax refunds.
LA		ACT 591	306	The property value of solar energy system equipment attached to residential buildings or swimming pools shall not be considered in assessing property value for taxation purposes. Defines solar energy system.
MD		CH 509	308	Prohibits increased assessment of a building's value in the case of a building utilizing both conventional and solar heating and cooling units. The combined units shall be assessed at no more than the value of the conventional heating and cooling unit.
MA	(30)	CH 73	868	
MA		CH 388	310	Extends from ten to twenty years the allowable period for a real estate tax exemption for the utilization of a solar or wind powered system.

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
9.	TAX EXEMPTION/SOLAR HEATING AND COOLING (cont.)			
MN	(20)	CH 786	470	
NE		LB 323	311	Submits to the electors a proposed consitutional amendment to allow tax exemptions or tax credits for the installation of direct alternate energy systems. Those alternate energy systems would include solar, wind-generated, solid waste conversion and water powered systems. The tax exemption would be applicable to residential, commercial and industrial buildings.
TN		CH 837	312	Provides a property tax exemption for all related property used for heating, cooling or electrical generation through solar or wind power. County property assessors will determine qualifications for the exemption, when necessary. The determination may be appealed to local and state boards of equalization.
WI	(9,30)	CH 313	313	Expenses incurred in the design, construction and installation of alternative energy systems after 4/20/77 may be deducted, depreciated, or amortized over a five year period. Stipulates the percent of the cost of the system that may be credited against income taxes over a period of years. Appropriate certification of the solar, waste conversion or wind energy system is a prerequisite of eligibility.
10.	TAX EXEMPTION/MOTOR FUEL			
AZ		CH 195	317	Exempts public service corporations providing urban mass transportation service and public transportation services provided by counties, cities and towns from the gross receipts license tax.
CO	(10, 30)	HB 1135	325	The amount of excise tax on motor fuel which contains at least ten percent alcohol derived from agricultural and forest products shall be five cents per gallon less than motor fuel lacking such a blend. Requires vehicles used by state agencies and local governments to use the blended fuel, in counties of 200,000 persons or more, when it becomes available.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
10.	TAX EXEMPTION/MOTOR FUEL (cont.)		
CT	PA 78-322	328	Authorizes a fuel tax refund for high-occupancy commuter vehicles. The vehicles must transport, on a daily average, a minimum of nine persons to and from work. Authorizes a fifty percent state fuel tax refund for motor buses engaged in transporting passengers to and from airport facilities.
OK	HB 1681	333	Amends terms related to required licensing of special fuel dealers and fuel users and the exemption of special fuels from the Gasoline and Motor Fuel Excise Tax Act.
VA	CH 71	339	Exempts from imposition a tax of nine cents per gallon on liquid petroleum gas sold or delivered to any licensed user-seller meeting certain qualifications. The licensed user-seller must not own or operate a motor vehicle propelled by liquid petroleum gas and must not maintain storage facilities used for the resale or delivery of liquid petroleum gas for highway use.
VA	CH 663	341	A refund of motor vehicle fuel taxes to taxi-cabs is allowable only if the applicant for refunds retains a certificate of authority. Refunds will not be denied due to the fee arrangement between the holder of the certificate and the driver(s).
11.	TAX EXEMPTION/HEATING FUEL		
MN	CH 721	343	Removes sales tax from residential heating fuels, including fuel oil, coal, wood, steam, propane gas and liquid petroleum gas. In the case of natural gas or electricity used as the primary source of residential heat, the sales tax is removed during the billing months of November through April.
TX	HB 1	347	Exempts home gas and electric bills from the state sales tax. The four cents sales tax from utility bills is removed. Discontinues the one cent city sales tax on gas and electric bills unless a city council votes to retain the tax before 5/1/79.

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14.	TAX APPLICATION/MOTOR FUEL			
OK		HB 1312	363	Levies a fee, remitted to the Tax Commissioner, on automobiles, trucks and vans using liquefied petroleum gas as fuel. Requires acquisition and display of a decal for such vehicles.
OK		SB 618	367	Levies a tax on diesel fuels and on diesel fuels imported in vehicle fuel supply tanks. Apportions the revenue from said taxes. Creates the motor fuel/diesel fuel importer for use tax code. Establishes related rules and regulations. Amends numerous provisions related to fuel revenue and taxation.
WI		CH 289/ SEC 1,2	426	Revises motor and special fuel tax report and tax payment requirements. Specifically shortens the time allowed to file and remit tax and penalty fines.
16.	FRANCHISE PROTECTION			
MD		CH 993	427	Requires distributors who set retail prices for gasoline, to provide non-controlled outlets they supply with gasoline products at a wholesale price of at least four cents per gallon under the lowest price posted for each grade of gasoline at controlled outlets. Exempts farm cooperatives and certain persons. Provides penalties for gasoline product price discrimination.
19.	CONSERVATION/APPLIANCE EFFICIENCY LABELING			
AZ	(33)	CH 180	1155	
NY	(22)	CH 462	528	
20.	CONSERVATION/BUILDING EFFICIENCY STANDARDS			
AL		ACT 766	430	Requires adoption of a state building code containing energy conservation measures. Establishes minimal energy conservation criteria.
CA	(20,22)	CH 248	432	Prohibits local building departments from issuing building permits unless building plans

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
20. CONSERVATION/BUILDING EFFICIENCY STANDARDS (cont.)			
			meet established standards. Allows for the use of pilot lights if no feasible alternative is found. Twenty-four months after certification of an intermittant ignition device, any new gas appliance offered for sale must be accompanied by a proper seal of certification.
CT	PA 78-269	437	Establishes lighting efficiency standards for public buildings. Designates means by which compliance with such standards will be monitored.
DE (9)	SB 242	298	
DE (24)	HJR 11	550	
GA	ACT 1470	440	Directs the State Building Administrative Board to implement minimum lighting and thermal efficiency standards for new and renovated public buildings. Enforcement of building efficiency standards is the responsibility of local governing authorities except in the case of state-owned buildings. In that instance, compliance is the responsibility of the agency owning the building.
HI	ACT 133	448	Requires that energy efficiency building design and construction standards be incorporated by each county into it's building code by 7/1/78. Energy efficiency standards for lighting shall take effect at that time.
HI (22)	ACT 134	513	
KS	SB 512	454	Requires thermal insulation sold in the state to meet testing standards for flame spread. Requires package labeling of the flame spread rating.
LA	ACT 715	455	States Louisiana policy of energy conservation. Authorizes the Secretary of the Department of Natural Resources to establish minimum thermal efficiency standards and lighting efficiency standards for certain residential, commercial and public buildings. Creates the Louisiana Building Energy Conservation Advisory Board. Prescribes duties and provides for composition of the Board.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
20. CONSERVATION/BUILDING EFFICIENCY STANDARDS (cont.)			
MD	CH 332	460	Provides for the development of statewide energy utilization guidelines for new buildings. Creates an advisory commission on energy utilization in buildings, prescribing for it's membership and duties. Directs the Department of Economic and Community Development to train local jurisdictions in regards to state guidelines on energy efficiency.
MD	CH 597	463	Requires consideration of life-cycle costing and energy consumption analysis during the preliminary design of new buildings financed by the state or with state assistance. Also required for all authorized construction appropriations. Directs the Department of General Services to establish standards and procedures for life-cycle costing and energy consumption analysis.
MD	CH 302	467	Requires development of illumination level guidelines for public buildings. Creates an advisory commission on energy conservation in buildings. Provides for training of local jurisdictions for the application of illumination guidelines.
MN	(20,9 30a) CH 786	470	Certain residential energy efficiency standards and insulation product and application standards shall be implemented. Requires energy disclosure reports for residences. Directs the energy agency to promulgate specifications for insulation and insulation testing. Requires proper labeling of insulation products and provides penalties for unfair and deceptive insulation advertising practices. Allows property tax exemptions for solar, wind or agriculturally derived methane gas energy systems. Municipalities may regulate through zoning ordinances access to direct sunlight for solar energy systems. Provides for the creation and definition of solar easements.
MS	SB 2379	477	Requires life-cycle costing for state buildings and the promulgation of rules for energy performance indices. Directs establishment of thermal and lighting efficiency standards to minimize energy consumption in state buildings.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
20. CONSERVATION/BUILDING EFFICIENCY STANDARDS (cont.)			
NJ	A 562	482	Requires a life-cycle cost analysis in the design phase of any construction or renovation of major facilities. The life-cycle costing must include an energy consumption analysis comparing alternative energy systems and the projected cost of energy consumed in the facility.
NY (20, 33)	CH 397	485	Mandates the state building code council establish the state energy conservation construction code. The code shall be administered and enforced by local municipalities. Municipalities are not precluded from establishing more stringent codes. Authorizes the adoption of rules and regulations to enforce energy efficiency standards in all new buildings applying for permits on or after 10/1/78.
NY	CH 710	490	Requires lighting efficiency standards to be promulgated, administered and enforced in existing public buildings owned by the state and by municipalities. Public buildings that are not government buildings shall be monitored for voluntary compliance.
OH	SB 127	493	Requires the Board of Building Standards to encourage fuel conservation by adopting insulation efficiency standards. Requires gas and electric companies to issue lists to residential customers of companies installing and financing insulation. Details methods of loan payment. Borrowers must obtain insulation material certification.
OH (20,21 22,24)	HB 419	497	Requires the Department of Administrative Services to ensure energy conservation in state-owned, assisted and leased facilities through the use of life-cycle costing, energy consumption analysis and energy performance indices. Requires energy conservation standards for state purchases including automobiles. State-owned passenger automobiles must achieve an average fuel economy of not less than twenty miles per gallon in 1979 and increased fuel economy in years thereafter. Allows preferential parking spaces for state employees whose vehicles are used in carpools and vanpools.

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
20. CONSERVATION/BUILDING EFFICIENCY STANDARDS (cont.)				
				Encourages and promotes carpool and vanpool programs and the use of transit facilities. Requires energy conservation to be incorporated into driver education programs and the general curriculum of public schools. Directs establishment of lighting efficiency standards in public schools. Prohibits the sale and installation of grain-drying equipment not accompanied by information regarding it's energy usage, bans decorative gas lamps and any appliances with continuously burning gas pilot lights. Provides penalties.
TN		CH 888	507	Establishes a state code for energy conservation in new buildings. Minimum requirements will be adopted from the National Conference of States on Building Codes and Standards.
VA		HJR 141	509	Requests the Virginia Board of Housing to upgrade the Uniform State-Wide Building Code to comply with prevailing conservation and energy efficient standards set forth in the Building Officials and Code Administrators (BOCA) Energy Code. Requests the Board to issue an annual report identifying specific changes and improvements made by the Uniform Statewide Building Code.
VA	(30)	HJR 147	892	
VA		CH 737	511	Requires the Director of the Department of Housing and Community Development to promulgate rules and regulations to enforce energy standards for existing buildings that may be required by federal law.
21. CONSERVATION/AUTO EFFICIENCY STANDARDS				
DE	(24)	HJR 11	550	
HI	(22)	ACT 134	513	
OH	(20)	HB 419	497	

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
22.	CONSERVATION/APPLIANCE EFFICIENCY STANDARDS			
CA	(20)	CH 248	432	
HI	(22,20 21)	ACT 134	513	Energy efficiency standards, including life-cycle costing, shall be included in procurement practices of the state. Mandates reliance on federal or national energy efficiency standards in procuring automobiles, air conditioning systems and other items procured by the state.
HI		ACT 137	516	Prohibits the sale or installation of gas appliances with pilot lights after 6/30/80. Intermittant ignition devices or other ignition systems shall be sold and installed in lieu of gas pilot lights. Exceptions include hot water heaters and gas appliances that are more energy efficient, with a lower life cycle cost, than alternative ignition systems.
IA		SF 182	519	Bans new gas appliances equipped with pilot lights following certification of intermittant ignition devices. Also prohibits decorative gas lamps. Authorizes creation of a seal of certificate and specifies procedures for notifying manufacturers concerning the prohibition of pilot lights. Establishes penalties.
KS	(22,7)	HB 2698	521	Classifies every municipally owned or operated electric or gas utility as a public utility for the purposes of filing tariffs, rules and regulations restricting connections to their systems of structures failing to meet heat loss standards and energy efficiency ratios for air-conditioners and heat pumps.
KY		CH 260	525	Regulates state agency purchases of energy consuming equipment for purposes of acquiring energy efficient products and to promote energy conservation. Also regulates the manner in which energy consuming items will be purchased.
MD	(4)	CH 497	128	
NY	(22, 19)	CH 462	528	Limits the standby energy loss of automatic gas-fired or oil-fired storage water heaters. Allows deadline extension of efficiency compliance in hot water heaters if none of a

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
22. CONSERVATION/APPLIANCE EFFICIENCY STANDARDS (cont.)				
				certain class are available. However, compliance is mandatory by January 1, 1980. Requires labeling of hot water heaters and their cartons with the notice that such heaters meet minimum energy efficiency requirements.
OH	(20)	HB 419	497	
TN		CH 655	530	Creates the Life-Cycle Cost and Procurement Act. Only products which have qualified through life-cycle costing and/or energy efficiency standards determined by the federal government may be purchased by the state. Directs the Board of Standards and the Tennessee Energy Authority to adopt energy efficiency standards for major energy-consuming products.
WI	(22,7)	CH 369	533	Directs development of intermittent ignition devices and bans pilot lights. Prohibits nonessential uses of natural gases. Rules shall be promulgated specifying nonessential uses of natural gas.
23. CONSERVATION/RIGHT TURN ON RED				
CT		PA 78-309	538	Permits right turns on red traffic lights unless prohibited at the intersection. Directs review of intersections to determine prohibitive right turn intersections through uniform standards.
KY		CH 156	543	Permits a left turn on a red light from a one-way highway on to the left lane of a one-way highway. An official sign may prohibit such movements.
MA		CH 350	545	Permits right turns on red and left turns from a one-way street into a one-way street at a signalized intersection provided a sign permitting this is posted. Determination of designated intersections is under the control of municipalities.

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24.	CONSERVATION/MISCELLANEOUS			
AZ	(33)	CH 180	1155	
CT	(24, 30)	PA 78-262	546	Promotes energy conservation and increased efficiency of energy utilization as a state policy. Calls for utilization of renewable energy resources to the maximum practicable extent. Directs policy implementation through public education and cooperation from various levels of state governments.
CT	(33)	PA 78-314	1164	
DE		HJR 27	548	Requires all school districts to adopt the energy saving program approved by the State Board of Education.
DE	(24,20 21)	HJR 11	550	Resolves adoption of energy conservation as an official state policy. Calls for energy reduction and efficiency in state buildings, life-cycle costing and conservation in state purchases, use of energy efficient vechicles and vehicular conservation.
HI	(24, 26)	SB 1596 (v)	552	Appropriates funds for an information gathering study in order to effectuate a used oil recycling program.
IA	(30)	HF 187	829	
KS	(33)	HB 2973	1191	
KS		HCR 5047	556	Urges the Secretary of Transportation and the Kansas Turnpike Authority to provide parking sites for persons engaged in car pooling.
KY	(30)	CH 119	854	
KY		CH 232	558	Relating to the operation of vanpools. Vehicles operated on a non-profit basis used to transport 15 persons or less between employment and residence are not required to maintain a special permit. Licensing fees and permits are not required for motor pooling. Permits are required of motor vehicles transporting minerals or natural resources.

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24.	CONSERVATION/MISCELLANEOUS (cont.)			
MD	(24, 30)	CH 230	568	Maryland Used Oil Recycling Act. Provides for conduction of a public education program relating to oil recycling. Requires persons engaged in selling oil to post signs informing the public of how and where used oil may be disposed. Provides for used oil information centers and collection facilities. Places restrictions on oil disposal and representation of used oil products. Directs state officials and agencies to procure recycled oil to the fullest extent possible. Provides penalties.
MD		JR 2	572	Urges the Maryland Congressional Delegation to support the Federal Coal Conversion Act requiring large industrial firms to convert to coal burning facilities for energy production.
NJ	(27)	CH 80	706	
NY	(24, 30)	CH 740	574	Official policy encourages the use of rerefined oil. Used oil collectors and rerefiners shall be regulated. Used oil retention facilities are required of any establishment or person generating at least five hundred gallons of used oil annually with maintenance and oil disposal regulated. Rerefined oil must be labeled as such. Requires labeling of used oil containers with a notice of proper disposal requirements. Directs standards to be set for the use of used oil as a method of dust control.
OH	(20)	HB 419	497	
OH		HJR 1	579	Urges compliance with voluntary programs of natural gas conservation. Requests all establishments not using natural gas to set their thermostats at 60^{o}.
RI		S 1232 A	580	Reinstates the life and extends the deadline of the report for a special legislative commission directed in 1977 to study economically feasible energy conservation alternatives.
VT		ACT 228	581	Establishes a revolving fund in support of vanpools with monies obtained from the general fund and highway fund.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
24. CONSERVATION/MISCELLANEOUS (cont.)			
VA	HJR 9	588	Requests the Governor to direct the Adjutant General of the Virginia National Guard to assist the state energy office in implementing the state winterization program. The National Guard will do so by utilizing facilities such as armories for storing winterization materials and transporting same to the site of implementation.
VA	HJR 128	589	Requests the Governor to proclaim October of 1978 and October of all succeeding years as Energy Conservation Month.
25. RESOURCE DEVELOPMENT/NUCLEAR			
AZ (25, 33)	CH 160	590	Amends the licensing powers of the Arizona Atomic Energy Commission regarding radioactive material. Requires bonding for perpetual care of storage and disposal sites of radioactive waste materials. Directs review of mill tailing management and disposal in license application of radioactive materials.
CT	PA 78-214	597	Stipulates specific means whereby the Department of Environmental Protection will regulate nuclear facilities. Mandates more stringent controls over development, utilization and regulation of radiation sources.
ID	HCR 59	599	Directs the legislative council to study and determine the possibilities of providing nuclear energy to the state as an additional supply of power.
IA	HF 82	600	Confers the Department of Health with responsibility for regulating the installation and use of radiation-producing equipment and materials. Provides penalties for unlawful operation of radiation emitting equipment.
KY (30)	CH 113	837	
KY (25, 33)	CH 419	602	Directs the formation of a special advisory committee on nuclear waste disposal to assume an oversight role. Allocates $20,000 for operation of the committee.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
25. RESOURCE DEVELOPMENT/NUCLEAR (cont.)			
LA	ACT 327	603	Bans transportation into the state for disposal or storage in the state or other states of high level radioactive wastes, including spent fuel rods from nuclear reactors. Prescribes penalties for violation.
MD	CH 125	605	Temproary storage of used nuclear plant fuel, limited to two years, may be extended by not more than one year. Allows the extension only if the Secretary of Health and Mental Hygiene grants a variance necessary and in the public interest.
MD	JR 38	607	Directs a joint study to determine the best efforts to ensure safety of tanks containing hazardous materials. The study shall ascertain proper design, construction, maintenance and placement of tanks carrying hazardous materials, determine inspection procedures, and develop means to expedite enforcement of safety standards.
MD	CH 810	609	Temporarily restricts disposal of hazardous substances to only those areas utilized for disposal prior to 1/1/78.
VA	CH 495	611	The Office of Emergency Services may direct each political subdivision to prepare and update an emergency plan in response to nuclear accidents. Compliance is mandatory if a nuclear power station or nuclear facility is located within ten miles of its boundaries.
26. RESOURCE DEVELOPMENT/RD & D			
AK (30)	CH 29	794	
GA (26, 33)	SR 427	612	Creates a Senate Study Committee on Energy to report its findings by January, 1979. The committee is directed to study Georgia's energy materials' requirements, consumption, transportation, supplies, technologies, organization, legislation, financing and any other aspects related to the energy question. Provides for expenses and allowances of interim legislative committee members.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
26. RESOURCE DEVELOPMENT/RD & D (cont.)			
HI	ACT 131	614	Appropriates $3,845,000 for research development and demonstration of alternative energy resource development and utilization. Directs coordination of planned expenditures with the Energy Resources Coordinator.
HI (24)	SB 1596 (v)	552	
ID (26, 33)	CH 206	618	Appropriates $506,000 for the Energy Conservation Program and $127,800 for the Energy Management and Research Program for the period 7/1/78 through 6/30/79.
IL (26 33)	PA 80-1218	619	Establishes the Illinois Institute of Natural Resources to carry out the duties of a former agency, duties related to research, data collection and environmental studies. Amends the Coal and Energy Bond Act and the Comprehensive Solar Energy Act of 1977 to include reference to the newly created Institute as the lead agency.
IA	HF 2098	653	Appropriations to continue the Iowa Coal Project, a coal research project. Changes the membership composition of the Iowa Energy Policy Council and directs their review of alternative energy sources.
KY (30)	CH 112	834	
KY (26, 33)	CH 291	665	Increases the energy development demonstration fund by $5,000,000 and extends the deadline for committing the funds to 1985.
LA (26, 30)	ACT 542	667	Directs the Department of Natural Resources to develop a program of research and development in solar energy supply, consumption and conservation, and the technology of siting facilities. Mandates priority be given to accelerated development of alternative energy sources, participation in large-scale demonstrations of alternative energy systems, and improved construction design and operation methods of solar energy facilities. Requires development and adoption of solar device regulations. Calls for preparation for mass market deployment of solar heating and cooling systems.

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26. RESOURCE DEVELOPMENT/RD & D (cont.)			
MD (30)	JR 45	861	
MN (30)	CH 728	876	
NM (26, 28, 30)	CH 111	672	Appropriates $2,000,000 from the severance tax income fund to the energy research and development fund. Appropriates $500,000 from severance tax revenues for the development of solar energy.
NY (30)	CH 725	883	
RI (26, 30, 33)	S 2060	673	Creates a special legislative commission to study the feasibility of developing hydro-electric and/or hydro-power. Provides for membership and directs a report of findings to be delivered in one year.
VT (26, 33)	ACT 234	675	Establishes a forest resource advisory council. Duties include the review of forest resources and their potential for development and utilization. Assessing the feasibility of wood fiber as an economically viable source of fuel is one priority.
27. RESOURCE DEVELOPMENT/FACILITY SITING			
FL	HB 11	681	Authorizes regional water supply authorities and port or aviation authorities to take possession and title in advance of final judgement in eminent domain actions.
FL (33)	SB 2	1172	
FL	SB 4	682	State title to lands beneath navigable waters is acquired by virtue of its sovereignty.
FL	SB 901	683	Requires the clerk of the circuit court to keep a file regarding buried gas pipelines. Excavators who seek a permit to excavate on land containing buried gas pipelines must notify the owner in a prescribed manner.
HI	SR 92/ SCR 28	684	Urges the President and Congress to reconsider providing strategic oil reserve facilities in Hawaii.

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27. RESOURCE DEVELOPMENT/FACILITY SITING (cont.)				
IL	(29)	HB 3054	791	
IN		H 1353	687	A private body of water designed to reduce or control pollutants for cooling before discharge into public water does not become public water to permit the state to regulate its quality. The state does not acquire rights or interests if the owner permits entrance to or recreational use of the water.
KS		HB 3238	688	Amends the power plant siting law and the electric service territories law. Extends the time for setting a public hearing following the application for a plant siting permit. Also extends the deadline for preparation of electric service territory maps of retail electric suppliers.
KY	(30)	CH 113	837	
LA	(7)	HB 1129	237	
MD		CH 878	691	Requires that acquisition of sites for power plants, in certain cases, be made only upon receipt of requisition from the electric utility. Technical amendments to the power plant siting act.
MD		CH 520	695	Oil pipeline corporations may acquire by eminent domain any property necessary for placement of oil pipelines not more than 50 feet from the companies existing rights of way. To acquire this right an order must be obtained from the PSC after a public hearing with written notice to all affected property owners. Property used for pipeline placement must be restored to its original condition within a specified time period.
MD		JR 32	698	Requests appointment of the Commission for the Review of the Siting of Power Transmission Lines, providing for its composition. Directs the Commission to explore health risks of residing near high voltage power transmission corridors and to assess the impact of routing overhead transmission corridors through residential communities. Also directed to assess the benefits and costs of placing high voltage lines underground in populated areas.

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27.	RESOURCE DEVELOPMENT/FACILITY SITING (cont.)			
MA		CH 217	700	Requires electric companies to alert the department of public utilities and the energy facilities siting council of all hydroelectric generation sites within their respective market areas. Directs compliance by 6/1/79.
MN		CH 658	701	Includes failure to maintain health standards as a cause for revocation or suspension of a power plant site certificate. Extends the effective date for emergency rules dealing with procedures for site certificate revocation to suspension.
MN	(30)	CH 728	876	
NM		CH 59	703	Allows natural gas companies to appropriate for underground storage facilities by eminent domain proceedings. Details limitations to appropriations of said facilities.
NM		CH 62	705	Extends a feasibility study determining the potential for siting an electrical generating plant in the Tularosa Basin.
NJ	(27, 24)	CH 80	706	Directs the preparation of a study evaluating the site specific potential for the cogeneration of electricity and process steam at the 200 largest steam-using sites in the state. Defines cogeneration. Requires consideration of cogeneration facilities to simultaneously produce electricity and steam for fuel conservation. Includes cogeneration facilities in programs to conserve energy.
NY		CH 348	712	Allows school districts to engage in exploration and development of natural gas fields and to own and operate natural gas producing facilites situated on school district owned property. Allows school districts to finance natural gas exploration by levying taxes in a prescribed manner.
NY		CH 395	714	Imposes a moratorium on the issuance of certificates of environmental safety for liquefied natural or petroleum gas storage or conversion facilities. Imposes a moratorium on acceptance of applications or issuance of certification of a route for the intrastate transportation of liquefied natural or petroleum gas. Moratoriums are imposed due to known and unknown hazards of transporting and storing such gases.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
27. RESOURCE DEVELOPMENT/FACILITY SITING (cont.)			
NY (27, 33)	CH 708	716	Establishes a state board on electric generation siting and the environment. A certificate for a major steam electric generating facility, issued by the board, is required prior to site preparation or construction. Specifies content of certificate application. A public hearing may be held after receipt of an application with the board making a final decision on the application. Provides for rehearing and judicial review for any party aggrieved by the board's decision.
NY	CH 709	728	Technical change in amending the public service law relating to the expeditious siting of major steam electric generating facilities.
RI	H 8106A	729	Creates a special legislative commission to study the feasibility of enacting an energy facility siting act and to report its findings in January, 1979. Provides for membership composition, to include representatives of both the legislative and the general public.
TN (7)	CH 692	252	
WI	CH 440	730	Requires agricultural impact statement on public projects. Revises eminent domain laws.
28. RESOURCE DEVELOPMENT/REVENUE			
AK	CH 146	737	Oil and gas royalties may be taken in kind rather than in money. The commissioner of natural resources must have the approval of the Alaska Royalty Oil and Gas Development Advisory Board and the legislature to sale, exchange or dispose of oil or gas. Approval is also needed for the rights or waiver of the rights to receive future production of royalty oil or gas.
LA (28, 29)	ACT 294	738	Levies a tax upon the first occurrence within the state of any use of natural gas that has not been subject to any previous tax. The tax imposed shall be seven cents on one thousand cubic feet of natural gas. Authorizes the

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
28. RESOURCE DEVELOPMENT/REVENUE (cont.)			
			collector of revenue to promulgate rules and regulations incidental to enforcement of the first use tax. The intent of the use tax is to provide reimbursement for damages consequential to natural gas activity.
LA	ACT 436	746	Allows severance tax credits to taxpayers liable for first use taxes. The credit shall not affect the percentage of severance tax proceeds allocated to parishes. Details procedure for authorizing tax credits.
LA (28, 29)	ACT 293	750	Creates the First Use Tax Trust Fund. Details the amounts to be credited to various accounts from the tax proceeds, including the Initial Proceeds Account and the Debt Retirement and Redemption Account. Twenty-five percent of the proceeds shall be deposited in the distribution conservation account for the purpose of improving barrier islands, reefs and shores of the coastline. Capitol improvement projects must receive legislative approval prior to funding.
LA (28, 29)	ACT 797	754	Constitutional amendment to create a First Use Tax Trust Fund to be used for debt retirement, redemption of debt, reimbursement for tax credits and for improvements to the Louisiana coastline, barrier islands and reefs.
MD (28, 32)	CH 853	759	Revised coal severance tax distribution formula. Nine cents from each ton of coal removed shall be deposited in the bituminous coal open-pit mining reclamation fund and six cents shall be remitted to the county in which the coal was removed, for improvement of health, welfare and living conditions of the coal mining community. Requires deep mine operators to file monthly progress reports regarding mine openings and tonnage of coal removed.
MO	SB 499	762	Additional bonds issued to finance water pollution control programs.
NE (30)	LB 424	880	
NM (26)	CH 111	672	

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28. RESOURCE DEVELOPMENT/REVENUE (cont.)			
NM (32)	CH 117	983	
OH (30)	SB 303	884	
OK	HB 1303	763	Relates to the handling and distribution of tax levied on natural gas and casinghead gas. Deletes certain requirements.
OK	HB 1578	773	Reapportions revenue from the conservation excise tax on natural gas and casinghead gas to the special conservation fund.
OK	HB 1706	775	Prescribes method of payment for conservation excise tax levied on natural gas and casinghead gas.
OK	HB 1717	778	Allows excise tax credits levied on certain minerals to be claimed specifically by a producer or royalty owner rather than by a taxpayer. Those minerals include oil, gas, coal and certain ores, when the combined total tax amounts to a specified level.
SD	HB 1007	784	Increases the severance tax to four and one-half percent of the taxable value of any energy minerals severed. Determines the taxable value. Designates distribution patterns of collected severance taxes. Dedicates revenues to counties and the state treasury.
VA (32)	CH 119	1107	
VA	CH 646	789	Adopts a severance tax for the Coal Road Improvement Fund. An advisory committee, in conjunction with the local governing body, shall determine improvements to be made to public coal hauling roads.
29. RESOURCE DEVELOPMENT/IMPACT AMELIORATION			
HI (3)	SR 41/ SCR 12	106	
IL (29, 27)	HB 3054	791	Relates to the seasonal operation of natural gas-fired burners. Permits the shut off of natural gas-fired after burners installed to control hydrocarbon emissions to reduce ambient oxidant concentration.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
29. RESOURCE DEVELOPMENT/IMPACT AMELIORATION (cont.)			
LA (28)	ACT 294	738	
LA (28)	ACT 293	750	
LA (28)	ACT 797	754	
NM (29, 33)	CH 63	792	Enacts membership composition changes in the New Mexico Community Assistance Council whose function is to assist areas impacted by mineral and energy development. Directs the energy and minerals department to serve as administrative staff rather than the Energy Resources Board.
WI (32)	CH 438	1137	
30. RESOURCE DEVELOPMENT/RENEWABLE RESOURCES			
AK (30, 26, 31)	CH 29	794	Establishes the alternative power resources revolving loan fund within the Department of Commerce and Economic Development. The fund is specifically created to aid in the development of energy production utilizing alternate energy sources, other than fossil or nuclear fuel.
CO (30, 33)	SB 80	795	Declares promotion of gasohol production and use. Establishes the gasohol promotion committee, providing for membership composition. Directs the committee to promote the use of gasoline and alcohol production, research the value of gasohol and make recommendations. Defines powers of the committee pursuant to performing prescribed duties.
CO (10)	HB 1135	325	
CT (24)	PA 78-262	546	
CT (33)	PA 78-314	1164	
DE (9)	SB 242	298	
GA	ACT 1364	800	Permits counties and municipalities to establish a resource recovery development authority to recover and utilize resources contained in sewage sludge and solid waste. Mandates bonding authority.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
30. RESOURCE DEVELOPMENT/RENEWABLE RESOURCES (cont.)			
HI	ACT 36	820	Counties may participate on their own or in joint venture with an end user or public utility in the development of alternative energy resources. Such energy development includes geothermal, solar, wind, ocean power, biomass and solid waste resource development.
HI (2)	ACT 132	78	
ID (30, 31)	CH 367	822	Irrigation districts are given the power to reconstruct dams and construct hydroelectric generating facilities. They may issue bonds to pay the cost of reconstruction and construction.
IN (31)	H 1196	900	
IA (30,4, 9)	SF 2209	826	Creates a comprehensive solar energy program. Calls for instituting solar energy system demonstration projects, development of incentive programs, and directs a study of public energy suppliers and their relationship to the use of solar energy systems. Authorizes a study of the impact of joint solar energy systems and the need for regulation of such systems. Disallows increased property tax assessments as a result of installation or construction of solar or methane energy systems. Prohibits charging discriminatory electric and gas service rates to customers employing a renewable energy source system.
IA (30, 24)	HF 187	829	Requires a refund value of at least five cents paid by the consumer on each beverage container sold, with the amount of refund returned upon redemption of the container. Persons or dealers required to accept empty beverage containers may be reimbursed one cent per container by the distributor and may compact empty metal beverage containers with distributor approval. The refund value of beverage containers shall be clearly indicated on the container unless a brand name is visible. Provides for redemption centers, both approved and unapproved. Prohibits snap-top cans.
KS (30, 7)	HB 2842	832	Allows utilities to receive a higher rate of return on investments in systems designed to generate or produce energy from renewable

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
30. RESOURCE DEVELOPMENT/RENEWABLE RESOURCES (cont.)			
			resources, including solar energy, geothermal energy, wind sources and biomass. Also allows a higher rate of return on investments in experimental projects such as local management devices utilized by a public utility.
KY (30, 26)	CH 112	834	States policy of promoting resource recovery and energy generation from solid waste. Directs the administrator of energy research to develop demonstration projects. Provides state financial assistance until the output of projects can yield a profit.
KY (30,25, 27)	CH 113	837	Directs the department for natural resources and environmental protection to promulgate a comprehensive waste management plan to ensure proper collection, storage, disposal and recycling of wastes including hazardous and solid wastes. Hazardous wastes may only be transported to and disposed at permitted hazardous waste disposal sites. Prohibits the use of open dumps. Legislative consent must be granted to dispose of long-lived hazardous wastes.
KY (30, 33)	CH 115	848	Allows solid waste management planning by counties singly, with multiple countics, or in districts. Directs the department for natural resources and environmental protection to coordinate solid waste management planning and activities.
KY (30, 24)	CH 119	854	Provides for source separations and recycling programs of litter. Makes assessments on covered items including containers to be deposited in the resource conservation recovery and beautification fund.
LA (26)	ACT 542	667	
MD (30, 26)	JR 45	861	Requests conduction of a pilot program to investigate the use of waste wood products for providing heat and other forms of energy.
MD (24)	CH 230	568	
MD	CH 549	863	Invests the Department of Natural Resources with the duties and powers of regulating the state's geothermal resources. Requires permits

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
30. RESOURCE DEVELOPMENT/RENEWABLE RESOURCES (cont.)			
			for geothermal exploratory activities and for the appropriation or use of geothermal resources. Specifies required information for permit application. Authorizes bonds and judicial review. Provides penalties.
MA (30, 9)	CH 73	868	Allows real estate improvement loans for the purchase and installation of a solar or wind-powered system or heat pump system. Amends terms of improvement loans.
MA (30, 33)	CH 486	870	Creates the Bayside Resource Recovery Council provided the city of Beverly enters into a long term contract with cities in the vicinity for the disposal of solid waste and the sale of energy at a newly constructed resource recovery facility in Beverly. Provides for membership composition, duties and powers of the Council.
MN (30, 26, 27)	CH 728	876	Directs the State Planning Agency to research and select appropriate means aiding in the reduction, separation, recovery and energy production of solid and hazardous wastes. Establishes a joint legislative committee on solid and hazardous wastes. Appropriates funds to expedite research. Postpones facility siting for hazardous wastes until completion of research. Allows any county board to designate the facility for solid waste disposal within the county provided a solid waste program is in effect within the county.
MN (30, 33)	CH 793/ SEC 14	879	Directs review of all pilot project proposals for production and marketing of industrial hydro-carbons derived from agricultural and forest products with the intent of endorsing and promoting one proposal.
NE (30, 28, 33)	LB 424	880	Provides for enactment of a gasohol development program. Mandates grants for the construction of grain alcohol plants and provides conditions for receiving grants.
NM (26)	CH 111	672	

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
30. RESOURCE DEVELOPMENT/RENEWABLE RESOURCES (cont.)				
NY	(30, 26)	CH 725	883	Authorizes the commissioner of general services to test the feasibility of using gasoline and alcohol mixtures as fuel for state operated motor vehicles. Requires a report of findings including facts and recommendations.
NY	(24)	CH 740	574	
OH	(30, 28)	SB 303	884	Provides that the board of county commissioners shall fix rates or charges for garbage and refuse disposal or collection, refuse recycling, or resource recovery services. The rates or charges must be announced at atleast three public meetings beforehand. Technical changes made in the financing of solid waste disposal and recovery projects.
RI	(26)	S 2060	673	
SC		HCR 3968	890	Recognizes May 3, 1978 as Sun Day. Sanctions increased government research, development, and implementation of solar energy.
SD	(8)	HB 1354	276	
VA	(30, 20)	HJR 147	892	Requests the State Board of Housing to develop and implement a training program on the application and utilization of solar energy. Determined advisable due to a general lack of knowledge and experience with solar energy systems at the local level.
WI	(9)	CH 313	313	
30a. SOLAR EASEMENTS/ACCESS				
GA		ACT 1446	893	Allows the owner of a solar energy device to negotiate for continual access to sunlight, possibly dampered by buildings or vegetation. Requires written negotiations describing affected air-space and conditions of the solar easement. Subjects solar easements to the same legal requirements as other easements.
CT	(33)	PA 78-314	1164	

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
30a. SOLAR EASEMENTS/ACCESS (cont.)				
ID		CH 294	896	Solar easements may be obtained in writing and are subject to the same legal requirements as other easements. Solar easements shall pass with the property they are first created on.
MN	(20)	CH 786	470	
NJ		A 561	897	Creates solar easements, guaranteeing solar energy devices exposure to the sun. Requires that a solar easement is subject to the same legal requirements as other easements. Specifies information to be included in the easement.
VA		CH 323	899	Any solar easement for the purpose of solar energy equipment shall be created in writing, subject to the same requirements as other easements. Contents of the agreement include angles at which the solar easement extends, terms or conditions of the easement and provisions for compensation to the owner of the property subject to the solar easement.
31. RESOURCE DEVELOPMENT/FINANCIAL INCENTIVE				
AK	(30)	CH 29	794	
AZ	(32)	CH 137	916	
ID	(30)	CH 367	822	
IN	(31, 30)	H 1196	900	Allows tax deductions for the amount paid by the taxpayer to a person for the return of an empty returnable container. Defines "returnable container."
VT	(1)	ACT M-12	54	
WV		HB 1649	902	Modifies the tax exemption for coal gasification and liquefication. Prior certification by the tax commissioner is required for exemption eligibility.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
32. MINERAL EXTRACTION REGULATION			
AZ	CH 113	905	Requires permits and approval of equipment and methods for underground storage of hydrocarbon substances, for secondary and tertiary recovery, for disposal of substances, and for injection of substances underground.
AZ	CH 177	910	Revises methods of locating mining claims for greater consistency with modern mining techniques.
AZ (32, 31)	CH 137	916	Suspends 50 percent of imposed taxes on the business of copper mining, smelting and production for sale, profit or commercial use until June 30, 1980.
HI	ACT 135	917	Amends various provisions related to mineral right leases reserved and disposed of by the government. Allows lessees to process minerals for electric power generation and transmission. Limits the number of mining leases that may be held. Allows cooperative or unit plans of mineral resource development. Discusses general excise tax assessments on geothermal resources. Provides penalties.
IN	H 1044	933	Authorizes enforcement of certain sections of the surface mining control and reclamation act of 1977. Power of enforcement is given to the Department of Natural Resources.
KS	SB 897	935	Authorizes the Mined Land Conservation Board to take necessary action to qualify for the regulatory programs pursuant to the national surface mining control and reclamation act. Requires surface mine operators to comply with the regulations. Creates an executive director position for the Mined Land Conservation Board. Authorizes the board to instigate regulations in compliance with federal mining and reclamation regulations. Provides more stringent requirements for mined land reclamation.
KY	CH 105	944	Specifies payment procedures for reclamation of mined land. Discusses bond forfeitures in cases where surface rights have been severed from mineral rights.
KY	CH 330	946	Requires strip mine operators to restore land in a prescribed manner detailed in the bill. Provides penalties for failure to abide by reclamation procedures and standards. Allows

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
32. MINERAL EXTRACTION REGULATION (cont.)			
			the department of natural resources and environmental protection to adopt necessary rules for the enforcement of the Federal Surface Mining Control and Reclamation Act provided rules are no more stringent than required by federal law. Bans strip mining from operating with the vicinity of certain populated buildings and areas. Provides for regulating reclamation of strip mining operations affecting two acres of less. Amends practices related to mining permit renewals. Directs development of a permanent state regulatory surface mining control and reclamation program.
KY	CH 332	964	Establishes a bureau of surface mining reclamation and enforcement within the department for natural resources and environmental protection. Increases the fee for processing mining permit applications. Revises language related to permit penalties. Describes procedures for improving, continuing or maintaining watershed projects.
MD	SB 924 (v)	972	Requirements related to topographical maps of mined land may be waived if an operator extracts less than 30,000 tons or 20,000 cubic yards of minerals per year.
MD	CH 228	974	Prohibits owners of surface or mineral rights from interfering with operators discharging required duties.
MD	CH 765	975	Allows required bond fees to be considered unreasonably excessive and waived. The reclamation bond may be executed by an irrevocable letter of credit. Within six months of reclamation a mining operator must furnish a final map consistent with the original mining and reclamation map.
MD (28)	CH 853	759	
MD	CH 372	978	Requires that backfilling must be completed before backfilling equipment is removed, unless the mining operator obtains prior written approval from the Bureau of Mines.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
32. MINERAL EXTRACTION REGULATION (cont.)			
MD	CH 361	979	Amends regulations relating to reclamation exemptions of cover machines for public facilities.
NM (32, 33)	CH 71	981	Enumerates the powers of the oil conservation division of the Energy and Minerals Department. The division is given authority to make rules, regulations and orders mainly regarding oil and gas wells.
NM (32, 28)	CH 117	983	Amends bonding requirements for oil and gas wells. Stipulates all monies in the oil and gas reclamation fund are appropriated to the energy and minerals department to carry out provisions of the Oil and Gas Act. Designates the administrator of the oil and gas reclamation fund to be the oil conservation division, prescribing duties of that division's director. Appropriates the oil conservation fund to the energy and minerals department.
OH	SB 69	986	Establishes the Interstate Mining compact to protect and restore natural resources affected by mining and to increase efficiency and productivity of mining, working with party states. Creates the Interstate Mining Commission as an agency of the party states. Creates the Ohio Mining Council as an advisory council to the compact.
OK	HB 1223	992	Designates numerous surface mining safety standards. Requires competency certification of certain mine workers and provides for certification regulations. Directs proper procedures for mining inspections and ground control.
OK	HB 1463	1029	The Chief Mining Inspector shall be appointed rather than elected. Assistant Mine Inspectors shall be appointed by the Chief Inspector. Amends provisions dealing with duties of the Inspector.
OK	HB 1690	1032	Authorizes the Department of Mines to deny mining permits to operators who have defaulted on bonds or other security, or who have failed to perform corrective work.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
32. MINERAL EXTRACTION REGULATION (cont.)			
OK	HB 1779	1036	Directs the Corporation Commission to conduct proceedings for persons, firms or municipalities aggrieved by refusal of a common carrier to purchase or transport natural gas. Common carriers must cooperate unless the Commission finds difficulty or expense is excessive, use of another common carrier may be more convenient, or the gas might pollute or dilute gas already carried on the common carrier.
OK	SB 43	1039	Abandoned proceeds on property interest from any mineral interest may be subject to state confiscation as provided by law. The sale of mineral interests shall be pooled, subject to regulation. Notification of the sale to the last known owner shall be attempted prior to the sale.
OK	SB 512	1042	Specifies means for reclaiming mined land other than lands affected by coal mining. Creates the Coal Reclamation Act of 1978. Redefines surface coal mining and amends permit applications for such mining. Enumerates reclamation procedures and requirements.
OK (32, 33)	SB 531	1062	Increases membership of the State Mining Board. Modifies Board composition to include strip miners, mine superintendents, foremans or managers, and superintendents or owners of coal mines. Regulates reimbursements for members. Certificate of competency tests may be given only by Board members holding said certificates.
VA (32, 33)	HJR 95	1069	Calls for continuation of the Joint Subcommittee studying surface mining of coal. Requests further study of the effects surface mining has on highways, water courses, buildings and other adjacent structures. Requests analysis of the coal surface mining regulatory program.
VA	CH 729	1071	Increased membership in the Board of Examiners, Division of Mines, includes one miner and one operator each respectively representing underground mining, surface mining, and mining of minerals other than coal. Provides numerous

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
32. MINERAL EXTRACTION REGULATION (cont.)			
			regulations regarding certification and revocation of certificate, duties of mine foreman, prohibited acts of miners, crane operation, housekeeping, flammable material controls, standards for support, surface storage of explosives, blasting practices, hoisting, signalling in shafts, conveyances in shafts, noise levels and ear protection.
VA (32, 33)	CH 120	1084	Amends provisions related to coal mine health and safety. Redefines terms. Increases the required quantity of air passing through the last passout. Amends regulations regarding examination fees, qualifications and employment of mine foreman and fire bosses, inspection of mines and rock-dusting. Establishes safety advisory committees, providing for membership and powers.
VA	CH 489	1100	Requires a license prior to opening a mine and penalzies mine operation without a licens Regulates ownership transfer of a quarry, certification of shot firers, and possession of nonprescription drugs into a mine.
VA (32, 28)	CH 119	1107	Amendments and additions to oil and gas laws, relating chiefly to powers and duties of the Chief Mine Inspector and his role in emergency regulations. Requires drilling permits and bonding of oil and gas wells. Sets permit and bonding fees.
VA	CH 118	1111	Amends and provides regulations related to mine maps, safety lamps, supply materials, variations in seam height, roof and rib falls restricting air flow, communication facilities, methane monitors, retaining hoods and posting of fire evacuation plans. Denying the Chief Inspector access to a mine constitutes a Class I misdemeanor.
VA	CH 94	1118	Safe transportation must be provided for mine injuries from the site of injury to outside the mine. First aid trainees may be used for emergency medical care if technicians are not available. Directs establishment of mine

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
32. MINERAL EXTRACTION REGULATION (cont.)			
			first aid training programs, available to every miner and a prerequisite for certification. Declares that the term "compensation" does not include the wages of coal miners engaged in emergency first aid service.
VA	CH 634	1121	Provides procedures for reclamation of non-coal lands. Creates the minerals reclamation fund with provisions for return of payments upon satisfactory reclamation. Details required assessments to raise the reclamation fund.
VA	CH 222	1124	Requires the operator of each mining company to prepare a monthly report for the Division of Mines. Content includes names of mine operators, quantity of coal mined and other information that may be required.
VA	CH 92	1127	Allows Virginia to enforce the initial regulatory program of the Surface Mining Control and Reclamation Act of 1977. Empowers the Director of Conservation and Economic Development to enforce related requirements. Enumerates powers of the Director and the Board. Specifies permit terms and requires anniversary payments on permits. Allows adoption of regulations relating to surface operations and surface impacts incident to underground coal mine.
VA (32, 33)	CH 474	1130	Authorizes the Director of the Department of Corrections to make contracts, easements and leases for the removal or mining of gas, oil and minerals. The board must possess the title of real estate involved in the preceeding procedures. Authorizes proper bidding.
WV	SB 448	1131	Directs the Department of Natural Resources and the Reclamation Commission to comply with provisions of the Surface Mining Control and Reclamation Act of 1977 so that surface-mining permits may be issued. Expands rule-making authority to expedite compliance with said law.
WV	SCR 27	1135	Directs the Joint Committee on Government and Finance to study the requirements necessary to comply with the Federal Surface Mining Control and Reclamation Act of 1977.

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
32.	MINERAL EXTRACTION REGULATION (cont.)			
WI	(32, 29)	CH 438	1137	Revises laws on eminent domain. Enumerates factors which may be considered in determining severance damages to mined lands.
WI		CH 418/ SEC 674b,g,m	1140	Relates to inspection of petroleum products. Provides for exemptions. Establishes a fee for certification of petroleum inspection.
33.	MANAGEMENT/ORGANIZATION			
AL		ACT 849	1141	Creates the state board of Heating, Air Conditioning, Roofing and Sheet Metal Contractors. Regulates the practice of design construction, and the installation of heating, air conditioning equipment, roofing and sheet metal.
AK		CH 63	1145	Provides more stringent controls over municipal air pollution control programs.
AZ		CH 52	1147	Creates a resource division of the state land department. Provides for administrative employees, enumerating powers and duties.
AZ	(25)	CH 160	590	
AZ	(33, 19,24)	CH 180	1155	Provides for a purchasing review board, which will prescribe minimum energy efficiency standards for selected products purchased by the state.
CO	(30)	SB 80	795	
CT	(33, 24,30, 30a)	PA 78-314	1164	Enables municipalities to use their planning and zoning powers to encourage energy efficient patterns of development, the use of solar and other renewable energy sources, and energy conservation. Municipalities may do so through regionally planned unit development.
FL	(33, 27)	SB 2	1172	Amendments to land use management law. Requires the state comprehensive plan to be advisory in nature only. Directs consideration of existing and prospective resources in formulating the plan. Calls for continual revision of the plan including coastal zone management revisions.

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
33.	MANAGEMENT/ORGANIZATION (cont.)			
GA		HB 1465	1178	Establishes a Coastal Zone Management Board, providing for membership, powers and duties. Directs the board, along with the Department of Natural Resources, to establish a land and water resources policy in the coastal zone. Authorizes the newly created board to enforce the provisions of the Federal Coastal Zone Management Act of 1972.
GA	(26)	SR 427	612	
HI		ACT 136	1187	The director of planning and economic development shall serve as energy resources coordinator rather than a Governor appointee. Provides the coordinator with rule-making powers, subject to legislative review.
ID	(26)	CH 206	618	
IL	(26)	PA 80-1218	619	
KS	(33, 24,34)	HB 2973	1194	Designates the Kansas Energy Office as an independent agency and the energy advisory council as a part of that office. Provides for membership and duties of the Council. Increases duties of the director of the energy office including the responsibility of developing an energy emergency plan, energy conservation programs and reporting on trends in energy supplies.
KS		HB 3274	1197	Directs that federal energy-related funds mandated by federal law or rule and regulation to be received directly by a state educational institution may not be allocated or distributed by the Kansas Energy Office.
KY	(30)	CH 115	848	
KY		CH 186	1198	Establishes a department of energy, designating organizational units. Provides for an advisory council for energy and natural resources and an energy research board, prescribing composition and duties. Organizational changes are made involving the bureau of energy research and the bureau of production and distribution.

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
33.	MANAGEMENT/ORGANIZATION (cont.)			
KY	(26)	CH 291	665	
KY	(7)	CH 379	217	
KY	(25)	CH 419	602	
MA	(30)	CH 486	870	
MA		CH 7	1204	Directs the energy policy office and the energy facilities siting council to conduct an investigation of the licensing procedure for water power facilities. The study is to focus on water power facilities with an installed capacity of less than thirty megawatts.
MN	(30)	CH 793/ SEC 14	879	
NE	(30)	LB 424	880	
NM	(29)	CH 63	792	
NM	(32)	CH 71	981	
NY	(20)	CH 397	485	
NY	(33,7)	CH 707	1205	Creates the energy planning board. Directs drafting of a state energy master plan to provide a framework for energy related decisions Prescribes factors to be considered in the drafting and outlining of the state energy plan. Requires public hearings on an aid in preparing the draft and upon completion of the draft. Following adoption of a state energy master plan a review to update the plan shall take place at least every two years. Requires the New York power pool and gas group to annually prepare and submit a long-range electric and gas system plan with follow-up public hearings on demand forecasts. Establishe a fund in the energy office to defray fees of certain hearing participants.
NY	(27)	CH 708	716	
OK	(32)	SB 531	1062	

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
33. MANAGEMENT/ORGANIZATION (cont.)				
OK		HB 1536	1211	Authorizes a $10,000 appropriation as Oklahoma's assessment for the Southwest Regional Energy Council.
RI	(26)	S 2060	673	
VT		ACT 123	1214	Creates a joint energy committee. Provides for membership and functions, including a continuous review of energy related matters in the state and the region.
VT	(26)	ACT 234	675	
VA	(32)	HJR 95	1069	
VA	(32)	CH 120	1084	
VA	(32)	CH 474	1130	
34. EMERGENCY POWERS/RESPONSES				
DE	(34,4)	SJR 14 (v)	1216	Directs the Delmarva Power and Light Company to develop a comprehensive plan to continually provide energy to commercial and industrial customers in the event of an energy crisis.
DE	(34,7)	SJR 18	1218	Directs the Delmarva Power and Light Company and the Cheasapeake Utilities Corporation to develop a comprehensive plan to continually provide energy to commercial and industrial customers in the event of an energy crisis.
KS	(33)	HB 2973	1191	
MD		CH 19	1220	Extends the Governor's emergency powers in the event of an energy crisis. Extends his powers to 3/15/79.
OH	(7)	HB 261	246	
SC		SCR 201	1223	Extends a state of emergency due to natural gas shortages.
SC		HR 2432	1224	Requests that government employess not be charged with annual leave or loss of pay when it is necessary to suspend employment

STATE		BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
34. EMERGENCY POWERS/RESPONSES (cont.)				
				during emergency situations. Such emergency situations include those caused by adverse weather conditions or energy supply shortages.
SC		HR 2423	1225	Directs the major oil companies to fill the oil dealers heating fuel allotments for kerosine and number two oil. Disobeyance will constitute contempt of the House of Representatives.
SC		HR 2350	1226	Requests suspension of schools and nonessential state services until priority need and critical energy supplies may be returned to industry.
VT		ACT 136	1228	Extends the Governor's emergency energy powers to 6/30/79.
WI	(34,4)	CH 418/ SEC 331p,x	1229	Twenty percent matching funds required of counties to participate in the emergency fuel and utilities assistance program. Funds shall be granted in the form of a loan not to exceed $200 per household for bills incurred between 12/1 and 3/1. Households eligible are those with annual income at or below 125 percent of the federal poverty line.
37. MISCELLANEOUS LEGISLATION				
FL		SB 5	1230	Abolition of statute of limitations for actions on unauthorized use of Florida owned lands.
FL		SB 6	1231	Creates the state lands study committee to review the sale or conveyance of state lands. Provides for composition, prescribes duties and appropriates funds.
ID		SJM 112	1233	Memorializes Congress to terminate U.S. dependence on foreign oil supplies. Urges the development of energy sources, particularly coal and nuclear power. Asks for the promotion of further energy conservation.
KS		HB 2275	1234	Authorizes fee collection from nuclear powered generation facilities to moniter the environmental impact of such facilities with respect to air quality.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
37. MISCELLANEOUS LEGISLATION (cont.)			
MD	JR 63	1236	Requests the President to declare Western Maryland a disaster area due to extreme increased fuel adjustment charges placed on the customers of the Potomac Edison System as a result of the coal strike.
MD	CH 400	1238	Increases the base pressure computation for natural gas.
MD	JR 39	1240	Requests Congress to enact a comprehensive and balanced energy program based on advanced technologies, including utilization of existing fossil fuels.
NM	CH 58	1243	Provides for the seizure and sale of illegally produced, purchased or acquired oil, gas or oil and gas products. Stipulates proper legal action. Proceeds from the sale shall be deposited with the school fund.
NM	CH 61	1245	Directs the energy and minerals department to purchase natural gas for political subdivisions and natural gas distributors in the state. The department may enter into contracts towards that end, but only with prior approval from the state board of finance. Moreover, the department may not enter into contracts for the purchase of gas in place and without securing assurance that the producer has adequate reserves.
NM	CH 112	1246	Creates the natural gas purchase revolving fund for the purchase of natural gas for resale. To be administered by the Energy Resources Board.
NY	CH 396	1247	Regulates natural resources as a policy of environmental conservation. Amends the policy of the energy law to foster and promote development and use of indigenous state energy resources and those resources shared with Canada, the federal government and other states. Specifies those energy resources to be developed as on-shore and off-shore oil and natural gas, natural gas from Devonian shale formations, small head hydro, wood, solar, wind, solid waste, energy from biomass, fuel cells and cogeneration.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
37. MISCELLANEOUS LEGISLATION (cont.)			
NY	CH 649	1248	Requires a contractual agreement for the installation of solar thermal systems in any building. Protects consumers with warranty and service agreements on solar thermal systems. Violations may be dealt with by the attorney general and owners of solar thermal systems may recover actual damages, reasonable attorney's fees and costs.
SC	HCR 2369	1251	Memorializes Congress to enact legislation related to the research and development of alternative energy sources.
VA	HJR 11	1253	Requests a study by the subcommittee on energy of the interrelationship between Virginia energy programs and those of the federal government for purposes of harmony.
VA	SJR 60	1254	Commends the efforts of Saudi Arabia to restain the organization of petroleum exporting countries from raising significantly the world price of crude oil.

Due to the late September 1 adjournment of the California legislature, the California enactments have been included following the main body of the index.

2. UTILITIES/RATE REGULATION			
CA	AB 3032	1256	Within the provisions of the Public Utilities Code, a person is not considered a public utility as a result of owning or operating a facility employing cogeneration technology. PUC jurisdiction does not apply to a person or corporation employing cogeneration technology to generate electricity for its own use, use of its tenants, sale to an electrical corporation, or for sale to state or local public agencies.
9. TAX EXEMPTION/SOLAR HEATING AND COOLING			
CA	AB 3623	1259	Revises the maximum tax credit allowable for acquisitions of solar energy systems in certain circumstances. Amends administrative provisions. Revises the definition of a solar energy system for purposes of tax deductions.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
26. RESOURCE DEVELOPMENT/RD&D			
CA	SB 2066	1276	Mandates that state governments is responsible for ensuring that energy production and distribution is consistent with environmental quality. Enumerates guidelines for developing and funding coal gasification demonstration projects. Amends requirements for findings and certifications relative to coal gasification combined cycle demonstration projects.
CA (33)	AB 2841	1280	Requires a study regarding energy employment needs through 1982, due by 11/30/79. Directs the Employment Development Department and the ERCD Commission to provide each other with information regarding energy trends and projected labor requirements as a result of those trends.
CA (30)	AB 2976	1284	Requires implementation of a state wind energy program. The program must specify time schedules for task completions. Appropriates $800,000 to expedite the wind energy program.
CA (24)	AB 3539	1288	Directs the State Energy Resources Conservation and Development Commission to undertake a study to determine the best means of promoting and increasing the use of energy surveys. The program shall also effect to ensure quality and cost effectiveness of energy surveys. Twenty percent energy efficiency improvement is the main goal.
27. RESOURCE DEVELOPMENT/FACILITY SITING			
CA	SB 1805	1291	Notice of intent to file certification application for siting a thermal power plant is no longer required and decisions on applications must be reached within 12 months provided the proposed thermal power plant meets certain specifications Redefines cogeneration technology. Proposals to modify existing power facilities need no longer include alternative modification methods or alternative methods of providing additional service.
CA (33)	SB 1859	1296	Requires from energy electric utility five, twelve and twenty-year forecasts or assessments of loads and resources for its service area.

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
			Revises criteria of biannual reports dealing with energy supply, demand and conservation. Requires public information presentations in the county(s) of proposed electric power facility sites within 45 days after a notice of intention is filed. Nonadjudicatory hearings must be held 15 days after conclusion of the presentations with a final conclusive report following. The State Energy Resources Conservation and Development Commission is no longer authorized to mandate a specific supply plan for any utility.
30. RESOURCE DEVELOPMENT/RENEWABLE RESOURCES			
CA	(33) AB 2644	1320	Redefines "geothermal field development project." Requires one permit from the lead agency and one permit from each responsible agency when approving such a project. Redefines "geothermal exploratory project" and designates the Division of Oil and Gas as the lead agency for projects. Designates duties of the division as lead agency. Amends procedures and time schedules for processing and approving certification of geothermal powerplants. Authorizes certificati programs for counties with geothermal elements. Authorizes the Public Utilities Commission to prohibit electric corporations from curtailing the generation, production, or transmission of electricity from a geothermal powerplant operated by such corporations, if the curtailment is not in the public interest.
CA	(8, 26) AB 3046	1332	Promotes passive solar design features in housing. Directs that an architectural design competition be held to select outstanding residential units incorporating passive solar and other energy conserving design features. Prescribes composition of a judging panel and provides for winning design awards.
30a. SOLAR EASEMENTS/ACCESS			
CA	(9) AB 3250	1339	Guarantees solar access and creates solar easements. Specifies informational contents of the easement. Precludes legislative bodies from

STATE	BILL NO.	APPENDIX PAGE NO.	BILL CONTENT
			restricting or prohibiting the use of solar energy systems. Requires subdivision maps to provide for future passive or natural heating and cooling opportunities, dedicated to solar access. Allows a tax credit for recording fees and acquisition costs in connection to solar easements.
33. MANAGEMENT/ORGANINZATION			
CA (27)	CH 760	1356	Amends provisions related to environmental impact reports undertaken for powerplant sites or facilities. The lead agency for all projects requiring certification and projects exempted from certification shall be the State Energy Resources Conservation and Development Commission. The Commission is required to prepare an environmental impact report within one year after receipt of application if the commission regulation program is not certified. The Commission must adopt regulations by 1/31/79 with respect to power facility and site certification.
34. EMERGENCY POWERS/RESPONSES			
CA (27)	SB 1767	1369	Deletes required limitation on maximum allowable capacity of generating facilities. Requires the State Energy Resources Conservation and Development Commission to authorize the construction and use of generating facilities in the event all conservation, allocation, and service restriction measures will not alleviate an energy supply emergency.

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Alabama		
ACT 766	20	430
ACT 849	33	1141
Alaska		
CH 156	1	1
CH 146	28	737
CH 29	30,26,31	794
CH 63	33	1145
Arizona		
CH 112	9,8	283
CH 195	10	317
CH 160	25,33	590
CH 113	32	905
CH 177	32	910
CH 137	32,31	916
CH 52	33	1147
CH 180	33,19,24	1155
Arkansas		
No energy enactments at the time of publication.		
California		
AB 3032	2	1256
AB 3623	9	1259
CH 248	20,22	432
SB 2066	26	1276
AB 2841	26,33	1280
AB 2976	26,30	1284
AB 3539	26,24	1288
SB 1805	27	1291
SB 1859	27,33	1296
AB 2644	30,33	1320
AB 3046	30,8,26	1332
AB 3250	30a,9	1339
CH 760	33,27	1356
SB 1767	34,27	1369

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HB 1135	10,30	325
SB 80	30,33	795
Connecticut		
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PA 78-119	2	74
PA 78-370	3,2	100
PA 78-184	4	120
PA 78-86	7	192
PA 78-378	7	193
PA 78-322	10	328
PA 78-269	20	437
PA 78-309	23	538
PA 78-262	24,30	546
PA 78-214	25	597
PA 78-314	33,24,30, 30a	1164
Delaware		
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HB 183	3	102
HB 539	3	103
SB 715	4	121
HB 475	9	295
SB 242	9,20,30	298
HJR 27	24	548
HJR 11	24,20,21	550
SJR 14 (v)	34,4	1216
SJR 18	34,7	1218
Florida		
SB 1	5,6	156
SB 7	7,4	201
HB 11	27	681
SB 4	27	682
SB 901	27	683
SB 2	33,27	1172
SB 5	37	1230
SB 6	37	1231

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ACT 1470	20	440
SR 427	26,33	612
ACT 1364	30	800
ACT 1446	30a	893
HB 1465	33	1178
Hawaii		
ACT 132	2,30	78
SR 41/ SCR 12	3,29	106
ACT 19	8	264
ACT 133	20	448
ACT 134	22,20,21	513
ACT 137	22,	516
SB 1596 (v)	24,26	552
ACT 131	26	614
SR 92/ SCR 28	27	684
ACT 36	30	820
ACT 135	32	917
ACT 136	33	1187
Idaho		
CH 176	7	209
CH 362	7	211
HCR 59	25	599
CH 206	26,33	618
CH 367	30,31	822
CH 294	30a	896
SJM 112	37	1253
Illinois		
HB 3053	4	122
PA 80-1218	26,33	619
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H 1044	32	933
Iowa		
HF 602	8,9	266
SF 182	22	519
HF 82	25	600
HF 2098	26	653
SF 2209	30,4,9	826
HF 187	30,24	829
Kansas		
SB 804	1	6
HB 2070	2	82
HB 3206	2	83
HB 2531	4	124
SB 546	8	273
SB 545	9	304
SB 512	20	454
HB 2698	22,7	521
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HB 2842	30,7	832
SB 897	32	935
HB 2973	33,24,34	1191
HB 3274	33	1197
HB 2275	37	1234
Kentucky		
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CH 379	7,33	217
CH 260	22	525
CH 156	23	543
CH 232	24	558
CH 419	25,33	602
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CH 112	30,26	834
CH 113	30,25,27	837
CH 115	30,33	848
CH 119	30,24	854
CH 105	32	944
CH 330	32	946
CH 332	32	964
CH 186	33	1198
Louisiana		
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ACT 108	1	11
ACT 109	1	13
ACT 110	1	15
ACT 560	1	17
ACT 77	2,4	87
ACT 599	5	170
HB 1129	7,27	237
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ACT 591	9	306
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ACT 542	26,30	667
ACT 294	28,29	738
ACT 436	28	746
ACT 293	28,29	750
ACT 797	28,29	754
Maine		
No energy legislation passed.		
Maryland		
CH 542	2	89
CH 374	2,4	91
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CH 788	4	133
CH 860	4	135
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CH 377	7	240
CH 748	7	242
CH 509	9	308
CH 993	16	427
CH 332	20	460
CH 597	20	463
CH 302	20	467
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JR 2	24	572
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JR 38	25	607
CH 810	25	609
CH 878	27	691
CH 520	27	695
JR 32	27	698
CH 853	28,32	759
JR 45	30,26	861
CH 549	30	863
SB 924 (v)	32	972
CH 228	32	974
CH 765	32	975
CH 372	32	978
CH 361	32	979
CH 19	34	1220
JR 63	37	1236
CH 400	37	1238
JR 39	37	1240
Massachusetts		
CH 388	9	310
CH 350	23	545
CH 217	27	700
CH 73	30,9	868
CH 486	30,33	870
CH 7	33	1204

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Minnesota		
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CH 746	4	138
CH 721	11	343
CH 786	20,9,30a	470
CH 658	27	701
CH 728	30,26,27	876
CH 793/ SEC 14	30,33	879
Mississippi		
HB 581	3	113
SB 2379	20	477
Missouri		
HB 1126	1	18
SB 499	28	762
Montana		
No energy legislation passed.		
Nebraska		
LB 323	9	311
LB 424	30,28,33	880
Nevada		
No energy legislation passed.		
New Hampshire		
No energy legislation passed.		
New Jersey		
A 562	20	482
CH 80	27,24	706
A 561	30a	897

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CH 59	27	703
CH 62	27	705
CH 63	29,33	792
CH 71	32,33	981
CH 117	32,28	983
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CH 61	37	1245
CH 112	37	1246
New York		
CH 644	1	26
CH 394	2	95
CH 397	20,33	485
CH 710	20	490
CH 462	22,19	528
CH 740	24,30	574
CH 348	27	712
CH 395	27	714
CH 708	27,33	716
CH 709	27	728
CH 725	30,26	883
CH 707	33,7	1205
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CH 649	37	1248
North Carolina		
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North Dakota		
No energy legislation passed.		
Ohio		
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HB 1073	4	140
HB 261	7,34	246
SB 127	20	493
HB 419	20,21,22,24	497

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Oklahoma		
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SB 400	7	248
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HB 1312	14	363
SB 618	14	367
HB 1303	28	763
HB 1578	28	773
HB 1706	28	775
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HB 1690	32	1032
HB 1779	32	1036
SB 43	32	1039
SB 512	32	1042
SB 531	32,33	1062
HB 1536	33	1211
Oregon		
No energy legislation passed.		
Pennsylvania		
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Rhode Island		
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South Carolina		
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HR 2350	34	1226
HCR 2369	37	1251
South Dakota		
HB 1292	1	53
HB 1354	8,30	276
HB 1007	28	784
Tennessee		
CH 615	2,3	96
CH 871	4	150
CH 692	7,27	252
CH 746	7	257
CH 884	8	280
CH 837	9	312
CH 888	20	507
CH 655	22	530
Texas		
HB 1	11	347
Utah		
No energy legislation passed.		
Vermont		
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ACT 123	33	1214
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CH 631	8	282
CH 71	10	339
CH 663	10	341
HJR 141	20	509
CH 737	20	511
JHR 9	24	588
HJR 128	24	589
CH 195	25	611
CH 646	28	789
HJR 147	30,20	892
CH 323	30a	899
HJR 95	32,33	1069
CH 729	32	1071
CH 120	32,33	1084
CH 189	32	1100
CH 119	32,28	1107
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CH 634	32	1121
CH 222	32	1124
CH 92	32	1127
CH 474	32	1130
HJR 11	37	1253
SJR 60	37	1254
Washington		
No energy legislation passed.		
West Virginia		
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HB 1649	31	902
SB 448	32	1131
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CH 350	7	262
CH 418/ SEC 704	7	263
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CH 369	22,7	533
CH 440	27	730
HB 1649	31	902
CH 438	32,29	1137
CH 418/ SEC 674b,g,m	32	1140
CH 418/ SEC 331p,x	34	1229
Wyoming		
No energy legislation passed.		

LAWS OF ALASKA

1978

Source	Chapter No.
SCS CSHB 442	156

AN ACT

Relating to the Alaska Power Authority; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 44.56.010(a)(2) and (3) are amended to read:

(2) the establishment of power projects at these sites is necessary to supply power at the lowest reasonable cost to the state's municipal electric, rural electric, cooperative electric, and private electric utilities, and regional electric authorities, and thereby to the consumers of the state, as well as to supply existing or future industrial needs;

(3) the achievement of the goals of lowest reasonable consumer power costs and beneficial long-term economic growth and of establishing, operating and developing power projects in the state will be accelerated and facilitated by the creation of an instrumentality of the state with powers to construct, acquire, finance, and operate power projects.

* Sec. 2. AS 44.56.030 is repealed and re-enacted to read:

Sec. 44.56.030. MEMBERSHIP OF THE AUTHORITY. (a) The authority shall consist of the following directors:

(1) four directors at large to be appointed by the governor and confirmed by the legislature;

(2) the commissioner of commerce and economic development.

(b) The commissioners of community and regional affairs, natural resources, transportation and public

facilities, and revenue shall have the rights and privileges of directors except for the right to vote and may not be considered for purposes of quorum or voting.

* Sec. 3. AS 44.56.040 is amended to read:

Sec. 44.56.040. OFFICERS AND QUORUM. The directors shall elect one of the directors at large as chairman and other officers they determine desirable. The powers of the authority are vested in the directors, and three directors of the authority constitute a quorum. Action may be taken and motions and resolutions adopted by the authority at a meeting by the affirmative vote of at least three directors. The directors of the authority serve without compensation, but they shall receive the same travel pay and per diem as provided by law for board members.

* Sec. 4. AS 44.56 is amended by adding a new section to read:

Sec. 44.56.045. QUALIFICATIONS, POWERS, AND DUTIES OF OFFICERS AND DIRECTORS. (a) The directors at large must be residents and qualified voters of Alaska and shall comply with the requirements of AS 39.50 (conflict of interests). The directors at large shall serve four-year terms. The four original directors at large have terms of one, two, three, and four years, respectively.

(b) A vacancy in a directorship occurring other than by expiration of a term shall be filled in the same manner as the original appointment, but for the unexpired portion of the term only.

(c) The authority shall employ an executive director who may, with the approval of the authority, employ additional staff as necessary. In addition to its staff of regular employees, the authority may contract for and engage the services of legal and bond counsel, consultants, experts, and financial and technical advisors the authority considers necessary for the purpose of conducting studies, investigations, hearings, or other proceedings. The board of directors shall establish the compensation of the executive director. The executive director of the authority is subject to the provisions of AS 39.25.

* Sec. 5. AS 44.56.070 is amended to read:

Sec. 44.56.070. PURPOSE OF THE AUTHORITY. The purpose of the authority is to promote, develop and advance the general prosperity and economic welfare of the people of Alaska by providing a means of constructing, acquiring, financing and operating power production facilities limited to fossil fuel, wind power, tidal, geothermal, hydroelectric, or solar energy production and waste energy conservation facilities.

* Sec. 6. AS 44.56.080(5) is amended to read:

(5) to acquire, whether by construction, purchase, gift or lease, and to improve, equip, operate, and maintain power projects;

* Sec. 7. AS 44.56.080(6) is amended to read:

(6) to issue bonds to carry out any of its corporate purposes and powers, including the acquisition or construction of a project to be owned or leased, as lessor or lessee, by the authority, or by another person, or the acquisition of any interest in a project or any right to capacity of a project, the establishment or increase of reserves to secure or to pay the bonds or interest on them, and the payment of all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers;

* Sec. 8. AS 44.56.080(8) is amended to read:

(8) to accept gifts, grants or loans from, and enter into contracts or other transactions regarding them, with any person;

* Sec. 9. AS 44.56.080(10) is amended to read:

(10) to enter into contracts with the United States or any person and, subject to the laws of the United States and subject to concurrence of the legislature, with a foreign country or its agencies, for the financing, construction, acquisition, operation and maintenance of all or any part of a power project, either inside or outside the state, and for the sale or transmission of power from a project or any right to the capacity of it or for the security of any bonds of the authority issued or to be issued for the project;

* Sec. 10. AS 44.56.080(11) is amended to read:

(11) to enter into contracts with any person and with the United States, and, subject to the laws of the United States and subject to the concurrence of the legislature, with a foreign country or its agencies for the purchase, sale, exchange, transmission, or use of power from a project, or any right to the capacity of it;

* Sec. 11. AS 44.56.080(13) is amended to read:

(13) to perform reconnaissance studies with respect to power projects;

* Sec. 12. AS 44.56.090 is repealed and re-enacted to read:

Sec. 44.56.090. POWER CONTRACTS AND THE ALASKA PUBLIC UTILITIES COMMISSION. (a) The authority shall, in addition to the other methods which it may find advantageous, provide a method by which municipal electric, rural electric, cooperative electric, or private electric utilities and regional electric authorities, or other persons authorized by law to engage in the distribution of electricity may secure a reasonable share of the power generated by a project, or any interest in a project, or for any right to the power and shall sell the power or cause the power to be sold at the lowest reasonable prices which cover the full cost of the electricity or services, including capital and operating costs, debt coverage as considered appropriate by the authority, and other charges that may be authorized by

this chapter. A contract for the sale, transmission and distribution of power generated by a project or any right to the capacity of it shall provide:

(1) for payment of all operating and maintenance expenses of a project and costs of renewals, replacements and improvements of it;

(2) for interest on and amortization charges sufficient to retire bonds of the authority issued for the project and reserves for them, plus a debt service coverage factor as may be determined by the authority to be necessary for the marketability of its bonds;

(3) for monitoring of the project by the authority or its agents;

(4) for full and complete disclosure to the authority of all factors of cost in the transmission and distribution of power, so that rates to any persons may be fixed initially in the contract and may be adjusted from time to time on the basis of true cost data;

(5) for periodic revisions of the service and rates to persons on the basis of accurate cost data obtained by the accounting methods and systems approved by the directors and in furtherance and effectuation of the policy declared in this chapter;

(6) for the cancellation and termination of a contract upon violation of its terms by any person;

(7) for security for performance as the authority may consider practicable and advisable, including provisions assuring the continuance of the distribution and transmission of power generated by a project and the use of its facilities for these purposes; and

(8) other terms not inconsistent with the provisions and policy of this chapter as the authority may consider advisable.

(b) The authority is not subject to the jurisdiction of the Alaska Public Utilities Commission. Nothing in this chapter grants the authority any jurisdiction over the services or rates of any public utility or diminishes or otherwise alters the jurisdiction of the Alaska Public Utilities Commission with respect to any public utility, including any right the commission may have to review and approve or disapprove contracts for the purchase of electricity by a public utility.

* Sec. 13. AS 44.56.110(a)(1) is amended to read:

(1) make and enter into any and all the covenants and agreements with the trustee or the holders of the bonds which the authority may determine to be necessary or desirable, including, without limitation, covenants, provisions, limitations and agreements as to

(A) the application, investment, deposit, use and disposition of the proceeds of bonds of the

authority or of money or other property of the authority or in which it has an interest;

(B) the fixing and collection of rentals, charges, fees or other consideration for, and the other terms to be incorporated in, contracts with respect to a project or to generated power;

(C) the assignment by the authority of its rights in contracts with respect to a project or to generated power or in a mortgage or other security interest created with respect to a project or generated power to a trustee for the benefit of bondholders;

(D) the terms and conditions upon which additional bonds of the authority may be issued;

(E) the vesting in a trustee of rights, powers, duties, funds or property in trust for the benefit of bondholders, including, without limitation, the right to enforce payment, performance, and all other rights of the authority or of the bondholders, under a lease, power of contract, contract of sale, mortgage, security agreement, or trust agreement with respect to a project by injunction or other proceeding or by taking possession of by agent or otherwise and operating a project and collecting rents or other consideration and applying the same in accordance with the trust agreement;

* Sec. 14. AS 44.56.110(d) is amended to read:

(d) If the authority decides to issue bonds secured by such a capital reserve fund, the bonds may not be issued if the amount in the capital reserve fund is less than such an amount as may be established by resolution of the authority (called the "capital reserve fund requirement"), unless the authority, at the time of issuance of the obligations, deposits in the capital reserve fund from the proceeds of the obligations to be issued or from other sources, an amount which, together with the amount then in the fund, will not be less than the capital reserve fund requirement.

* Sec. 15. AS 44.56.150 is amended to read:

Sec. 44.56.150. TAX EXEMPTION. All property of the authority is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes of the state or a political subdivision of the state; however, the authority may make payments in place of taxes in amounts equal to the real and personal property taxes which would be assessed on its real and personal property by each political subdivision in which its property is located to the same extent as if that property were private property and the authority were a non-public corporation. All bonds issued under this chapter are issued by a body corporate and public of this state and for an essential public and governmental purpose and the bonds and the interest and income on and from the bonds and all income of the authority are exempt from taxation except for transfer, inheritance and estate taxes.

* Sec. 16. AS 44.56.170 is repealed and re-enacted to read:

Sec. 44.56.170. POWER PROJECT FUND. (a) There is established as a separate fund the power project revolving fund which shall be administered by the authority as a trust fund separate and distinct from any other money or funds of the authority, and which shall be composed of appropriated funds and interest earned on loans by the fund.

(b) The authority may make loans from the fund to electric utilities, regional electric authorities, cities, boroughs, regional and village corporations, village councils, and nonprofit marketing cooperatives to pay the costs of

(1) feasibility studies, preconstruction engineering, and design of any power projects;

(2) constructing, equipping, modifying, and expanding small-scale power production facilities or conservation facilities, limited to fossil fuel, wind power, tidal, geothermal, hydroelectric, or solar energy production and waste energy conservation facilities; and

(3) reconnaissance studies, preconstruction engineering, design, construction, equipping, modification, and expansion of potable water supply including surface storage and groundwater sources and transmission of water from surface storage to existing distribution systems.

(c) Before making any loans, except loans made under (f) of this section, from the power project revolving fund, the authority shall by regulation specify the standards for those loans with respect to the following:

(1) criteria regarding the eligibility of borrowers and of types of projects;

(2) standards regarding the technical and economic viability and revenue self-sufficiency of eligible projects;

(3) interest rates and other terms and conditions, and collateral or any other security required for loans; and

(4) other relevant criteria, standards, or procedures.

(d) Any loan made by the authority must be made according to the standards, criteria, and procedures established by regulation under this section.

(e) Repayment of the loans shall be secured in such manner as the authority determines is feasible to assure prompt repayment under a loan agreement entered into with the borrower. The authority may forgive repayment of loans made for reconnaissance studies if the study shows that a project is not feasible. Under a loan agreement, repayment may be deferred for 10 years or until the project for which the loan is made has achieved earnings from its operations sufficient to pay the loan, whichever is earlier.

(f) Projects for which loans are outstanding from the water resources revolving loan fund (AS 45.86) on the effective date of this Act may receive additional funding from the power project revolving loan fund for a term not exceeding 50 years and at an interest rate of not less than three nor more than five per cent a year on the unpaid balance. Repayment of loan principal and interest shall commence on the date of commercial operation of the project funded by the loan or 10 years from the date the loan is granted, whichever is earlier.

* Sec. 17. AS 44.56.180 is amended to read:

Sec. 44.56.180. ASSESSMENT, PROPOSAL, AND CONSTRUCTION OF PROJECTS. (a) The authority shall, for each new project, determine the most appropriate means by which to finance a project which may include, but is not limited to,

(1) the issuance of revenue bonds;

(2) a guarantee of indebtedness by the Alaska Permanent Fund Corporation in accordance with AS 37.13.200;

(3) an appropriation from the general fund; or

(4) any combination of (1), (2), and (3) of this subsection.

(b) Upon completion of the reconnaisance study, the authority shall submit to the governor and the legislature a statement of its recommendations for financing each new project. The financing plan may include a recommendation for a guarantee of indebtedness or a general fund appropriation only when necessary to supplement private financing in order to make a project financially feasible. If the recommended financing for the project includes a guarantee of indebtedness by the permanent fund or an appropriation from the general fund, the legislature must first give its approval by joint resolution before the authority may proceed with the engineering or design phase of the project. The legislative approval required in this subsection may not be considered the approval required under AS 37.13.-230 for granting of a permanent fund guarantee.

(c) The authority shall submit a statement outlining the general design, demonstration of financial feasibility, and maximum amount of bonds and appropriations estimated to be necessary for each new project to the governor and the legislature, together with a statement that the authority intends to design, acquire, construct or finance the project itself or that it intends that the project be designed, acquired, constructed or financed by the United States or another person under agreement with the authority which may provide for ownership of all or a portion of the project by the authority or of a right to the capacity of it. If the legislature adopts a joint resolution approving the general design and maximum amount of bonds, the authority shall, in accordance with the terms of the joint resolution, (1) proceed to design, acquire and construct the new project, or (2) agree with the United States or other person for design, acquisition and construction of the project by the United States, for payments to the United States or other person for such design, acquisition

and construction, reimbursement by the United States or other person in certain events, and otherwise on the terms and conditions as may be set out in such agreement.

(d) If the new project is to be designed, acquired and constructed by the authority, it shall be designed, acquired and constructed as a public work of the state. For the purpose of this section a new project does not include (1) an addition or modification to an existing project if the total cost of the addition or modification does not exceed $1,000,000; (2) any repair or reconstruction of a project; or (3) any design, acquisition or construction necessary to complete a project for which bonds previously authorized by the legislature have been issued. Any such addition, modification, repair, reconstruction, design, acquisition or construction may be undertaken by the authority without any of the approvals necessary for a new project.

* Sec. 18. AS 44.56.180 is amended by adding a new subsection to read:

(e) Any power project proposal requiring approval by the legislature under this chapter, except on projects with a complete reconnaissance study on the effective date of this Act, together with supporting data analyses, and findings of the authority, shall be submitted to the governor for review. The governor shall make an evaluation of the proposal which shall include, but not be limited to, an analysis of the balance of benefits and costs to Alaska, including environmental and social costs, and the ability of the project to generate sufficient revenues to be self-supporting. The governor shall submit the results of the evaluation, his recommendations, if any, and a statement as to whether the project is consistent with the long-term plan to the legislature.

* Sec. 19. AS 44.56.210 is repealed and re-enacted to read:

Sec. 44.56.210. APPROPRIATIONS AND REPORTS. (a) Notwithstanding any other provision in this chapter, the authority is subject to the provisions of the Executive Budget Act (AS 37.07).

(b) The authority shall, by the 15th day of each regular legislative session, present to the legislature a report detailing project status, original costs and projected costs, particularly highlighting any costs in excess of the original cost estimates submitted for each project when that project was originally approved by the legislature.

* Sec. 20. AS 44.56 is amended by adding a new section to read:

Sec. 44.56.224. LONG-TERM PLAN. The Department of Commerce and Economic Development, assisted by the authority, shall prepare, after public hearings, and, as appropriate, revise a long-term electrical power development plan for meeting projected electrical energy demand in Alaska at the lowest reasonable cost, including environmental and social costs, consistent with acceptable standards of reliability. The plan must include, but is not limited to,

considerations specified in sec. 180(e) of this chapter. The plan and any revision of it shall be submitted to the governor for his approval and shall be reviewed by all appropriate state agencies. After approval by the governor the plan shall be submitted to the legislature.

* Sec. 21. AS 44.56.230(4) is amended to read:

(4) "power project" or "project" means a plant, works, system, facility, water rights, fuel deposits or sources, and real estate and personal property of any nature whatsoever, together with all facilities and appurtenances related to them or necessary for the purposes of them used or useful in power production limited to fossil fuel, wind power, tidal, geothermal, hydroelectric, or solar energy production and waste energy conservation and the transmission, purchase, sale, exchange and interchange of power, and shall include any interest in them, whether divided or undivided, or any right to the capacity of them;

* Sec. 22. AS 44.56.230 is amended by adding new paragraphs to read:

(6) "person" includes a public agency in addition to the entities set out in AS 01.10.060(7);

(7) "reconnaissance study" means a study conducted for the purpose of establishing, with reasonable certainty, the economic merit of developing a certain project and includes, without relying on costly data collection, an environmental assessment so as to insure that no adverse environmental impacts exist of such magnitude as to render the project inadvisable, an assessment of a community's present economy and power needs, an estimate of the community's future economy and power needs, a determination of alternative energy costs, and an estimate of the project cost.

* Sec. 23. AS 44.56.050 is repealed.

* Sec. 24. The requirements of AS 44.56.180(e), enacted in sec. 18 of this Act, do not apply to any project which the authority has determined to finance and in which it will not maintain an ownership interest upon completion and for which the Tenth Legislature has adopted a joint resolution of approval.

* Sec. 25. This Act takes effect immediately in accordance with AS 01.10.070(c).

Approved by the Governor: July 12, 1978
Actual Effective Date: July 13, 1978

Ramon

SENATE BILL No. 804

AN ACT relating to electric cooperatives; amending K.S.A. 17-4604, 17-4610 and 17-4612, and repealing the existing sections; also repealing K.S.A. 17-4620.

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

Section 1. K.S.A. 17-4604 is hereby amended to read as follows: 17-4604. A cooperative shall have power:

(a) To sue and be sued in its corporate name;

(b) to have perpetual existence;

(c) to adopt a corporate seal and alter the same;

(d) *to generate, manufacture, purchase, acquire,* accumulate and transmit electric energy, and to distribute, sell, supply, and dispose of electric energy to its members, and to governmental agencies, political subdivisions, and to other persons, who are not receiving central station service from facilities of existing public utilities: ~~*Provided, however,* That the furnishing by a cooperative of electric cold storage or processing plant service shall not be deemed to be distributing selling, supplying or disposing of electric energy~~;

(e) to assist members by the financing thereof to whom electric energy is or will be supplied by the cooperative, in wiring their premises and in acquiring and installing electrical and plumbing appliances, equipment, fixtures and apparatus, and for demonstration purposes such corporations may purchase, acquire, lease as lessor or lessee, electric and plumbing appliances, equipment, fixtures and apparatus and to sell same when it has served such purposes.

(f) To construct, purchase, lease, and to equip, maintain and operate, and to sell, assign, convey, lease, mortgage, pledge or encumber electric transmission and distribution lines or systems, electric generating plants, and lands, buildings, structures, dams, easements and rights-of-way, equipment, and any other real or personal property, tangible or intangible, necessary to accomplish the purpose for which the cooperative may be organized hereunder;

(g) to purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber, franchises, rights, privileges, licenses and easements;

(h) to borrow money and otherwise contract indebtedness, and to issue notes, bonds, and other evidences of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its then-owned or after-acquired real or personal property, assets, franchises, revenues or income;

(i) to construct, maintain and operate electric transmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, roads, highways, streets, alleys, bridges and causeways in conformity with the laws of the state of Kansas;

(j) to exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of such power by other corporations constructing or operating electric transmission and distribution lines or systems;

(k) to become a member of other cooperatives, and conduct its business and exercise its powers within this state;

(l) to adopt, amend and repeal bylaws; and

(m) to do and perform any other acts and things, and to have and exercise any other powers which may be necessary, to accomplish the purpose for which the cooperative is organized.

Sec. 2. K.S.A. 17-4610 is hereby amended to read as follows: 17-4610. (a) An annual meeting of the members of a cooperative shall be held at such time and place as shall be provided in the bylaws.

(b) Special meetings of the members may be called by the president, by the board of trustees, by any three *(3)* trustees, or by not less than ten ~~percentum~~ *percent (10%)* of the members.

(c) Except as otherwise provided in this act, written or printed notice stating the time and place of each meeting of the members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each member, either personally or by mail, not less than ten *(10)* days nor more than ~~twenty-five~~ *thirty-five (35)* days before the date of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, with postage prepaid, addressed to the member at his address as it appears on the records of the cooperative.

(d) Unless the bylaws prescribe the presence of a greater percentage or number of the members for a quorum, a quorum for the transaction of business at all meetings of the members of a cooperative having not more than one thousand *(1,000)* members, shall be five ~~percentum~~ *percent (5%)* of all members, who must be present in person, and of a cooperative having more than one thousand *(1,000)* members, shall be fifty *(50)* members, present in person. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(e) Each member shall be entitled to one *(1)* vote on each matter submitted to a vote at a meeting of the members.

Voting shall be in person, but, if the bylaws so provide, may also be by proxy or by mail, or both. If the bylaws provide for voting by proxy or by mail, they shall also prescribe the conditions under which voting shall be permitted. No person shall vote as proxy more than three *(3)* members at any meeting of the members.

Sec. 3. K.S.A. 17-4612 is hereby amended to read as follows: 17-4612. (a) The business of a cooperative shall be managed by a board of not less than five (5) trustees, each of whom shall be a member of the cooperative. The bylaws shall prescribe the number of trustees, their qualifications, other than those prescribed in this act, the manner of holding meetings of the board of trustees and of electing successors to trustees who shall resign, die, or otherwise be incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors. Trustees shall not receive any salaries for their services as trustees and except in emergencies, shall not be employed by the cooperative in any capacity involving compensation without the approval of the members. The bylaws may, however, provide that a fixed fee and expenses of attendance may be allowed to each trustee for attendance at each meeting of the board of trustees *and for other functions duly authorized for and on behalf of the cooperative.*

(b) The trustees of a cooperative named in any articles of incorporation, consolidation, merger or conversion, shall hold office until the next annual meeting of the members and until their successors are elected and qualify. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees to hold office until the next annual meeting of the members, except as otherwise provided in this act. Each trustee shall hold office for the term for which ~~he is~~ elected and until ~~his~~ *a* successor is elected and qualifies.

(c) Instead of electing all the trustees annually, the bylaws may provide that half of them, or a number as near thereto as possible, shall be elected to serve until the next annual meeting of the members and that the remaining trustees shall be elected to serve until the second succeeding annual meeting. Thereafter, as trustees' terms expire, the members shall elect their successors to serve until the second succeeding annual meeting after their election.

(d) Instead of electing the trustees in the manner as provided in subsections (b) or (c) of this section, the bylaws may provide that the members shall be elected at such annual meetings to serve for ~~three (3) year~~ terms *of three (3) years*, except that the terms of the first trustees elected pursuant to this subsection may

be fixed in said bylaws for a number of years not exceeding three (3), and upon the expiration thereof all members thereafter to be elected for ~~three (3) year~~ terms *of three (3) years.*

(e) A majority of the board of trustees shall constitute a quorum.

(f) If a husband and wife hold a joint membership in a cooperative, either one, but not both, may be elected a trustee.

Sec. 4. K.S.A. 17-4604, 17-4610, 17-4612 and 17-4620 are hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body.

_____

President of the Senate.

_____

Secretary of the Senate.

Passed the HOUSE _____

_____

Speaker of the House.

_____

Chief Clerk of the House.

APPROVED _____

_____

Governor.

ACT NO. 83

Regular Session, 1973

SENATE BILL NO. 826

BY MR. MOUTON

AN ACT

To amend and reenact Section 4361 of Title 33 of the Louisiana Revised Statutes of 1950, relative to franchises or operating system granted by police juries, to provide for the approval and recognition of television lines and cables; to provide for nonexclusive franchises, and to otherwise provide with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 4361 of Title 33 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted to read as follows:

§4361. Police jury may grant franchise for use of streets, roads, and alleys outside municipalities

A. Police juries may, subject to any conditions, regulations, and restrictions which they impose, grant franchises or operating system over the public places, roads, streets, and alleys of their respective parishes, not within the limits of any municipality, to any person for:

(1) The construction, maintenance, and operation of lines of poles and wire for the transmission of electric current for heat, light, or power.

(2) Laying, maintaining, and operating lines of pipe or mains for supplying gas or water in, over, under or along the public roads, streets, or alleys.

(3) The construction, maintenance, and operation of sewerage and drain pipes across, along and underneath the roads, alleys, and public places.

(4) The construction, maintenance, and operation of railways utilizing electric or motive power other than steam, under the conditions hereinafter set forth.

(5) The construction, maintenance, and operation of television

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lines and cables whether erected on poles owned or leased from existing public utilities or on poles to be erected, or through cables to be laid underground for receiving, distributing, and transmitting television impulses or signals to residences, commercial establishments, or other customers. Each franchise or operating system granted for this purpose is hereby approved and recognized as legal until the franchise termination or operating system termination date or until September 1, 1991, whichever occurs sooner.

B. A franchise shall be awarded to the highest responsible bidder in accordance with the public bid laws of the state. The specifications shall state the area to be served by the franchisee, the duration of the franchise, and the other terms of the agreement.

C. Franchises awarded under the provisions of this Section shall be nonexclusive.

Section 2. Any individual, partnership or corporation operating a franchise or operating system of cable television on the effective date of this Act shall continue to operate such franchise or operating system under the same terms and conditions as it is operating under on the effective date of this Act.

Section 3. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

Section 4. All laws or parts of laws in conflict herewith are hereby repealed.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

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Regular Session, 1978

HOUSE BILL NO. 547

BY MESSRS. TURNLEY AND FREEMAN

ENROLLED

ACT NO. 108

AN ACT

To amend and reenact Section 407 of Title 12 of the Louisiana Revised Statutes of 1950 relative to electric cooperatives, to provide for adoption of bylaws, to allow voting by mail at the meetings of members with certain exceptions, and to provide for a quorum and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 407 of Title 12 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted to read as follows:

§407. Bylaws

The original bylaws of a cooperative shall be adopted by its board of directors. The first bylaws of a new cooperative resulting from a consolidation, or the surviving cooperative resulting from a merger, or the converted corporation resulting from a conversion, as provided in this Part, shall be adopted by the board of directors named in articles of conversion, merger or consolidation, as the case may be. Thereafter bylaws shall be adopted, amended or repealed by the members, except the board may amend the bylaws to authorize voting by mail at its meetings of the members unless such meeting concerns the sale, lease or other disposition or encumbrance of all or any substantial portion of the property belonging to the cooperative. In the event voting by mail is authorized in the bylaws, the board of directors is authorized to prescribe conditions necessary for voting by mail, including the

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percentage of members required to constitute a quorum. The bylaws shall set forth the rights and duties of members and directors and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this Part or with its articles of incorporation.

Section 2. This Act shall become effective upon signature by the governor or, if not signed by him, upon expiration of the time for bills to become law without his signature, as provided by Article III, Section 18 of the constitution.

Section 3. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 4. All laws or parts of laws in conflict herewith are hereby repealed.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED:_____

Regular Session, 1973

HOUSE BILL NO. 548

BY MESSRS. TURNLEY AND FREEMAN

ENROLLED

ACT NO. 109

AN ACT

To amend and reenact Subsection C of Section 409 of Title 12 of the Louisiana Revised Statutes of 1950 relative to electric cooperatives, to provide that the members of the board of directors be classified into three classes, to provide for election of board members for staggered terms, and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subsection C of Section 409 of Title 12 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted to read as follows:

§409. Board of directors

* * *

C. The directors shall be divided into three classes at the next annual meeting, each class to be as nearly equal in number as possible, with the term of office of the directors of the first class to expire at the next succeeding annual meeting, the term of the second class to expire at the second succeeding annual meeting, and the term of the third class to expire at the third succeeding annual meeting. At each annual meeting after such classification, a number of directors equal to the number of the class whose term expired at the time for such meeting shall be elected to hold office until the third succeeding annual meeting.

The provisions of this Subsection shall not be construed to reduce the term of office of any director holding such office on

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the effective date of this Subsection.

* * *

Section 2. This Act shall become effective upon signature by the governor or, if not signed by him, upon expiration of the time for bills to become law without his signature, as provided by Article III, Section 18 of the constitution.

Section 3. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 4. All laws or parts of laws in conflict herewith are hereby repealed.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED:_____

Regular Session, 1973

HOUSE BILL NO. 549

BY MESSRS. TURNLEY AND FREEMAN

ENROLLED

ACT NO. 110

AN ACT

To amend and reenact Subsection F of Section 408 of Title 12 of the Louisiana Revised Statutes of 1950 relative to meetings of electric cooperatives, to provide for the quorum at such meetings; to include members voting by mail in determining the existence of a quorum to transact business, and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subsection F of Section 408 of Title 12 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted to read as follows:

§408. Members

* * *

F. Unless otherwise required in the articles of incorporation or in the bylaws, five percent of all members, present in person, shall constitute a quorum for the transaction of business at all meetings of the members. For purposes of this Section, if voting by mail is authorized in the bylaws, members voting by mail shall be considered present in person. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

Section 2. This Act shall become effective upon signature by the governor or, if not signed by him, upon expiration of the time for bills to become law without his signature, as provided by Article III, Section 18 of the constitution.

Section 3. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

Section 4. All laws or parts of laws in conflict herewith are hereby repealed.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED:_____

ENROLLED

Regular Session, 1978

HOUSE BILL NO. 1538

BY MESSRS. ALARIO AND LEITHMAN

(INTRODUCED PURSUANT TO THE AUTHORITY OF H.C.R. NO. 125.)

ACT NO. 540

AN ACT

To allocate one hundred thousand dollars, from any funds made available to the Department of Transportation and Development for the West Bank Expressway Project, for payment of certain costs of the relocation of public utilities in the Expressway right of way in the cities of Westwego and Gretna.

Be it enacted by the Legislature of Louisiana:

Section 1. The sum of one hundred thousand dollars is hereby allocated from funds made available to the Department of Transportation and Development for the West Bank Expressway Project by Act No. 327 of the 1977 Regular Session or by any other Act heretofore or hereafter enacted, to be used to pay the pro rata charges assessed the cities of Westwego and Gretna by the Department of Transportation and Development for costs incurred in relocating publicly owned utility lines within the right of way of said West Bank Expressway within said cities to permit the construction of the highway. Such allocation of funds shall be in addition to the allocation of funds for the purpose of relocating publicly owned utility lines made by Act No. 656 of the 1977 Regular Session of the Legislature.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

SECOND REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

SENATE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1126

AN ACT

Relating to the creation by municipalities of joint power commissions to effect the joint development of water, gas, electric light works, heating and power plants and to provide for the issuance of revenue bonds, with an effective date conditional on the adoption by the voters of a constitutional amendment authorizing such creation.

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Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. This act shall be known as the "Joint Municipal Utility Commission Act".

Section 2. As used in this act, the following terms shall, unless the context clearly indicates otherwise, have the following meanings:

(1) "Bond" or "bonds", any bonds, interim certificates, notes, debentures or other obligations or a commission issued pursuant to this act;

(2) "Commission", any joint municipal utility commission established by a joint contract under this act;

(3) "Contracting municipality", each municipality which is a party to a joint contract establishing a commission under this act;

(4) "Joint contract", the contract entered into among or by and between two or more contracting municipalities for the purpose of establishing a commission;

(5) "Person", a natural person, cooperative or private corporation, association, firm, partnership, or business trust of any nature whatsoever, organized and existing under the laws of any state or

of the United States and any municipality or other municipal corporation, governmental unit, or public corporation created under the laws of this state or the United States, and any person, board, or other body declared by the laws of any state or the United States to be a department, agency or instrumentality thereof;

(6) "Project", the purchasing, construction, extending or improving of any revenue producing water, gas or electric light works, heating or power plants including all real and personal property of any nature whatsoever to be used in connection therewith, together with all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, distribution excluding retail sales, purchase, sale, exchange, or interchange of water, electric power and energy, or any interest therein or right to capacity thereof and the acquisition of fuel of any kind for any such purposes.

Section 3. 1. Municipalities may by joint contract, establish a separate governmental entity to be known as a joint municipal utility commission, to effect the joint development of water, gas, or electric light works, heating and power plants, or production, distribution and transmission of electric power and energy in whole or in part for the benefit of the inhabitants of such municipalities.

2. Any joint contract establishing a commission under this section shall specify:

(1) The name and purpose of the commission and the functions or services to be provided by the commission;

(2) The establishment and organization of a governing body of a commission which shall be a board of directors in which all powers of the commission are vested. The joint contract may provide for the creation by the board of an executive committee of the board to which the powers and duties may be delegated as the board shall specify;

(3) The number of directors, the manner of their appointment, t of office and compensation, if any, and the procedure for f g vacancies on the board. Each contracting municipality

shall have the power to appoint one member and an alternate to the board of directors and shall be entitled to remove that member and alternate at will;

(4) The manner of selection of the officers of the commission and their duties;

(5) The voting requirements for action by the board, but, unless specifically provided otherwise, a majority of directors shall constitute a quorum and a majority of the quorum shall be necessary for any action taken by the board;

(6) The duties of the board which shall include the obligation to comply or to cause compliance with this section and the laws of the state and in addition, with each and every term, provision and covenant in the joint contract creating the commission on its part to be kept or performed;

(7) The manner in which additional municipalities may become parties to the joint contract by amendment;

(8) The ownership interests of the contracting municipality electric cooperative associations, municipally owned or public utilities in a project or the manner of determining such ownership interest, which ownership interest shall be subject to any mortgage of a project pursuant to section 8 of this act;

(9) Provisions for the disposition, division or distribution of any property or assets of the commission on dissolution; and

(10) The term of the joint contract, which may be a definite period or until rescinded or terminated, and the method, if any, by which the joint contract may be rescinded or terminated so long as the commission has no bonds outstanding, unless provision for full payment of such bonds, by escrow or otherwise, has been made pursuant to the terms of the bonds or the resolution, trust indenture or security instrument securing the bonds.

3. A commission shall, if the joint contract so provides, be the successor to any non-profit corporation, agency, or another entity theretofore organized by the contracting municipalities to provide the same function, service or facility, and the co sion shall be entitled to all rights and privileges and s..... assume all

obligations and liabilities of such other entity under existing contracts to which such other entity is a party.

Section 4. The general powers of a commission to the extent provided in section 3 herein and subject to the provisions of section 14 herein shall include the power to:

(1) Plan, develop, acquire, construct, reconstruct, operate, manage, dispose of, participate in, maintain, repair, extend or improve one or more projects, either exclusively or jointly or by participation with electric cooperative associations, municipally owned or public utilities, or acquire any interest in or any rights to capacity of a project, within or outside the state and act as an agent, or designate one or more other persons participating in a project to act as its agent, in connection with the planning, acquisition, construction, operation, maintenance, repair, extension or improvement of such project;

(2) Acquire, sell, distribute and process fuels necessary to the production of electric power and energy provided however, the commission shall not have the power or authority to erect, own use or maintain a transmission line which is parallel or generally parallel to another transmission line in place within a distance of two miles, which serves the same general area sought to be served by the commission unless the Public Service Commission finds that it is not feasible to utilize the transmission line which is in place;

(3) Enter into operating, franchises, exchange, interchange, pooling, wheeling, transmission and other similar agreements with any person;

(4) Make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the commission;

(5) Employ agents and employees;

(6) Contract with any person within or outside the state, for the construction of any project or for any interest therein or any right to capacity thereof, without advertising for bids, preparing final plans and specifications in advance of construction, or securing

performance and payment of bonds, except to the extent and on such terms as its board of directors shall determine. Any contract entered into pursuant to this subdivision shall contain a provision that the requirements of sections 290.210 to 290.340, RSMo, shall apply;

(7) Purchase, sell, exchange, transmit or distribute water, gas, heat or electric power and energy, or any bi-product resulting therefrom, within and outside the state in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, and to enter into agreements with any person with respect to such purchase, sale, exchange, or transmission, on such terms and for such period of time as its board of directors shall determine. A commission may not sell or distribute water, gas, heat or power and energy at retail to ultimate customers outside the boundary limits of its contracting municipalities;

(8) Acquire, own, hold use, lease, as lessor or lessee, sell or otherwise dispose of, mortgage, pledge, or grant a security interest in any real or personal property, commodity or service or interest therein;

(9) Exercise the powers of eminent domain for public use as provided in chapter 523, RSMo, except that the power of eminent domain shall not be exercised against any electric cooperative association, municipally owned or public utility;

(10) Incur debts, liabilities or obligations including the issuance of bonds pursuant to the authority granted in section 27 of article VI of the Missouri Constitution;

(11) Sue and be sued in its own name;

(12) Have and use a corporate seal;

(13) Fix, maintain and revise fees, rates, rents and charges for functions, services, facilities or commodities provided by the commission;

(14) Make, and from time to time, amend and repeal, by-laws, rules and regulations not inconsistent with this section to carry into effect the powers and purposes of the commission;

(15) Notwithstanding the provisions of any other law, invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities and other investments as the commission deems proper;

(16) Join organizations, membership in which is deemed by the board of directors to be beneficial to accomplishment of the commission's purposes;

(17) Exercise any other powers which are deemed necessary and convenient by the commission to effectuate the purposes of the commission; and

(18) Do and perform any acts and things authorized by this section under, through or by means of an agent or by contracts with any person.

Section 5. Any commission established by joint contract under this section shall constitute a political subdivision and body public and corporate of the state, exercising public powers, separate from the contracting municipalities. It shall have the duties, privileges, immunities, rights, liabilities and disabilities of a public body politic and corporate but shall not have taxing power nor shall it have the benefit of the doctrine of sovereign immunity.

Section 6. 1. Bonds issued pursuant to this act by a commission shall be payable, as to principal and interest, solely from the net revenues derived by the commission from the operation of the commission's project or projects, after providing for the costs of operation and maintenance of the commission's project or projects, or from any other funds made available to the commission from sources other than from proceeds of taxation.

2. Each bond issued pursuant to the provisions of this act shall contain a statement that such bond is not an indebtedness of the state, or of any political subdivision thereof, other than the joint power commission, or of the contracting municipalities, but shall be special obligations of the commission only and that neither the faith and credit nor the taxing power of the state or of any political subdivision thereof, or of the contracting municipalities is pledged

to the payment of or the interest on such bonds. The bonds shall not be deemed to be an indebtedness within the meaning of any constitutional or statutory limitation upon the incurring of indebtedness. Neither the members of the board of directors of a commission nor any person executing the bonds shall be liable personally on the bonds by reason of the lawful issuance thereof.

3. A commission, subject to the provisions of section 13 of this act, may from time to time issue its bonds in such principal amounts as it deems necessary to provide sufficient funds to purchase, construct, extend or improve a project, including the establishment or increase of reserves, interest accrued during construction of such project and for a period not exceeding one year after the completion of construction of such project, and the payment of all other costs or expenses of the commission incident to and necessary or convenient to carry out its corporate purposes and powers.

4. Bonds of a commission shall be authorized by resolution of the board of directors and may be issued under such resolution or under a trust indenture or other security instrument, as authorized by the resolution, in one or more series and shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form, either coupon, registered or both, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places within or without the state, and be subject to such terms or redemption, with or without premium, as such resolution, trust indenture or other security instrument may provide, and without limitation by the provisions of any other law limiting amounts, maturities or interest rates.

5. The bonds shall be sold at public sale and in the event of a rejection of all bids by the commission, the bonds may be sold at private sale as the commission may provide and at such price or prices as the commission shall determine.

6. The bonds may be signed by manual or facsimile signatures

as determined by resolution of the board. In case any of the officers whose signatures appear on any bonds or coupons shall cease to be such officers before the delivery of such obligations, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officers had remained in office until such delivery.

7. Pending preparation of definitive bonds, a commission may issue temporary bonds which shall be exchanged for the definitive bonds when such bonds shall have been executed and are available for delivery.

8. All bonds issued under the provisions of this act shall be negotiable instruments under the provisions of the uniform commercial code of the state.

Section 7. 1. The resolution authorizing any issuance of bonds hereunder shall make provision for the payment of the bonds by fixing such rates, fees and charges for water, gas, heat, electric power and energy and all other services sufficient to pay the interest and principal of the bonds when due, to provide for a sinking fund sufficient to retire the bonds, and to provide and maintain reasonable reserves. Such rates, fees and charges shall also be sufficient to pay the costs of operation, improvement and maintenance of the water, gas, heat or electric power facilities.

2. The resolution and trust indenture under which any bonds shall be issued shall constitute a contract with the holders of the bonds, and may contain provisions, among others, as to:

(1) The terms and provisions of the bonds;

(2) As provided in section 8 of this act, the mortgage or pledge of and the grant of a security interest in any real or personal property and all or any part of the revenues from any project or projects or any revenue producing contract or contracts made by the commission with any person to secure the payment of bonds, subject to such agreements with the holders of bonds as may then exist;

(3) The custody, collection, securing, investment and payment of any revenues, assets, money, funds or property with respect to

which the commission may have any rights or interest;

(4) The purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, and the pledge of such proceeds to secure the payment of the bonds;

(5) Limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds;

(6) The rank or priority of any bonds with respect to any lien or security;

(7) The creation of special funds or moneys to be held in trust or otherwise for operating expenses, payment, or redemption of bonds, reserves or other purposes, and the use and disposition of moneys held in such funds;

(8) The procedure by which the terms of any contract with or for the benefit of the holders of bonds may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(9) The definition of the acts or omissions to act which shall constitute a default in the duties of the commission to holders of its bonds, and the rights and remedies of such holders in the event of such default including, if the commission shall so determine, the right to accelerate the due date of the bonds or the right to appoint a receiver or receivers of the property or revenues subject to the lien of the resolution and trust indenture;

(10) Any other or additional agreements with or for the benefit of the holders of bonds or any covenants or restrictions necessary or desirable to safeguard the interests of such holders;

(11) The custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds;

(12) The vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers, and duties in trust as the commission may determine, or limiting or abrogating the rights of the holders of any bonds to appoint a trustee, or limiting the rights, powers, and duties of such trustee; and

(13) Appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state.

Section 8. As additional security for bonds issued or to be issued by a commission, the commission may mortgage or execute deeds of trust of the whole or any part of a project. Any such mortgage or deed of trust covering the whole or any part of easements or other interests in real estate less than fee simple used in a project, or for the generation or transmission of electric power and energy, and covering fixtures annexed thereto, may be filed in the office of the secretary of state with or as a part of the financing statement covering such fixtures. All filings required under the uniform commercial code to perfect a security interest against the personal property or fixtures of a commission shall be made and maintained in the office of the secretary of state.

Section 9. 1. All bonds issued pursuant to this act and all income or interest thereon shall be exempt from all state taxes, except inheritance, estate, and transfer taxes.

2. All property, real and tangible personal, acquired by the bonds issued pursuant to this act or otherwise acquired by a commission shall be subject to taxation for state, county, and municipal and other local purposes to the same extent as bridge and public utility companies under the provisions of section 153.030 RSMo and 138.420 RSMo.

Section 10. Any commission governed by the provisions of this act having issued bonds under this act may from time to time as authorized by resolution of the commission issue refunding bonds for the purpose of refunding, extending and unifying the whole or any part of its valid outstanding indebtedness.

Section 11. Bonds issued by any commission under the provisions of this act are hereby made securities in which all public officers and public bodies of the state and its political subdivisions, all insurance companies, trust companies, banking associ s, investment companies, executors, administrators,

trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. The bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law.

Section 12. A commission shall have power to purchase bonds out of any funds available therefor and to hold, pledge, cancel or resell such bonds, subject to and in accordance with any agreements with the holders.

Section 13. 1. The commission shall, in accordance with the provisions of section 115.123, RSMo, order an election to be held whereby the qualified electors in each contracting municipality shall approve or disapprove the issuance of the bonds as provided for in the resolution of the commission. The commission may not order such an election until it has engaged and received a report from an independent consulting engineer as defined in section 327.181, RSMo, for the purpose of determining the economic and engineering feasibility of any proposed project the costs of which are to be financed through the issuance of bonds. The report of the consulting engineer shall be provided to and approved by the legislative body and executive of each contracting municipality and such report shall be open to public inspection and shall be the subject of a public hearing in each municipality. Notice of the time and place of each such hearing shall be published in a daily newspaper of general circulation within each municipality. Interested parties may appear and fully participate in such hearings.

2. The commission shall cause notice of the election to be published in accordance with the provisions of section 115.127, RSMo. The election shall be held and judges thereof appointed as in the case of other elections in such contracting municipalities except that the proper elections authorities having ch of the election in each contracting municipality shall prov t least

one voting place in each ward of a city, and for that purpose may combine as many election precincts in each ward as in their judgment is proper, and may designate one set of judges to conduct the election for such precincts. Except as provided in this act, the election shall be conducted in the same manner and by the same election officials, judges, clerks, and other office and employees as other elections are conducted.

3. The proper officers of each contracting municipality shall prepare and cause to be printed ballots to be used at the election which shall be in substantially the following form:

OFFICIAL BALLOT

Should a resolution to approve the issuance of revenue bonds by the joint municipal (water) (power) (gas) commission in an amount not to exceed $_____ for the purpose of _____ be approved?

☐ Yes

☐ No

If you are in favor of the resolution, place an X in the box opposite "Yes". *If you are opposed to the question, place an X in the box* opposite "No".

4. Upon the certification of the results of the election by the proper officials of each contracting municipality to the commission, if the resolution to issue the bonds was approved by at least a majority of the qualified electors voting thereon in each of the contracting municipalities voting at the election, the commission shall declare the result of the election and cause the bonds to be issued.

5. The municipalities shall bear all expenses associated with the elections in the contracting municipalities.

Section 14. All provisions of Chapters 386 and 393, RSMo in reference to the jurisdiction, supervision, powers and duties of the public service commission with reference to water, gas and electrical corporations are hereby made applicable to any commission proposed to be created pursuant to this act which commission proposes to own, operate, control or manage any

water, gas or electrical light works, heating or power plant in this state, and said provisions shall have full application thereto.

Section 15. 1. The contracting municipalities may provide in the joint contract for payment to the commission of funds for commodities to be procured and services to be rendered by the commission. The contracting municipalities and other persons may enter into purchase agreements with the commission for the purchase, sale, exchange or transmission of water, gas, heat or any right to capacity or interest in such electric power and energy whereby the purchaser is obligated to make payments in amounts which shall be sufficient to enable the company to meet its expenses, interest and principal payments, whether at maturity or upon sinking fund redemption, for its bonds, reasonable reserves for debt service, operation and maintenance and renewals and replacements and the requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture or other security instrument. Purchase agreements may contain such other terms and conditions as the commission and the purchasers may determine, including provisions whereby the purchaser is obligated to pay for water, gas, heat or power irrespective of whether water, gas, heat or energy is produced or delivered to the purchaser or whether any project contemplated by any such agreement is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the output of such project. Such agreements may be for a term covering the life of a project or for any other term, or for an indefinite period. The joint contract or a purchase agreement may provide that if one or more of the purchasers defaults in the payment of its obligations under any such purchase agreement, the remaining purchasers which also have such agreements shall be required to accept and pay for and shall be entitled proportionately to use or otherwise dispose of the water, gas, heat or energy to be purchased by the defaulting purchaser.

2. The obligations of a municipality under a purchase

agreement with a commission or arising out of the default by any other purchaser with respect to such an agreement shall not be construed to constitute debt of the municipality. To the extent provided in the purchase agreement, such obligations shall constitute special obligations of the municipality, payable solely from the revenues and other moneys derived by the municipality from its municipal utility and shall be treated as expenses of operating a municipal utility.

3. The contracting municipalities may provide in the joint contract for payment to the commission of funds from proprietary revenues for services rendered by the commission; from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth in the joint contract; and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the commission.

386.025. Any joint municipal utility commission established by contract for the purpose of owning, operating, controlling or managing all or part of any water, gas or electric light works, heating or power plants, or gas or electrical production, distribution or transmission facilities shall be considered a water corporation, gas corporation or electrical corporation, as the case may be, as those terms are defined in this chapter.

393.295. All provisions of chapters 386 and 393, RSMo, concerning court proceedings and the jurisdiction, supervision, powers and duties of the Public Service Commission with reference to water corporations, gas corporations and electrical corporations, including, but not limiting by enumeration those provisions concerning supervision, investigations, complaints, hearings, reports, approval of certificates of franchises, granting of certificates, approval of issues of stocks, bonds, notes and other evidence of indebtedness, keeping of accounts, fixing of just and reasonable rates, which shall be based on costs associated with any property of such corporations, shall be and are hereby made fully icable to any joint municipal utility commission which

owns, operates, controls or manages all or part of any water, gas or electric light works, heating or power plants, electrical energy resources or gas or electrical production, distribution or transmission facilities in this state. Nothing contained herein, however, shall affect the rights, privileges or duties of existing corporations pursuant to this chapter, including the construction of facilities within an existing certificated area.

Section A. This act shall not become effective until passage of a joint resolution submitted to the voters by the seventy-ninth general assembly amending Section 27 of Article VI of the Missouri Constitution to authorize the issuance of revenue bonds by joint boards, commissions or officers established by a joint contract between municipalities or political subdivisions.

Signed into law July 25, Chapter 644

STATE OF NEW YORK

9018

IN SENATE

March 30, 1978

Introduced by Sen. McFARLAND—(at request of the Governor)—read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Public Utilities

AN ACT to amend the public authorities law, in relation to the development and sale of electric power by the power authority of the state of New York

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The second unnumbered paragraph of section one thousand one of the public authorities law, as amended by chapter eight hundred sixty-four of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

It is further declared that the need for obtaining and maintaining a continuous and adequate supply of dependable electric power and energy is a matter of public concern to the people of the state; that the maximum capacity of the hydroelectric developments on the Niagara and Saint Lawrence rivers of the authority can be best utilized and additional public benefit derived therefrom by provision for supplemental base loan nuclear generating facilities or facilities utilizing new energy technologies and that for the purposes (i) of so utilizing such capacity and of deriving such additional benefit, (ii) of providing additional low cost power and energy to attract and expand high load factory industry, (iii) of continuing an adequate supply of power and energy for the future needs of its municipal electric systems and rural electric cooperative customers, and (iv) of assisting in the development of additional dependable hydroelectric power from other waters of the state and in the development of advanced facilities having substantial prospects of reducing electricity production costs, the public interest requires that the authority participate in the generation of supplemental electric power and energy by [pumped] *energy* storage, hydroelectric and nuclear means and new energy technologies to the extent authorized in this title.

§ 2. The second unnumbered paragraph of section one thousand five of such law, as amended by chapter eight hundred sixty-four of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

The authority is authorized to construct, *improve and/or rehabilitate* throughout its area of service (a) such hydroelectric [pumped] or [other] energy storage projects, as it deems necessary or desirable to [supplement] *contribute to the adequacy, economy and reliability of* the supply of electric power and energy *or*

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

to conserve fuel and (b) such base-load nuclear generating facilities or other facilities utilizing new energy technologies as in its judgment are necessary (i) to supply sufficient supplemental energy to make possible optimum use of the generating capacity of the authority's St. Lawrence and Niagara hydroelectric projects, (ii) to supply low cost power and energy to high load factor manufacturers which will build new facilities in the authority's area of service or expand existing facilities provided such power and energy is made available to them, and (iii) to supply the future needs of the authority's existing municipal electric and rural electric cooperative customers.

§ 3. Subdivisions nine, ten and eleven of section one thousand five of such law are hereby renumbered subdivisions ten, eleven and twelve and a new subdivision nine is hereby inserted therein to read as follows:

9. To cooperate with and, when the trustees deem it feasible and advisable, to enter into contractual arrangements with municipal corporations with respect to construction, improvement, rehabilitation, ownership and/or operation of hydroelectric generating facilities and subsidiary facilities and disposition of the output of such generating facilities.

§ 4. This act shall take effect immediately.

AN ACT

To enact sections 4933.81 to 4933.90, and to repeal section 4905.261 of the Revised Code to certify exclusive territory to electric light companies and to create a public utilities territorial administration fund.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4933.81, 4933.82, 4933.83, 4933.84, 4933.85, 4933.86, 4933.87, 4933.88, 4933.89, and 4933.90 of the Revised Code be enacted to read as follows:

Sec. 4933.81. AS USED IN SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE:

(A) "ELECTRIC SUPPLIER" MEANS ANY ELECTRIC LIGHT COMPANY AS DEFINED IN SECTION 4905.03 OF THE REVISED CODE, INCLUDING ELECTRIC LIGHT COMPANIES ORGANIZED AS NONPROFIT CORPORATIONS, BUT NOT INCLUDING A MUNICIPAL CORPORATION OR OTHER UNIT OF LOCAL GOVERNMENT THAT PROVIDES ELECTRIC SERVICE.

(B) "ADEQUATE FACILITIES" MEANS DISTRIBUTION LINES OR FACILITIES HAVING SUFFICIENT CAPACITY TO MEET THE MAXIMUM ESTIMATED ELECTRIC SERVICE REQUIREMENTS OF ITS EXISTING CUSTOMERS AND OF ANY NEW CUSTOMER OCCURRING DURING THE YEAR FOLLOWING THE COMMENCEMENT OF PERMANENT ELECTRIC SERVICE, AND TO ASSURE ALL SUCH CUSTOMERS OF REASONABLE CONTINUITY AND QUALITY OF SERVICE. DISTRIBUTION FACILITIES AND LINES OF AN ELECTRIC SUPPLIER SHALL BE CONSIDERED "ADEQUATE FACILITIES" IF SUCH SUPPLIER OFFERS TO UNDERTAKE TO MAKE ITS DISTRIBUTION FACILITIES AND LINES MEET SUCH SERVICE REQUIREMENTS AND CAN, IN THE DETERMINATION OF THE PUBLIC UTILITIES COMMISSION, DO SO WITHIN A REASONABLE TIME.

(C) "DISTRIBUTION LINE" MEANS ANY ELECTRIC LINE HAVING A DESIGN VOLTAGE BELOW THIRTY-FIVE THOUSAND VOLTS PHASE TO PHASE WHICH IS BEING OR HAS BEEN USED PRIMARILY TO PROVIDE ELECTRIC SERVICE DIRECTLY TO ELECTRIC LOAD CENTERS BY THE OWNER OF SUCH LINE.

(D) "EXISTING DISTRIBUTION LINE" MEANS ANY DISTRIBUTION LINE OF AN ELECTRIC SUPPLIER WHICH WAS IN EXISTENCE ON JANUARY 1, 1977, OR UNDER CONSTRUCTON ON SUCH DATE.

(E) "ELECTRIC LOAD CENTER" MEANS ALL THE ELECTRIC CONSUMING FACILITIES OF ANY TYPE OR CHARACTER OWNED, OCCUPIED, CONTROLLED, OR USED BY A PERSON AT A SINGLE LOCATION, WHICH FACILITIES HAVE BEEN, ARE, OR WILL BE CONNECTED TO AND SERVED AT A METERED POINT OF DELIVERY AND TO WHICH ELECTRIC SERVICE HAS BEEN, IS, OR WILL BE RENDERED.

(F) "ELECTRIC SERVICE" MEANS RETAIL ELECTRIC SERVICE FURNISHED TO AN ELECTRIC LOAD CENTER FOR ULTIMATE CONSUMPTION AND DOES NOT INCLUDE FURNISHING ELECTRIC POWER OR ENERGY AT WHOLESALE FOR RESALE.

(G) "CERTIFIED TERRITORY" MEANS A GEOGRAPHICAL AREA THE BOUNDARIES OF WHICH HAVE BEEN ESTABLISHED PURSUANT TO SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE WITHIN WHICH AN ELECTRIC SUPPLIER IS AUTHORIZED AND REQUIRED TO PROVIDE ELECTRIC SERVICE.

(H) "OTHER UNIT OF LOCAL GOVERNMENT" MEANS ANY GOVERNMENTAL UNIT OR BODY THAT MAY COME INTO EXISTENCE AFTER THE EFFECTIVE DATE OF THIS SECTION WITH POWERS AND AUTHORITY SIMILAR TO THOSE OF A MUNICIPAL CORPORATION, OR WHICH IS CREATED TO REPLACE OR EXERCISE THE RELEVANT POWERS OF ANY ONE OR MORE MUNICIPAL CORPORATIONS.

Sec. 4933.82. (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE BOUNDARIES OF THE CERTIFIED TERRITORY OF EACH ELECTRIC SUPPLIER SHALL BE CONSIDERED SET AS A LINE OR LINES SUBSTANTIALLY EQUIDISTANT BETWEEN ITS EXISTING DISTRIBUTION LINES AND THE NEAREST EXISTING DISTRIBUTION LINES OF ANY OTHER ELECTRIC SUPPLIER IN EVERY DIRECTION, SO THAT THERE IS THEREBY CERTIFIED TO EACH ELECTRIC SUPPLIER SUCH LAND AREA AS IS LOCATED NEARER TO ONE OF ITS EXISTING DISTRIBUTION LINES THAN TO THE NEAREST EXISTING DISTRIBUTION LINE OF ANY OTHER ELECTRIC SUPPLIER.

(B) ON OR BEFORE ONE YEAR AFTER THE EFFECTIVE DATE OF THIS SECTION OR, WHEN REQUESTED IN WRITING BY AN ELECTRIC SUPPLIER AND FOR GOOD CAUSE SHOWN, SUCH FURTHER TIME AS THE COMMISSION MAY FIX BY ORDER, EACH ELECTRIC SUPPLIER SHALL FILE WITH THE PUBLIC UTILITIES COMMISSION A MAP OR MAPS SHOWING ALL OF ITS EXISTING DISTRIBUTION LINES AND THE PROPOSED BOUNDARIES OF ITS CERTIFIED TERRITORY. THE COMMISSION SHALL PREPARE, OR CAUSE TO BE PREPARED, WITHIN SIX MONTHS AFTER SUCH FILING A MAP OF UNIFORM SCALE TO SHOW, ACCURATELY AND CLEARLY, THE BOUNDARIES OF THE CERTIFIED TERRITORY OF EACH ELECTRIC SUPPLIER AS PROPOSED BY SUCH ELECTRIC SUPPLIER, OR AS ESTABLISHED UNDER DIVISION (A) OF THIS SECTION, AND SHALL ISSUE A MAP OF THE CERTIFIED TERRITORY OF EACH ELECTRIC SUPPLIER. SUCH MAP SHALL SHOW THE SERVICE AREAS OF MUNICIPALLY OWNED ELECTRIC SYSTEMS AS OF THE DATE THE MAP IS DRAWN. THE SERVICE AREA OF EACH MUNICIPALLY OWNED ELECTRIC SYSTEM SHALL INCLUDE ALL OF THE INCORPORATED AREA OF SAID SYSTEM AND THAT TERRITORY WITHIN A LINE SUBSTANTIALLY EQUIDISTANT BETWEEN ITS EXISTING DISTRIBUTION LINES AND THE NEAREST EXISTING DISTRIBUTION LINE OF ANY ELECTRIC SUPPLIER IN EVERY DIRECTION. CERTIFICATION OF TERRITORY PURSUANT TO SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE SHALL NOT IN ANY MANNER PROHIBIT OR RESTRICT THE RIGHTS OF MUNICIPALITIES UNDER ARTICLE XVIII OR ANY OTHER ARTICLE OF THE OHIO CONSTITUTION AND THE EXISTENCE OF A MUNICIPALLY OWNED ELECTRIC SYSTEM SERVICE AREA SHALL NOT IN ANY RESPECT RESTRICT OR LIMIT THE BOUNDARIES OF THE CERTIFIED TERRITORY ESTABLISHED FOR ELECTRIC SUPPLIERS.

(C) EACH ELECTRIC SUPPLIER AND ANY MUNICIPAL CORPORATION MAY EXAMINE THE MAPS OF ELECTRIC SUPPLIERS FILED WITH THE COMMISSION PURSUANT TO THIS SECTION. ANY ELECTRIC SUPPLIER WHOSE OWN CERTIFIED TERRITORY IS AFFECTED OR ANY MUNICIPAL CORPORATION WHOSE SERVICE AREA IS AFFECTED BY ANY SUCH FILING AND THAT TAKES EXCEPTION THERETO, ON THE BASIS OF AN ALLEGED ERROR, MAY INFORMALLY REQUEST THE COMMISSION TO ARRANGE A CONFERENCE OF THE AFFECTED PARTIES TO RESOLVE THE ALLEGED ERROR. THE SUPPLIER MAKING THE REQUEST SHALL SERVE A COPY OF THE REQUEST BY CERTIFIED MAIL ON THE ELECTRIC SUPPLIER WHOSE MAP IS ALLEGED TO CONTAIN THE ERROR. THE COMMISSION SHALL ARRANGE A CONFERENCE AS PROMPTLY AS PRACTICABLE AFTER RECEIPT OF THE

REQUEST AND SHALL GIVE NOTICE THEREOF TO ALL ELECTRIC SUPPLIERS AND MUNICIPAL CORPORATIONS AFFECTED BY THE ALLEGED ERROR. IF AN ALLEGED ERROR IS NOT CORRECTED TO THE SATISFACTION OF ANY AFFECTED ELECTRIC SUPPLIER OR MUNICIPAL CORPORATION, SUCH SUPPLIER OR MUNICIPAL CORPORATION MAY FORMALLY PETITION THE COMMISSION FOR A HEARING AND SUCH HEARING SHALL BE GRANTED BY THE COMMISSION AS PROMPTLY AS PRACTICABLE.

(D) UPON COMPLETION BY THE COMMISSION OF MAPS SHOWING THE BOUNDARIES OF THE CERTIFIED TERRITORY OF EACH ELECTRIC SUPPLIER AS ESTABLISHED UNDER DIVISION (A) OF THIS SECTION, EACH ELECTRIC SUPPLIER SHALL HAVE THE RIGHT TO EXAMINE ALL SUCH MAPS, AND ANY ELECTRIC SUPPLIER WHOSE OWN CERTIFIED TERRITORY IS AFFECTED THEREBY, ON THE BASIS OF AN ALLEGED ERROR, MAY INFORMALLY REQUEST THAT THE COMMISSION CONFER WITH IT TO RESOLVE THE ISSUE OF THE ALLEGED INCORRECT LOCATION OF BOUNDARY. THE PROCEDURE SHALL BE AS SPECIFIED ABOVE FOR RESOLUTION OF ALLEGED ERRORS IN THE MAPS SUPPLIED BY ANY ELECTRIC SUPPLIER, INCLUDING THE RIGHT OF THE SUPPLIER MAKING THE INFORMAL REQUEST TO ULTIMATELY FORMALLY PETITION THE COMMISSION FOR A HEARING.

(E) IN REACHING ITS DECISION ON ANY DISPUTE FORMALLY OR INFORMALLY BROUGHT TO THE ATTENTION OF THE COMMISSION, UNDER DIVISION (C) OR (D) OF THIS SECTION, THE COMMISSION SHALL FOLLOW THE STANDARDS SET FORTH IN DIVISION (A) OF THIS SECTION AND DIVISION (C) OF SECTION 4933.83 OF THE REVISED CODE.

(F) ALL PORTIONS OF THE STATE SHALL BE INCLUDED WITHIN CERTIFIED TERRITORY ESTABLISHED PURSUANT TO THIS SECTION.

Sec. 4933.83. (A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION AND ARTICLE XVIII OF THE OHIO CONSTITUTION, EACH ELECTRIC SUPPLIER SHALL HAVE THE EXCLUSIVE RIGHT TO FURNISH ELECTRIC SERVICE TO ALL ELECTRIC LOAD CENTERS LOCATED PRESENTLY OR IN THE FUTURE WITHIN ITS CERTIFIED TERRITORY, AND SHALL NOT FURNISH, MAKE AVAILABLE, RENDER, OR EXTEND ITS ELECTRIC SERVICE FOR USE IN ELECTRIC LOAD CENTERS LOCATED WITHIN THE CERTIFIED TERRITORY OF ANOTHER ELECTRIC SUPPLIER; PROVIDED THAT NOTHING IN SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE SHALL IMPAIR THE POWER OF MUNICIPAL CORPORATIONS TO REQUIRE FRANCHISES OR CONTRACTS FOR THE PROVISION OF ELECTRIC SERVICE

WITHIN THEIR BOUNDARIES, AND PROVIDED THAT ANY ELECTRIC SUPPLIER MAY EXTEND ITS FACILITIES THROUGH THE CERTIFIED TERRITORY OF ANOTHER ELECTRIC SUPPLIER TO CONNECT ANY OF ITS FACILITIES, TO SERVE ELECTRIC LOAD CENTERS WITHIN ITS OWN CERTIFIED TERRITORY OR TO INTERCONNECT WITH OTHER ELECTRIC SUPPLIERS. IN THE EVENT THAT A NEW ELECTRIC LOAD CENTER SHOULD LOCATE IN AN AREA THAT IS COMPOSED OF TWO OR MORE ADJACENT CERTIFIED TERRITORIES, THE ELECTRIC SUPPLIER IN WHOSE CERTIFIED TERRITORY THE GREATER PORTION OF THE LAND AREA COVERED BY THE ELECTRIC LOAD CENTER IS LOCATED SHALL SERVE THAT ELECTRIC LOAD CENTER. IN THE EVENT THAT A MUNICIPAL CORPORATION REFUSES TO GRANT A FRANCHISE OR CONTRACT FOR ELECTRIC SERVICE WITHIN ITS BOUNDARIES TO AN ELECTRIC SUPPLIER WHOSE CERTIFIED TERRITORY IS INCLUDED WITHIN THE MUNICIPALITY, ANY OTHER ELECTRIC SUPPLIER MAY SERVE THE MUNICIPAL CORPORATION UNDER A FRANCHISE OR CONTRACT WITH THE MUNICIPAL CORPORATION.

(B) ELECTRIC SUPPLIERS SHALL FURNISH ADEQUATE FACILITIES TO MEET THE REASONABLE NEEDS OF THE CONSUMERS AND INHABITANTS IN THE CERTIFIED TERRITORIES THAT THEY ARE AUTHORIZED AND REQUIRED TO SERVE PURSUANT TO SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE. THE PUBLIC UTILITIES COMMISSION MAY, AFTER A HEARING HAD UPON DUE NOTICE, MAKE SUCH FINDINGS AS MAY BE SUPPORTED BY PROOF AS TO WHETHER ANY ELECTRIC SUPPLIER OPERATING IN A CERTIFIED TERRITORY, OR PROVIDING ELECTRIC SERVICE PURSUANT TO DIVISION (C) OF THIS SECTION, IS RENDERING OR PROPOSES TO RENDER PHYSICALLY ADEQUATE SERVICE TO AN ELECTRIC LOAD CENTER AND IN THE EVENT THE COMMISSION FINDS THAT SUCH ELECTRIC SUPPLIER IS NOT RENDERING AND DOES NOT PROPOSE TO RENDER PHYSICALLY ADEQUATE SERVICE, THE COMMISSION MAY ENTER AN ORDER SPECIFYING IN WHAT PARTICULARS SUCH ELECTRIC SUPPLIER HAS FAILED TO RENDER OR PROPOSE TO RENDER PHYSICALLY ADEQUATE SERVICE AND ORDER THAT SUCH FAILURE BE CORRECTED WITHIN A REASONABLE TIME TO BE FIXED IN SUCH ORDER. IF THE ELECTRIC SUPPLIER SO ORDERED TO CORRECT SUCH FAILURE FAILS TO COMPLY WITH SUCH ORDER, THE COMMISSION MAY AUTHORIZE ANOTHER ELECTRIC SUPPLIER TO FURNISH ELECTRIC SERVICE TO SUCH ELECTRIC LOAD CENTER AND SHALL APPROPRIATELY AMEND THE MAPS OF THE CERTIFIED TERRITORY OF SUCH ELECTRIC SUPPLIERS.

(C) EXCEPT AS PROVIDED IN DIVISION (B) OF THIS SECTION AND ARTICLE XVIII OF THE OHIO CONSTITUTION, EACH ELECTRIC SUPPLIER HAS THE OBLIGATION AND EXCLUSIVE RIGHT TO FURNISH ELECTRIC SERVICE TO ELECTRIC LOAD CENTERS, WHEREVER LOCATED, WHICH IT WAS SERVING ON JANUARY 1, 1977, OR WHICH IT HAD AGREED TO SERVE UNDER LAWFUL CONTRACTS IN EFFECT ON OR RESULTING FROM WRITTEN BIDS SUBMITTED UNDER BOND PRIOR TO JANUARY 1, 1977, AND NO OTHER ELECTRIC SUPPLIER SHALL FURNISH, MAKE AVAILABLE, OR EXTEND ELECTRIC SERVICE TO ANY SUCH ELECTRIC LOAD CENTERS.

(D) SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE SHALL NOT PREVENT AN ELECTRIC SUPPLIER FROM EXTENDING ITS ELECTRIC SERVICE AFTER THE EFFECTIVE DATE OF THIS SECTION TO ITS OWN PROPERTY OR FACILITIES.

(E) NOTWITHSTANDING THE EFFECTUATION OF CERTIFIED TERRITORIES ESTABLISHED BY OR PURSUANT TO SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE, AND THE EXCLUSIVE RIGHT OF ELECTRIC SUPPLIERS TO SERVE WITHIN SUCH TERRITORY, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF SUCH SECTIONS ESTABLISHING RIGHTS OF ELECTRIC SUPPLIERS TO FURNISH ELECTRIC SERVICE, ANY TWO OR MORE ELECTRIC SUPPLIERS MAY JOINTLY PETITION THE COMMISSION FOR THE REALLOCATION OF THEIR OWN TERRITORIES AND ELECTRIC LOAD CENTERS AMONG THEM AND DESIGNATING WHICH PORTIONS OF SUCH TERRITORIES AND ELECTRIC LOAD CENTERS ARE TO BE SERVED BY EACH OF THE ELECTRIC SUPPLIERS. THE COMMISSION, IF IT FINDS THAT GRANTING THE PETITION WILL PROMOTE THE PURPOSES OF SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE AND WILL PROVIDE ADEQUATE SERVICE TO ALL TERRITORIES AND ELECTRIC LOAD CENTERS AFFECTED THEREBY, SHALL APPROVE SUCH A PETITION, APPROPRIATELY MODIFY THE TERRITORIAL BOUNDARIES OF THE PETITIONING ELECTRIC SUPPLIERS, AND AMEND THE MAPS OF THE CERTIFIED TERRITORY OF SUCH ELECTRIC SUPPLIERS ACCORDINGLY.

Sec. 4933.84. ANNEXATION OR INCORPORATION BY A MUNICIPAL CORPORATION OR OTHER UNIT OF LOCAL GOVERNMENT DOES NOT AFFECT THE RIGHT OF AN ELECTRIC SUPPLIER TO CONTINUE OR EXTEND ELECTRIC SERVICE WITHIN ITS CERTIFIED TERRITORY EXCEPT INSOFAR AS THAT RIGHT IS AFFECTED OR MODIFIED BY ARTICLE XVIII OR ANY OTHER ARTICLE OF THE OHIO CONSTITUTION. NOTWITHSTANDING THIS SECTION

OR ANY OTHER PROVISION OF LAW, THE RIGHT OF A MUNICIPAL CORPORATION TO FURNISH SERVICE TO SUCH PORTION OF THE CORPORATION AS HAS BEEN ANNEXED TO THE CORPORATION SINCE THE TIME MAPS HAVE BEEN DRAWN IN ACCORDANCE WITH SECTION 4933.82 OF THE REVISED CODE SHALL NOT BE ABRIDGED.

Sec. 4933.85. THE RIGHTS AND AUTHORITY GRANTED UNDER SECTIONS 4933.81 TO 4933.84 OF THE REVISED CODE MAY BE ASSIGNED OR TRANSFERRED ONLY WITH THE APPROVAL OF THE PUBLIC UTILITIES COMMISSION AND APPROVAL SHALL BE GRANTED IF THE COMMISSION FINDS THAT THE ASSIGNMENT OR TRANSFER IS NOT CONTRARY TO THE PUBLIC INTEREST. UPON THE MERGER OR CONSOLIDATION OF ELECTRIC SUPPLIERS, THE SURVIVING OR NEW ELECTRIC SUPPLIER SHALL, WITHOUT FURTHER ACTION, SUCCEED TO ALL RIGHTS AND AUTHORITY PREVIOUSLY GRANTED UNDER SECTIONS 4933.81 TO 4933.84 OF THE REVISED CODE TO THE MERGED OR CONSOLIDATED ELECTRIC SUPPLIERS.

Sec. 4933.86. ANY ELECTRIC SUPPLIER THAT RENDERS ELECTRIC SERVICE IN VIOLATION OF SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE IS SUBJECT TO REMEDIES AND PENALTIES PROVIDED BY SECTIONS 4905.54, 4905.56, 4905.57, 4905.59, 4905.60, 4905.61, AND DIVISION (C) OF SECTION 4905.99 OF THE REVISED CODE.

Sec. 4933.87. NOTHING CONTAINED IN SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE SHALL BE CONSTRUED TO AFFECT THE RIGHT OF MUNICIPAL CORPORATIONS TO GENERATE, TRANSMIT, DISTRIBUTE, OR SELL ELECTRIC ENERGY. THE RIGHTS AND POWERS OF MUNICIPAL CORPORATIONS AS THEY EXIST ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION TO ACQUIRE, CONSTRUCT, OWN, LEASE, OR OPERATE IN ANY MANNER A PUBLIC UTILITY OR TO SUPPLY THE SERVICE OR PRODUCT BY MEANS OF A RATE ORDINANCE ADOPTED UNDER SECTION 743.26 OF THE REVISED CODE OR UNDER SECTION 4, ARTICLE XVIII, OHIO CONSTITUTION IN ANY PORTION OF THE STATE IS NOT AFFECTED BY SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE. WHEN AN ELECTRIC SYSTEM OWNED BY A MUNICIPAL CORPORATION IS SOLD, THE PURCHASER THEREOF SHALL BE CONSIDERED AN ELECTRIC SUPPLIER AND THE AREA SERVED BY THE SYSTEM SHALL BECOME THE CERTIFIED TERRITORY OF THE PURCHASER. AN ELECTRIC SUPPLIER WHOSE CERTIFIED TERRITORY ALSO INCLUDES ANY PORTION OF SUCH SERVICE AREA SHALL HAVE THE RIGHT AND OBLIGATION TO CONTINUE PROVIDING ELECTRIC SERVICE WITHIN ITS PREVIOUSLY ESTABLISHED

CERTIFIED TERRITORY AND THE SALE OF A MUNICIPAL CORPORATION'S ELECTRIC SYSTEM SHALL NOT IN ANY RESPECT RESTRICT OR LIMIT SUCH RIGHT AND OBLIGATION. THE PURCHASER SHALL, FOR THE PURPOSES OF SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE, BE AN ELECTRIC SUPPLIER.

Sec. 4933.88. THE EXPENSES OF THE PUBLIC UTILITIES COMMISSION IN ADMINISTERING SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE SHALL BE ASSESSED BY THE COMMISSION AGAINST THE AFFECTED ELECTRIC SUPPLIERS ON THE FOLLOWING BASIS:

(A) EXPENSES THAT RELATE TO THE PREPARATION OR REVIEW OF MAPS TO ESTABLISH THE CERTIFIED TERRITORY OF A SINGLE ELECTRIC SUPPLIER IN ANY AREA WHERE THERE IS NO OTHER ELECTRIC SUPPLIER SHALL BE ASSESSED SOLELY TO SUCH ELECTRIC SUPPLIER.

(B) EXPENSES THAT RELATE TO THE PREPARATION OR REVIEW OF MAPS TO ESTABLISH THE CERTIFIED TERRITORIES OF TWO OR MORE ELECTRIC SUPPLIERS IN ANY AREA WHERE THERE ARE TWO OR MORE ELECTRIC SUPPLIERS SHALL BE ASSESSED IN EQUAL SHARES AMONG SUCH ELECTRIC SUPPLIERS.

(C) EXPENSES THAT RELATE TO THE CONSIDERATION AND DISPOSITION OF ALLEGED ERRORS PURSUANT TO SECTION 4933.82 OF THE REVISED CODE AND THE CONSIDERATION AND DISPOSITION OF PROPOSED ADJUSTMENTS PURSUANT TO DIVISION (E) OF SECTION 4933.83 OF THE REVISED CODE SHALL BE ASSESSED IN EQUAL SHARES AMONG THE ELECTRIC SUPPLIERS AFFECTED THEREBY.

(D) EXPENSES THAT RELATE TO THE ENFORCEMENT BY THE COMMISSION OF COMPLIANCE WITH SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE SHALL BE ASSESSED IN EQUAL SHARES AGAINST THE ELECTRIC SUPPLIER OR SUPPLIERS TO WHICH AN ORDER OF ENFORCEMENT IS DIRECTED. WHERE SUCH ENFORCEMENT PROCEEDINGS ARE INITIATED BY AN ELECTRIC SUPPLIER OR SUPPLIERS AND NO ORDER OF ENFORCEMENT IS ISSUED BY THE COMMISSION, SUCH EXPENSES SHALL BE ASSESSED IN EQUAL SHARES AGAINST THE ELECTRIC SUPPLIER OR SUPPLIERS INITIATING SUCH PROCEEDINGS.

(E) ANY OTHER EXPENSES OF THE COMMISSION SHALL BE ASSESSED BY THE COMMISSION IN EQUAL SHARES AMONG THE ELECTRIC SUPPLIERS THAT ARE SUBJECT TO SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE.

(F) THE COMMISSION MAY ASSESS THE EXPENSES ENUMERATED IN THIS SECTION ON THE BASIS OF ESTIMATES MADE BY IT, WITH APPROPRIATE ADJUSTMENT OR CREDIT AFTER FINAL DETERMINATION OF SUCH EXPENSES.

Sec. 4933.89. THERE IS HEREBY CREATED IN THE STATE TREASURY A FUND TO BE KNOWN AS THE PUBLIC UTILITIES TERRITORIAL ADMINISTRATION FUND. THE FUNDS COLLECTED UNDER SECTION 4933.88 OF THE REVISED CODE AS ASSESSMENTS SHALL BE CREDITED TO THE PUBLIC UTILITIES TERRITORIAL ADMINISTRATION FUND.

Sec. 4933.90. ACTION OF THE PUBLIC UTILITIES COMMISSION PURSUANT TO SECTIONS 4933.81 TO 4933.90 OF THE REVISED CODE IS SUBJECT TO REVIEW IN ACCORDANCE WITH CHAPTER 4903. OF THE REVISED CODE BUT DURING ANY APPEAL THEREFROM, THE CONTINUANCE OF EXISTING ELECTRIC SERVICE IS LAWFUL.

SECTION 2. That section 4905.261 of the Revised Code is hereby repealed.

SECTION 3. Until such time as there is sufficient additional revenue paid into the public utilities territorial administration fund under section 4933.89 of the Revised Code to cover those additional expenses resulting from the enactment of this act, the

Public Utilities Commission shall pay those expenditures from funds available to it under section 4905.10 of the Revised Code.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed March 28, 1978

Approved APRIL 11, 1978

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 12th day of April, A. D. 1978,

Secretary of State.

File No. 271. **Effective Date** July 12, 1978.

An Act

ENROLLED HOUSE
BILL NO. 1462

BY: PARRIS and WILSON of the HOUSE

and

ROZELL and JOHNSON of the SENATE

AN ACT RELATING TO WATERS AND WATER RIGHTS; AMENDING 82 O.S. 1971, SECTION 863; PROVIDING FOR APPOINTMENT, TERMS, QUALIFICATIONS, COMPENSATION AND MEETINGS OF THE BOARD OF THE GRAND RIVER DAM AUTHORITY, INCLUDING THE CHANGE TO REQUIRING ONE MEMBER TO BE A CITY OFFICIAL AND ONE MEMBER TO BE AN OFFICIAL OF A RURAL ELECTRIC CO-OP CORPORATION.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. 82 O.S. 1971, Section 863, is amended to read as follows:

Section 863. The powers, rights, privileges and functions of the district shall be exercised by a board of seven (7) directors, herein called the Board, to be appointed by the Governor, by and with the advice and consent of the Senate, all of whom shall be residents and freehold property taxpayers in the district, providing that one director of said Board shall be selected from industrial customers of the district. After the second Tuesday of January of 1979, one director of said Board shall be an official of a municipality within the district. After the second Tuesday of January of 1980, one director of said Board shall be an official of a rural electric co-op corporation within the district and the remaining directors of said Board shall be selected at large; and provided, further, that those selected by the Governor shall have demonstrated capability in business, finance or professional fields.

No more than one of such directors shall be residents of the same county; provided, that no person shall be eligible for such appointment if he has, during the three (3) years before his appointment, been employed by any privately owned utility company of any kind or character whatsoever, or holding a federal, state or county office, elective or appointive; and, further, provided, that such director shall have lived in said district five (5) years prior to his appointment.

The terms of office of the directors first taking office after the approval of this act in 1965 shall expire as designated by the Governor at the time of nomination; one on the second Tuesday of January, 1966; one on the second Tuesday of January, 1967; one on the second Tuesday of January, 1968; one on the second Tuesday of January, 1969; one on the second Tuesday of January, 1970; one on the second Tuesday of January, 1971; and one on the second Tuesday of January, 1972. A successor to a director of the Board shall be appointed in the same manner as the original directors and shall have a term of office expiring seven (7) years from the date of the expiration of the term for which his predecessor was appointed. Any director appointed to fill a vacancy in the Board occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Each director shall qualify by taking the official oath of office prescribed by general statute. Any director may be removed from office for just cause.

Each director shall receive a fee of Twenty-five Dollars ($25.00) per day for each day spent in attending meetings of the Board and attending to authorized business of the district and in addition, each shall be allowed his actual and necessary expenses incurred in attending the meetings of the Board and in attending to the authorized business of the district. No director shall, at the same time he is serving on the Board of Directors as a director, hold any

Carrady Randall, Vice Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

other position with the Grand River Dam Authority, and each such director shall receive a compensation of Twenty-five Dollars ($25.00) per day for every day spent in attending meetings of the Board and attending to authorized business of the Authority and in addition shall be reimbursed for all travel expenses incurred in attending such meetings and to the business of the Authority in accordance with the provisions of the Travel Reimbursement Act.

The time and place of the regular meetings and the manner in which special meetings may be called shall be set forth in the bylaws of the said Authority. Four directors shall constitute a quorum at any meeting, and except as otherwise provided in this act or in the bylaws, all action may be taken by the affirmative vote of the majority of the directors present at any such meeting, except that no contracts which involve an amount greater than Ten Thousand Dollars ($10,000.00), or which are to run for a longer period than one (1) year, and no bonds, notes or other evidence of indebtedness, and no amendment of the bylaws, shall be valid unless authorized or ratified by the affirmative vote of four directors.

Passed the House of Representatives the 4th day of April, 1978.

Speaker pro tem of the House of Representatives.

Passed the Senate the 29th day of March, 1978.

acting President of the Senate.

OFFICE OF THE GOVERNOR

Received by the Governor this 5th day of April, 1978, at 3:30 o'clock P M.

By: Patricia W. Smith

Approved by the Governor of the State of Oklahoma the 11th day of April, 1978, at 9:45 o'clock A m.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 11th day of April, 1978, at 11:15 o'clock A M.

By:

Certified Enr. H.B. No. 1462 of the Oklahoma Senate and House of Representatives

APPROVED BY GOVERNOR JULY 1, 1978

PRIOR PRINTER'S NOS. 1569, 1641 **Printer's No.** 1704

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1268 Session of 1978

INTRODUCED BY KURY, JANUARY 31, 1978

AS AMENDED ON THIRD CONSIDERATION, MARCH 14, 1978

AN ACT

Amending the act of April 9, 1929 (P.L.177, No.175), entitled "An act providing for and reorganizing the conduct of the executive and administrative work of the Commonwealth by the Executive Department thereof and the administrative departments, boards, commissions, and officers thereof, including the boards of trustees of State Normal Schools, or Teachers Colleges; abolishing, creating, reorganizing or authorizing the reorganization of certain administrative departments, boards, and commissions; defining the powers and duties of the Governor and other executive and administrative officers, and of the several administrative departments, boards, commissions, and officers; fixing the salaries of the Governor, Lieutenant Governor, and certain other executive and administrative officers; providing for the appointment of certain administrative officers, and of all deputies and other assistants and employes in certain departments, boards, and commissions; and prescribing the manner in which the number and compensation of the deputies and all other assistants and employes of certain departments, boards and commissions shall be determined," further providing for the Public Utility Commission to levy limited assessments against public utilities for funding the Office of Consumer Advocate.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Subsection (a) of section 904-A.1, act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," added June 21, 1977 (No.15), is amended to read:

Section 904-A.1. Assessment Upon Public Utilities, Disposition, Appropriation and Disbursement of such

Assessments.--(a) Before July 1 of each year, the Office of Consumer Advocate shall estimate its total expenditures in the administration of this act insofar as it relates to public utilities for the fiscal year beginning that date, which estimate FOR THE FISCAL YEAR 1977-1978 shall not exceed seven per centum (7%) [of the public utility's assessment by the Pennsylvania Public Utility Commission for the preceding calendar year] of the total assessment of the Public Utility Commission for the same fiscal year levied pursuant to section 1201 of the act of May 28, 1937 (P.L.1053, No.286), known as the "Public Utility ~~Law~~ LAW." The PENNSYLVANIA Public Utility Commission's total assessment for fiscal 1977-1978 was twelve million, nine hundred fifty-four thousand five hundred forty-nine dollars and ninety eight cents ($12,954,549.98) and seven per centum (7%) of that figure is equivalent to nine hundred six thousand eight hundred eighteen dollars ($906,818) for the Office of Consumer Advocate. It is hereby declared that the assessment for the Office of Consumer Advocate approved by the Appropriation Committees of both the House and Senate of Pennsylvania, and by the Governor for the fiscal year 1977-1978 in the amount of nine hundred four thousand dollars ($904,000) is within the statutory limit of seven per centum (7%) of the PENNSYLVANIA Public Utility Commission's total assessment for the fiscal year 1977-1978. FOR THE FISCAL YEAR 1978-1979 AND FOR EACH FISCAL YEAR THEREAFTER, THE OFFICE OF CONSUMER ADVOCATE'S ESTIMATE OF ITS TOTAL EXPENDITURES FOR THAT FISCAL YEAR SHALL NOT EXCEED FIVE ONE HUNDREDTHS OF ONE PER CENTUM (.05%) OF THE TOTAL GROSS INTRASTATE OPERATING REVENUES OF ALL PUBLIC UTILITIES SUBJECT TO THE JURISDICTION OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION FOR THE PRECEDING CALENDAR YEAR. Such

estimate shall be submitted to the Governor and to the Appropriation Committees of the House and Senate through their respective chairmen for their respective approvals of such estimate in the amount submitted or such lesser amount as each of them may determine: Provided, That if the Governor or either committee, through its chairman, shall fail to notify the Office of Consumer Advocate in writing of his or its action within thirty (30) days after such submission, the estimate as submitted shall be deemed approved by him or by such committee, as the case may be. The least of the amounts so approved by the three (3) approving authorities shall be the final estimate, and approval of such least amount shall constitute compliance with section 604. The Office of Consumer Advocate shall subtract from the final estimate the estimated balance of the appropriation to be carried over into such fiscal year from the preceding one. The remainder so determined, herein called the total assessment, shall be allocated to, and paid by, such public utilities in the manner hereafter prescribed. The Office of Consumer Advocate or its designated representative shall be afforded an opportunity to appear before the Senate and the House Appropriation Committees regarding its estimate.

* * *

Section 2. This act shall take effect immediately and shall be retroactive to July 1, 1977.

An Act To Authorize Municipalities In The State Of South Carolina To Create Joint Agencies To Provide For The Generation And Transmission Of Electric Power And Energy; To Provide For The Powers And Duties Of Such Joint Agencies; To Provide For The Issuance Of Revenue Bonds Of Such Joint Agencies To Finance The Costs Of Facilities, Or Interests Therein, For The Generation And Transmission Of Electric Power And Energy; To Provide For The Payment Of Such Bonds, And To Withdraw From Joint Agencies Immunity From Legal Action Arising Out Of The Doing Or Failure To Do Anything Authorized By This Act.

Be it enacted by the General Assembly of the State of South Carolina:

Findings

SECTION 1. The General Assembly hereby finds and determines that:

Certain municipalities in this State which are empowered severally to engage in the generation, transmission and distribution of electric power and energy have for many years owned and operated systems for the distribution of electric power and energy to customers in their respective service areas;

Such municipalities owning electric distribution systems have an obligation to provide their inhabitants and customers an adequate, reliable and economical source of electric power and energy in the future;

In order to achieve the economies and efficiencies made possible by the proper planning, financing and location of facilities for the generation and transmission of electric power and energy which are not practical for any municipality acting alone, and to insure an adequate, reliable and economical supply of electric power and energy to the people of this State, it is desirable for the State of South Carolina to authorize municipalities to jointly plan, finance, develop, own and operate electric generation and transmission facilities appropriate to their needs in order to provide for their present and future power requirements for all uses without supplanting or displacing the service at retail of other electric suppliers operating in this State;

The creation of joint agencies by municipalities which own electric distribution systems for the joint planning, financing, development, ownership and operation of electric generation and transmission

facilities and the issuance of revenue bonds by such joint agencies for such purposes as provided in this act is for a public use and for public purposes and is a means of achieving economies, adequacy and reliability in the generation of electric power and energy and in the meeting of future needs of this State and its inhabitants.

A certain amount of experience and expertise in the generation, transmission or distribution of electric power and energy is required by officials of such municipalities prior to a municipality's participation in a joint agency, therefore, a municipality, which has owned for a least ten years a system or facilities for the generation, transmission or distribution of electric power and energy, may become a member of a joint agency; and

Because certain municipalities of the State presently purchase or are served by designated electric suppliers, it is a justifiable and reasonable classification to limit the membership in a joint agency to municipalities generally being served by such electric supplier pursuant to law;

Citation of act

SECTION 2. This act may be cited as the "Joint Municipal Electric Power and Energy Act".

Definitions

SECTION 3. The following terms whenever used or referred to in this act shall have the following respective meaning unless a different meaning clearly appears from the context:

(a) "Area generally served by the same electric supplier" shall mean that area located in any county or counties of this State and assigned to an electric supplier by the Public Service Commission pursuant to the provisions of Section 58-27-640 and to the Public Service Authority by Article 3 of Title 58.

(b) "Bonds" shall mean electric revenue bonds, notes, certificates or other obligations of indebtedness of a joint agency issued under the provisions of this act and shall include refunding bonds.

(c) "Cost" or "cost of a project" shall mean, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating thereto; the cost of land, land rights, rights-of-way and easements, water rights, fees, permits, approvals, licenses, certificates, chises, and the preparation of applications for and securing

the same; administrative, legal, engineering and inspection expenses; financing fees, expenses and costs; working capital; initial fuel costs; interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the joint agency; establishment of reserves; and all other expenditure of the joint agency incidental, necessary or convenient to the acquisition, construction, reconstruction, improvement, enlargement or extension of any project and the placing of the same in operation.

(d) "Governing body" shall mean, with respect to a municipality, the board, council, commission or other legislative body charged by law with governing the municipality.

(e) "Electric supplier" shall mean any electric utility authorized to do business within the State and owning and operating nuclear electric generating facilities.

(f) "Joint agency" shall mean a public body and body corporate and politic organized in accordance with the provisions of this act.

(g) "Municipality" shall mean a city or town created under the laws of the State, or any agency, board, commission or council thereof, that has owned for at least ten years a system or facilities for the generation, transmission or distribution of electric power and energy for public and private uses.

(h) "Project" shall mean any system or facilities for the generation, transmission and transformation, or any of them, of electric power and energy by any means whatsoever including, but not limited to, any one or more electric generating units situated at a particular site or any interest in any of the foregoing or any right to the output, capacity, use or services thereof.

(i) "State" shall mean the State of South Carolina.

Municipalities may own electric distribution facilities

SECTION 4. In addition and supplemental to the powers granted to municipalities of the State, and in order to accomplish the purposes of this act, a municipality may plan, finance, develop, acquire, purchase, construct, reconstruct, improve, enlarge, own, operate and maintain an undivided interest as a tenant in common in a project situated within or without the State jointly with one or more municipalities in this State or any other state, owning electric distribution facilities, or with any political subdivisions or agencies of any other state, and may make such plans and enter into such contracts in connection therewith, not inconsistent with the provisions of this

act, as are necessary or appropriate; provided, membership of municipalities, in a joint agency shall consist only of municipalities located within the area generally served by the same electric supplier; *provided*, further, the acquisition of a project or projects by a joint agency shall be by purchase from an electric supplier within the area generally served by such electric supplier; provided, further, such purchase shall be limited to a project or projects under construction on the date of approval of this act, or a project or projects on which construction will commence subsequent to the date of approval of this act; and provided, further, the amount of capacity and output of any project purchased by a joint agency shall not be less than ten percent of the rated capacity of such project.

Nothing contained herein shall prevent a municipality or municipalities from undertaking studies to determine whether there is a need for a project or whether such project is feasible.

Formation of joint agencies

SECTION 5. The procedure prior to formation of a joint agency shall be as follows:

(a) The governing body of two or more municipalities may by resolution or ordinance determine that it is in the best interests of the respective municipalities and their electric customers in accomplishing the purposes of this act to create a joint agency for the purpose of undertaking the planning, financing, development, acquisition, purchase, construction, reconstruction, improvement, enlargement, ownership, operation and maintenance of a project or projects to supply electric power and energy for such municipalities' present and future needs as an alternative or supplemental method of obtaining the benefits and assuming the responsibilities of ownership in a project. Such resolution or ordinance shall be approved by a majority of the members of the governing body of the municipality.

(b) In determining whether or not the creation of a joint agency for such purpose is in the best interests of the municipalities and their electric customers, the governing body shall take into consideration, but shall not be limited to, the following:

(i) Whether or not a separate entity may be able to finance the costs of a project or projects in a more efficient and economical manner;

(ii) Whether or not a better financial market acceptance may result if one entity is responsible for issuing all of the bonds required for a project or projects in a timely and orderly manner;

(iii) Whether or not savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, purchase, construction, ownership and operation of a project or projects;

(c) If the proposed creation of a joint agency is found to be in the best interests of a municipality, the governing body of such municipality shall cause notice of its action to be published once a week for two consecutive weeks in a newspaper of general circulation within such municipality. Any person affected by the action of the governing body of such municipality may, by action *de novo*, instituted in the Court of Common Pleas for the county in which such municipality is located, within twenty days following the last publication of the notice prescribed herein challenge the action of the municipality.

Duties of municipalities—membership of joint agencies

SECTION 6. Upon fulfilling the requirements set forth in Section 5 hereof, the governing body of each municipality which determines that its participation in the proposed joint agency is in its best interest shall by resolution appoint one representative of the proposed joint agency. Any two or more representatives so appointed shall file with the Secretary of State an application signed by a representative of each proposed member municipality setting forth:

(a) The names of all the proposed member municipalities and their respective appointed representatives;

(b) A certified copy of the resolution or ordinance of each member municipality determining it is in its best interest to participate in the proposed joint agency and the resolution appointing such representative;

(c) The desire that the joint agency be organized as a public body and a body corporate and politic under this act; and

(d) The name which is proposed for the joint agency.

The Secretary of State shall examine the application and, before filing such application, shall determine that the application complies with the requirements set forth above and, in addition, that the proposed name of the joint agency is not identical with that of any other corporation of the State or any agency or instrumentality thereof or so nearly similar as to lead to confusion and uncertainty. Thereupon, the Secretary of State shall receive and file the application.

When the application has been made and filed as provided herein, the Secretary of State shall make and issue a corporate certificate which shall be filed with the application, and the joint agency shall thereupon be and constitute a public body corporate and politic under the name proposed in the application. The corporate certificate shall set forth the names of the member municipalities and the name of the joint agency. The existence of the joint agency shall begin when the corporate certificate is issued by the Secretary of State. Notice of the issuance of such corporate certificate shall be given to all member municipalities of the joint agency by the Secretary of State. The joint agency shall give notice of the issuance of such corporate certificate to the Public Service Commission.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the joint agency, the joint agency, in the absence of establishing fraud, shall be conclusively deemed to have been established in accordance with the provisions of this act upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

Petition required prior to acquisition of a project

SECTION 7. Prior to the proposed acquisition of a project by a joint agency, a petition, on behalf of all municipalities proposing to create a joint agency, shall be filed with the Public Service Commission. Notice of the filing of such petition shall be given by the Public Service Commission once a week for three consecutive weeks in a newspaper of general circulation in the State. A hearing on such petition shall be conducted as provided by law.

The Public Service Commission shall be authorized to approve or disapprove the proposed acquisition by a joint agency of a project or projects. In determining whether or not it is in the best interests of the proposed member municipalities of the joint agency and in the best interests of an electric supplier serving the county or counties within which any member municipalities are located, the Public Service Commission shall take into consideration, but shall not be limited to, the following:

(i) The economies and efficiencies to be achieved in constructing on a large scale, facilities for the generation and transmission of electric power and energy;

(ii) The municipalities' needs for reserve and peaking capacity and to meet obligations under pooling and reserve-sharing agreements reasonably related to its needs for power and energy to which it is or may become a party;

(iii) The estimated useful life of such project;

(iv) The estimated time necessary for the planning, development, acquisition or construction of such project and the length of time required in advance to obtain, acquire or construct additional power supplies;

(v) The reliability and availability of existing or alternative power supply sources and the costs of such existing or alternative power supply sources; and

(vi) The load forecast of capacity of a project and the utilization of such capacity by the joint agency for a reasonable period of time subsequent to the date of commercial operation of the project.

A determination by the Public Service Commission based upon appropriate findings of the foregoing matters shall be conclusive as to the quantity of the interest which a municipality may acquire in a project. Any party in interest may appeal the Commission's action pursuant to Sections 58-27-2310 to 58-27-2340 of the 1976 Code.

To be managed by board of directors

SECTION 8. (a) The management and control of a joint agency shall be vested in a board of directors. The governing body of each member municipality of a joint agency shall appoint a representative, as aforesaid, who shall be a director of the joint agency. The representative, at the discretion of the municipality, may be an officer or employee of the municipality. Each director shall have not less than one vote and may have, in addition thereto, such additional votes as a majority of the members of the joint agency shall determine. Each director shall serve at the pleasure of the governing body by which he was appointed. Each appointed director, before entering upon his duties, shall take and subscribe to an oath before a person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing body of the appointing municipality.

The board of directors of the joint agency shall annually elect, with each representative of member municipalities having one vote, one of the directors as chairman, another as vice chairman and another person or persons who may but need not be directors as treasurer, secretary, and, if desired, assistant secretary. The office

of treasurer may be held by the secretary or assistant secretary. The board of directors may also appoint such additional officers as it deems necessary. The secretary or assistant secretary of the joint agency shall keep a record of the proceedings of the joint agency, and the secretary shall be the custodian of all books, records, documents and papers filed with the joint agency, the minute book or journal of the joint agency and its official seal.

A majority of the directors of the joint agency then in office shall constitute a quorum. A vacancy on the board of directors of the joint agency shall not impair the right of a quorum to exercise all rights and perform all the duties of a joint agency. Any action taken by the joint agency under the provisions of this act may be authorized by resolution at any regular or special meeting held pursuant to notice in accordance with bylaws of the joint agency, and each such resolution shall take effect immediately and need not be published or posted. Two-thirds of the votes which the directors present are entitled to cast, with a quorum present, shall be necessary and sufficient to take any action or to pass any resolution. No director of a joint agency shall receive any compensation for the performance of duties hereunder, *provided,* however, that each director may be paid per diem and subsistence expenses incurred while engaged in the performance of such duties.

(b) After the creation of a joint agency, any other municipality may become a member thereof (1) upon application to such joint agency; (2) upon compliance with the provisions of Section 3 hereof; and (3) with the unanimous consent of the members of the joint agency evidenced by the resolutions of their respective governing bodies. Notice of additional members shall be given to the Public Service Commission.

(c) Any municipality may withdraw from the joint agency, *provided,* however, that all contractual rights acquired and contractual obligation incurred by a municipality while such municipality was a member shall remain in full force and effect.

Whenever the board of directors of a joint agency and the governing body of each of its member municipalities shall by resolution or ordinance determine that the purposes for which the joint agency was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the joint agency have been fully paid or satisfied, such board of directors and governing bodies may declare the joint agency to be dissolved. On the effective date of such resolution or ordinance, the

title to all funds and other property owned by the joint agency at the time of such dissolution shall vest in the member municipalities of the joint agency as provided in this act and the bylaws of the joint agency.

Executive committee

SECTION 9. The board of directors of a joint agency may create an executive committee the composition of which shall be set forth in the bylaws of the joint agency. The composition of the executive committee shall afford a fair representative of the member municipalities. The executive committee shall have and shall exercise such of the powers and authority of the board of directors during intervals between the board's meetings in accordance with the board's bylaws, rules, motions or resolutions. The terms of office of the members of the executive committee and the method of filling vacancies therein shall be fixed by the bylaws of the joint agency.

Powers and duties

SECTION 10. Each joint agency shall have all the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including, but not limited to, the rights and powers:

(a) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(b) To adopt an official seal and alter the same at pleasure;

(c) To maintain an office at such place or places as it may determine;

(d) To sue and be sued in its own name, and to plead and be impleaded;

(e) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

(f) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof in conformity with state law;

(g) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein in conformity with state law;

(h) To pledge or assign any money, rents, charges, or other

revenues and any proceeds derived by the joint agency from the sales of property, insurance or condemnation awards;

(i) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes;

(j) To purchase from an electric supplier within the area generally served by such electric supplier one or more projects under construction on the date of approval of this act, or on which construction will commence subsequent to the date of approval of this act, either individually or jointly with one or more municipalities in any other state, owning electric distribution facilities, or with any political subdivisions or agencies of any other state and pay all or any part of the cost thereof from the proceeds of bonds of the joint agency or from any other funds available to the joint agency; *provided,* prior to and in connection with, such purchase of a project or projects the joint agency shall have the rights and powers to study, plan, finance, own, operate and maintain such project or projects; and provided, further, after such purchase the joint agency shall have the rights and powers to study, plan, finance, purchase, construct, reconstruct, improve, enlarge, extend, own, operate and maintain one or more additional projects;

(k) To authorize the construction, operation or maintenance of any project or projects by any person, firm or corporation, including political subdivisions and agencies of any state, of the United States;

(l) To acquire by negotiated purchase or lease an existing project, a project under construction, or other property, either individually or jointly, with one or more municipalities in this State or any other state owning electric distribution facilities or with any political subdivisions or agencies of any other state or with other joint agencies created pursuant to this act;

(m) To dispose of by negotiated sale or lease, an existing project, a project under construction, or other property either individually or jointly with one or more municipalities in this State or any other state owning electric distribution facilities or with any political subdivisions or agencies of any other state or with other joint agencies created pursuant to this act;

(n) To fix, charge and collect rents, rates, fees and charges for electric power or energy and other services, facilities and commodities sold, furnished or supplied through any project;

(o) To generate, produce, transmit, deliver, exchange, purchase or sell for resale only, electric power or energy, and to enter into

contracts for any or all such purposes, subject to the provisions of Section 13 hereof;

(p) To negotiate and enter into contracts for the purchase, exchange, interchange, wheeling, pooling, or transmission of electric power and energy with any municipality, any joint agency of any other state owning electric distribution facilities, or with any political subdivision or agencies of any other state, any electric cooperative, any public or private electric utility, or any state, federal or municipal agency which owns electric generation, transmission or distribution facilities in this State or any other state;

(q) To negotiate and enter into contracts for the sale or use of electric power and energy with any joint agency, electric cooperative, municipality, or any political subdivisions or agencies or any public or private electric utility of any other state, and any joint agency, electric cooperative, municipality, public or private electric utility, or any state or federal agency or political subdivision thereof located within the area generally served by the electric supplier from whom the joint agency has purchased the Project, and any electric supplier owning and operating nuclear electric generating facilities, subject to the provisions of Section 13 hereof;

(r) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this act, including contracts with persons, firms, corporations and others;

(s) To apply to the appropriate agencies of the State, the United States or any state thereof, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals, and to obtain, hold and use any license, permits, certificates or approvals, in the same manner as any other person or operating unit of any other person, previously obtained by such person;

(t) To employ engineers, architects, attorneys, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint agency and to fix and pay their compensation from funds available to the joint agency therefor.

Determinations of General Assembly

SECTION 11. Because of pooling and reserve-sharing agreements between electric suppliers, public and private electric utilities and electric cooperatives, the General Assembly determines that electric

generating facilities within the State are interrelated; therefore, it is necessary that the electric supplier generally serving the area in which the members of the joint agency are located be responsible for the dispatching of capacity and output and the scheduling of maintenance of a project owned by a joint agency in keeping with established utility practice, subject to contracts entered into for such capacity and output.

Municipalities may contract to buy power

SECTION 12. Any municipality which is a member of the joint agency may contract to buy from the joint agency power and energy required for its present or future requirements, including the capacity and output of one or more specified projects. As the creation of a joint agency is an alternative method whereby a municipality may obtain the benefits and assume the responsibilities of ownership in a project, any such contract may provide that the municipality so contracting shall be obligated to make the payments required by the contract whether or not a project is completed, operable or operating notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint agency or any other member of the joint agency under the contract or any other instrument. Any contract with respect to the sale or purchase of capacity or output of a project entered into between a joint agency and its member municipalities may also provide that if one or more of such municipalities shall default in the payment of its or their obligations with respect to the purchase of said capacity or output, then in that event the remaining member municipalities which are purchasing capacity and output under the contract shall be required to accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipality.

Notwithstanding the provisions of any other law to the contrary, any such contracts with respect to the sale or purchase of capacity, output, power or energy from a project may extend for a period not exceeding fifty years from the date a project is estimated to be placed in normal continuous operation; and the execution and effectiveness thereof shall not be subject to any authorizations or

approvals by the State or any agency, commission or instrumentality or political subdivision thereof.

Payments by a municipality under any contract for the purchase of capacity and output from a joint agency shall be made from the revenues derived from the ownership and operation of the electric system of said municipality and any obligation under such contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its income, receipts, or revenues, except the revenues of its electric system, and neither the faith and credit nor the taxing power of the municipality are, or may be, pledged for the payment of any obligation under any such contract. A municipality shall be obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through its electric system sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on general obligation bonds, if any, heretofore or hereafter issued by the municipality for purposes related to its electric system.

Any municipality which is a member of a joint agency may furnish the joint agency with money derived from the ownership and operation of its electric system or facilities and provide the joint agency with personnel, equipment and property, both real and personal. Any municipality may also provide any services to a joint agency.

Any member of a joint agency may contract for, advance or contribute funds derived solely from the ownership and operation of its electric system or facilities to a joint agency as may be agreed upon by the joint agency and the member, and the joint agency shall repay such advances or contributions from proceeds of bonds, from operating revenues or from any other funds of the joint agency, together with interest thereon as may be agreed upon by the member and the joint agency.

Sale of excess power

SECTION 13. Excess capacity or output of a project not then required by any of the members of a joint agency shall be first offered for sale or exchange to the electric supplier generally serving the area in which the members of the joint agency are located for such

period and upon such other terms and conditions as may be agreed upon by the joint agency and the electric supplier. Provided, however, if the electric supplier shall refuse or decline to purchase or exchange such capacity or output, the amount of capacity and energy sold from the total capacity resources of the electric supplier and joint agency shall be prorated equitably between the aforesaid parties. Electric generating capacity of the electric supplier and joint agency, and the associated energy, available for sale to a third party shall be that capacity in excess of the total capacity resources of the electric supplier and joint agency required to maintain a specified level of reserves. Any sale of available capacity and energy from the joint agency's project shall only be for the period required for the joint agency to fully utilize the amount of capacity and energy originally purchased in the project. *Provided*, however, that the foregoing limitations shall not apply to the temporary sale of excess capacity and energy without the State in cases of emergency or when required to fulfill obligations under any pooling or reserve-sharing agreements. *Provided*, further, however, that sales of excess capacity or output of a project to electric cooperatives, electric or public utilities, and other persons, the interest on whose securities and other obligations is not exempt from taxation by the federal government shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government.

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May issue bonds

SECTION 14. A joint agency may issue bonds pledging to the payment thereof as to both principal and interest the revenues, or any portion thereof, derived or to be derived from all or any of its projects, and any additions and betterments thereto or extensions thereof, or contributions or advances from its members. Bonds of a joint agency shall be authorized by resolution adopted by its board of directors.

Bond issues to be approved by members

SECTION 15. (a) No joint agency shall undertake any project required to be financed, in whole or in part, with the proceeds of bonds without the approval of two-thirds of its members. A joint agency is hereby authorized to issue at one time or from time to time its bonds for the purpose of paying all or any part of the cost of any of the purposes [illegible]n authorized. The principal of, premium, if any, and the

interest on such bonds shall be payable solely from the respective funds herein provided for such payment. The bonds of each issue may be sold at public or private sale. Notwithstanding any provision of law to the contrary, the bonds may be sold at such price, and shall bear interest at such rate or rates, as may be determined by the board of directors of the joint agency. The bonds of each issue shall be dated and shall mature in such amounts and at such time or times, not exceeding fifty years from their respective date or dates, as may be determined by the board of directors of the joint agency, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the board of directors of the joint agency prior to the issuance of the bonds. The board of directors of the joint agency shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The board of directors of the joint agency may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the governing body of the issuer may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

(b) The proceeds of the bonds of each issue shall be used solely for the purposes for which such bonds have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the board of directors of the joint agency may provide in the resolution authorizing the issuance of such bonds or in any trust agreement securing the same. The joint agency may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The joint agency may also provide for the replacement of any bonds which shall have become mutilated or shall have been destroyed or lost.

(c) Bonds may be issued under provisions of this act without obtaining the consent or approval of the State or any political subdivision or any agency, commission or instrumentality thereof.

Trust agreements

SECTION 16. In the discretion of the board of directors of the joint agency, any bonds issued under the provisions of this act may be secured by a trust agreement by and between the joint agency and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee as may be reasonable and proper and not in violation of law, and may restrict the individual right of action by bondholders. The trust agreement or the resolution providing for the issuance of such bonds may contain covenants including, but not limited to, the following:

(a) The pledge of all or any part of the revenues derived or to be derived from the project or projects to be financed by the bonds or from the electric system or facilities of a joint agency.

(b) The rents, rates, fees and charges to be established, maintained, and collected, and the use and disposal of revenues, gifts, grants and funds received or to be received by the joint agency.

(c) The setting aside of reserves and the investment, regulation and disposition thereof.

(d) The custody, collection, securing, investment, and payment of any moneys held for the payment of bonds.

(e) Limitations or restrictions on the purposes to which the proceeds of sale of bonds then or thereafter to be issued may be applied.

(f) Limitations or restrictions on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; or the refunding of outstanding or other bonds.

(g) The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the bondholders of which must consent thereto, and the manner in which such consent may be given.

(h) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this act shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(i) The preparation and maintenance of a budget.

(j) The retention or employment of conducting engineers, independent auditors and other technical consultants.

(k) Limitations on or the prohibition of free service to any person, firm or corporation, public or private.

(l) The acquisition and disposal of property, provided that no project or part thereof shall be mortgaged by such trust agreement or resolution.

(m) Provisions for insurance and for accounting reports and the inspection and audit thereof.

(n) The continuing operation and maintenance of the project.

May charge rents and fees

SECTION 17. A two-thirds majority vote of the directors of the joint agency, with each member having one vote, is hereby authorized to fix, charge, and collect rents, rates, fees and charges for electric power and energy and other services, related to the generation, transmission and sale of electric energy. For so long as any bonds of a joint agency are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as to provide revenues at least sufficient, together with other available funds, to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects, and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds payable from said revenues, to create and maintain reserves and comply with such covenants as may be required by any resolution or trust agreement authorizing and securing bonds, and to pay any and all amounts which the joint agency may be obligated to pay from said revenues by law or contract.

Any pledge made by a joint agency pursuant to this act shall be valid and binding from the date the pledge is made. The revenues, securities and other moneys so pledged and then held or thereafter received by the joint agency or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the municipality or joint agency without regard to whether such parties have notice thereof.

Investments

SECTION 18. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide that any of such moneys may be temporarily invested and reinvested pending disbursements thereof and such securities and other investments as shall be provided in such resolution or trust agreement, and shall provide that any bank or trust company with which such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulation as this act and such resolution or trust agreement may provide.

Legal action

SECTION 19. Any holder of bonds issued under the provisions of this act or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder, or, to the extent permitted by law, under such trust agreement or resolution authorizing the issuance of such bonds or under any agreement or other contract executed by the joint agency pursuant to this act, and may enforce and compel the performance of all duties required by this act or by such trust agreement or resolution to be performed by any joint agency or municipality or by any officer thereof, including the fixing, charging and collecting of rents, rates, fees and charges.

Investment securities

SECTION 20. Whether or not the bonds and interest coupons appertaining hereto are of such form and character as to be investment securities under Chapter 8, of Title 36 of the 1976 Code, all bonds and interest coupons appertaining thereto issued under this act are hereby made investment securities within the meaning of and for all the purposes of Chapter 8, of Title 36 of the 1976 Code, subject only to the provisions of the bonds, pertaining to registration.

Investments authorized

SECTION 21. It shall be lawful for all executors, administrators, guardians, committees and other fiduciaries to invest any moneys in their hands in bonds issued under the provisions of this act.

Bonds to be special obligations

SECTION 22. The bonds shall be special obligations of the joint agency issuing them. The principal of, premium, if any, and interest on the bonds shall not be payable from the general funds of the joint agency, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the funds which are pledged under the resolution authorizing the bonds or the trust agreement securing the bonds. Neither the faith and credit nor the taxing power of the State or any municipality is, or may be, pledged for the payment of the principal of or interest on the bonds, and no holder of the bonds shall have the right to compel the exercise of the taxing power by the State or any municipality or the forfeiture of any of its property in connection with any default thereon. Every bond shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the joint agency is not obligated to pay the principal or interest except from such revenues.

Issuance of refunding bonds

SECTION 23. A joint agency is hereby authorized to provide by resolution for the issuance of refunding bonds of the joint agency for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the joint agency in respect to the same shall be governed by the provisions of this act which relate to the issuance of bonds, insofar as such provisions may be appropriate therefor.

Exempt from taxes

SECTION 24. The principal of and interest on the bonds issued pursuant to this act shall have the tax exempt status prescribed by Section 12-1-60 of the 1976 Code.

Certification required

SECTION 25. The joint agency shall be required to obtain the necessary certification as appropriate under the "Utility Facility Citing and Environmental Protection Act", Sections 58-33-10 to 58-33-430 of the 1976 Code.

When not exempt from taxes

SECTION 26. A project owned by a joint agency shall not be exempt from property taxes or other taxes if applied to the sale of energy; *provided,* however, that if all or any portion of the joint agency is declared exempt from property taxation then the joint agency shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of a project if such project were subject to valuation and assessment by the respective governmental body. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as are added to taxes on taxable property in the governmental body. Payments in lieu of taxes if made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law.

Power and energy sold by a joint agency shall be subject to taxes.

Rights and privileges of personnel

SECTION 27. Personnel employed or appointed by a municipality to work for a joint agency shall have the same authority, rights, privileges and immunities (including coverage under the workmen's compensation laws) which the officers, agents and employees of the appointing municipality enjoy within the territory of that municipality, whether within or without the territory of the appointing municipality, when they are acting within the scope of their authority or in the course of their employment.

Personnel employed or appointed directly by a joint agency shall be qualified for participation in the South Carolina Retirement System with the same rights, privileges, obligations and responsibilities as they would have if they were employees of a municipality; *provided,* that personnel participating in the South Carolina Retirement Systems shall be residents of this State.

Annual reports

SECTION 28. Each joint agency shall, following the closing of each fiscal year, submit an annual report of its activities for the preceding year to the governing bodies of its member municipalities. Each such report shall set forth a complete operating and financial statement covering the operations of the joint agency during such year. The joint agency shall cause an audit of its books of record and accounts to be made at least once in each year by a certified public accountant and the cost thereof may be treated as a part of

the cost of construction of a project or projects, or otherwise as part of the expense of administration of a project covered by such audit.

Grants-in-aid and loans

SECTION 29. The board of directors of a joint agency is hereby authorized to make application and to enter into contracts for and to accept grants-in-aid and loans from the federal and State governments and their agencies for planning, acquiring, constructing, expanding, maintaining and operating any project or facility, or participating in any research or development program, or performing any function which such municipality or joint agency may be authorized by general or local law to provide or perform.

In order to exercise the authority granted by this section, the board of directors of a joint agency may:

(a) Enter into and carry out contracts with the State or federal government or any agency or institution thereof under which government, agency or institution grants financial or other assistance to the municipality or joint agency;

(b) Accept such assistance or funds as may be granted or loaned by the state or federal government with or without such a contract;

(c) Agree to and comply with any reasonable conditions which are imposed upon such grants or loans;

(d) Make expenditures from any funds so granted.

Eminent domain

SECTION 30. Any joint agency shall possess the power of eminent domain in accordance with Section 5-7-50 and Chapter 9 of Title 28, Code of Laws of South Carolina, 1976, in order to effectuate the purposes of this Act and shall exercise such power in accordance with Chapter 9 of Title 28 of the 1976 Code; *provided,* however, that joint agencies may exercise such power of eminent domain in any county of this State; *provided,* further, that a joint agency exercising the power of eminent domain for the purpose authorized by this Act shall have no power to condemn a facility under construction or an existing facility or any facility to be constructed in the future used for the generation, transmission or distribution of electric power or energy.

Immunity of directors and officers

SECTION 31. No director of any joint agency or officer of any municipality or person or persons acting in their behalf, while acting within the scope of their authority, shall be subject to any personal

liability by reason of carrying out any of the powers expressly or impliedly given in this act.

Powers to be additional

SECTION 32. The foregoing sections of this act shall be deemed to provide an additional, alternative and complete method for the doing of the things authorized thereby and shall be deemed and construed to be supplemental and additional to powers conferred by existing laws, and shall not be regarded as in degradation of any powers not existing; *provided,* however, that insofar as provisions of this act are inconsistent with the provisions of any other general, special or local law, the provisions of this act shall be controlling. Nothing in this act shall be construed to authorize the issuance of the bonds for the purpose of financing facilities to be owned wholly or in part by any private corporation.

Act to be construed liberally

SECTION 33. In order to effectuate the purposes and policies prescribed in this act, the provisions hereof shall be liberally construed. If any provision or section of this act be held invalid or unconstitutional such holding shall not affect the remaining provisions of this act.

Immunity from suit

SECTION 34. The General Assembly hereby waives and withdraws from the joint agencies authorized by this act their immunity from suit of every kind and description, whether the same be in tort, contract, or otherwise, which suits arise out of or are in any way connected with the development, ownership, operation, maintenance, or otherwise of a project or the doing, or failure to do, of anything authorized by this act.

Time effective

SECTION 35. This act shall take effect upon approval by the Governor."

In the Senate House the 11th day of April

In the Year of Our Lord One Thousand Nine Hundred and Seventy-eight.

W BRANTLEY HARVEY, JR.,
President of the Senate.

REX L. CARTER,
Speaker of the House of Representatives.

Approved the 17th day of April, 1978.

JAMES B. EDWARDS,
Governor.

Printer's No. 86—S.

AN ACT

ENTITLED, An Act to validate consumer power district contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 49-37 be amended by adding thereto a new section to read as follows:

Any consumer power district may contract in cooperation with others in an electric generation and transmission facility. Such contract may provide that the parties to the contract may be exempted from responsibilities of their respective negligence to the other party or parties with respect to the construction, operation, maintenance and management of an electric generation and transmission facility. Such contract may further provide for nonpartitionment and that the contract may be governed by the laws of the state in which such electric generation and transmission facilities are located.

NO. M-12. AN ACT TO AMEND SECS. 1(b), (c), (d) AND (h), 2, 3, 4, 6, 8 AND 12 OF NO. 298 OF THE ACTS OF 1953; SECS. 114 AND 228 OF NO. 298 OF THE ACTS OF 1949, AND 30 V.S.A. §§ 602 AND 604; AND TO ADD SECS. 4a, 4b, 4c, 4d, 8a AND 14 TO NO. 298 OF THE ACTS OF 1953; AND TO REPEAL SUBSECTION XLIII OF SEC. 48 OF NO. 298 OF THE ACTS OF 1949 AS AMENDED BY NO. 299 OF THE ACTS OF 1953 RELATING TO ELECTRIC REVENUE BONDS AND THE CHARTER OF THE CITY OF BURLINGTON.

(H.747)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. Section 1(b), (c), (d) and (h) of No. 298 of the Acts of 1953 are amended to read:

(b) The term "electric plant" shall mean the complete municipal electric generating, transmission and distribution system now owned by the city, together with any improvements thereto hereafter constructed or acquired, and all other facilities, including those authorized by section 604 of Title 30, equipment and appurtenances necessary or appropriate to such system, for the furnishing of electric power and energy for lighting, heating, power or any other purpose for which electric power and energy can be used. Such term may include facilities for the production and distribution of steam and hot or chilled water, timberlands or other fuel sources, facilities for the production, processing, transportation and storage of fuel to be used in the production of utilities furnished by the city, facilities for the processing or disposal of solid waste involving the production of such utilities (with or without other by-products) from solid waste (with or without other fuels), and innovative or experimental facilities for the utilization of conventional or other energy sources for the production of such utilities, including pilot or demonstration facilities.

(c) The term "improvement" shall mean any improvement, extension, betterment, addition, alteration, reconstruction, extraordinary repair, equipping or re-equipping of the electric plant of the city.

(d) The term "electric service" shall mean the furnishing of electric power and energy for lighting, heating, power or any other purpose for which electric power and energy can be used. Such term may include the furnishing of steam and hot or chilled water, and the processing or disposal of solid waste.

(h) The terms "revenues" and "revenues derived from electric service" shall mean all rates, fees, charges or other income received by the city, or accrued to the city, or any board or agency thereof in control of the management and operation of said electric plant, and all parts thereof, and may include, without limiting the generality of the foregoing, investment earnings, rentals, proceeds of insurance, condemnation or other disposition of plant assets and proceeds of borrowing hereunder.

Sec. 2. Sec. 2 of No. 298 of the Acts of 1953 is amended to read:

Sec. 2. Electric plant; improvement of. The city is hereby authorized and empowered to improve its electric plant for the purpose of lighting the streets, walks, public grounds and buildings of the city, for the furnishing of electric service within or without the corporate limits of the city and for production of electric energy for sale to electric distribution companies, cooperative, municipal and privately owned, within or without the state.

Sec. 3. Sec. 3 of No. 298 of the Acts of 1953 is amended to read:

Sec. 3. Bonds; issuance of. (a) The city is hereby authorized and empowered to issue negotiable bonds, from time to time, for the purpose of financing the cost of any improvement to the electric plant. Said bonds and the interest thereon shall be payable solely and exclusively from the revenues of the electric plant and shall not constitute general indebtedness of the city nor be an obligation or liability upon the city to pay the same from any funds of the city other than the revenues of the electric plant. No holder or holders of any bonds issued under this act shall ever have the right to compel any exercise of the taxing power of the city to pay said bonds or the interest thereon. Said bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction and shall not be within any statutory limitation upon the power of the city to issue bonds. It shall be plainly stated on the face of each bond that it has been issued under the provisions of this act and that it does not constitute an indebtedness of the city but is payable solely from the revenues of its electric plant. Said bonds may be authorized by resolution of the board of light commissioners adopted by a majority vote of the members thereof present at any meeting of such board. Each such resolution shall take effect immediately from its passage and need not thereafter be laid over or published or posted. The issuance of bonds under the provisions of this act by the city shall not be subject to the authorization or approval thereof by the legal voters of the city or to any other authorization or approval except as provided in Sec. 12 of this act.

(b) Said bonds may be issued in one or more series, may bear such date or dates, mature at such time or times not exceeding forty years from their respective dates, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, with or without premium, be declared or become due before the maturity date thereof, as such resolutions authorizing their issuance may provide. Said bonds may be sold at public or private sale for such price or prices as the board of light commissioners shall determine.

(c) In case any officer of the city whose signature appears on any bond or coupon shall cease to be such officer before the delivery of such bond, such signature shall, nevertheless, be valid and sufficient for all purposes, the same as if he had remained in office until such delivery. Any provision of any law to the contrary notwithstanding any bonds issued pursuant to this act shall be deemed to be investment securities under the Uniform Commercial Code. Any bonds issued by the city pursuant to the provisions of this act are declared to be issued for an essential public and governmental purpose and to be public instrumentalities, and, together with interest and income thereon, shall be exempt from taxes. The resolution authorizing the issuance of said bonds may provide that the bonds shall contain a recital that they are issued pursuant to this act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

Sec. 4. Sec. 4 of No. 298 of the Acts of 1953 is amended to read:

Sec. 4. Same; payment of. In order to secure the payment of any of the bonds, issued pursuant to this act, the interest thereon, or in connection with such bonds, the city shall have power as to such bonds, to the extent not inconsistent with the mandatory provisions of this act:

(a) To pledge all or any part of the revenues derived from electric service;

(b) To provide for the terms, forms, registration, exchange, execution and authentication of such bonds;

(c) To provide for the replacement of lost, destroyed or mutilated bonds;

(d) To covenant as to the use and disposition of the proceeds from the sale of such bonds and as to the use and disposition of revenues, including, without limitation of the generality of the foregoing, the establishment of reserves for debt service or other capital or current expenses from bond proceeds or revenues or both;

(e) To covenant as to the rates and charges of the electric plant, provided that the city shall always collect revenues adequate at all times to provide for the proper operation and maintenance of the electric plant and for the payment of the principal of and interest on all bonds payable from said revenues and all other required payments in connection therewith;

(f) To redeem such bonds, and to covenant for their redemption, and to provide the terms and conditions thereof;

(g) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(h) To covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, conditions or obligations;

(i) To vest in a trustee or trustees the right to receive all or any part of the income and revenue pledged and assigned to, or for the benefit of, the holder or holders of bonds issued hereunder, and to hold, apply and dispose of the same and the right to enforce any covenant made to secure or pay or in relation to the bonds; to execute and deliver a trust agreement or trust agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and limiting the liabilities thereof and describing what occurrences shall constitute "events of default" and prescribing the terms and conditions upon which such trustee or trustees or the holder or holders of bonds of any specified amount or percentage of such bonds may exercise such rights and enforce any and all such covenants and resort to such remedies as may be appropriate;

(j) To make convenants other than, and in addition to, the covenants herein authorized, of like or different character, necessary or advisable to effectuate the purposes of this act;

(k) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties.

Sec. 5. Sec. 4a is added to No. 298 of the Acts of 1953 to read:

Sec. 4a. Pledge of revenues. (a) Any pledge hereunder shall be valid and binding and shall be deemed continuously perfected for the purposes of the Uniform Commercial Code from the time when the pledge is made; unless otherwise provided in the resolution making the pledge, the pledge of revenues shall include any contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the city, and the proceeds thereof; the revenues, rights and proceeds so pledged and then held or thereafter acquired by the city shall immediately be subject to the lien of such pledge without any physical delivery or segregation thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the city, irrespective of whether such parties have notice thereof. The resolution by which a pledge is made need not be filed or recorded except in the records of the proceedings of the board of light commissioners and no filing need be made under the Uniform Commercial Code.

(b) A resolution pledging revenues hereunder may provide for priorities among payments to be made from such revenues, whether required by statute, the city charter, such resolution or otherwise. The pledge may include revenues otherwise accruing to particular funds established

by statute or the city charter. In the event bonds are issued junior and subordinate to other bonds, revenues remaining from time to time which are permitted by the terms of the senior bonds to be used to pay or secure the junior bonds may be pledged for that purpose by the resolution under which the junior bonds are issued. A pledge of revenues under this act shall constitute a sufficient appropriation thereof for the purposes of any provision for appropriation and such revenues may be applied as required by the pledge without further appropriation.

Sec. 6. Sec. 4b is added to No. 298 of the Acts of 1953 to read:

Sec. 4b. Refunding. The city may issue refunding bonds for the purpose of paying any of its bonds issued hereunder at maturity or upon acceleration or redemption. The refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the city deems to be in the public interest. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded, and such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be required by a resolution under which bonds are issued. The issue of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties and obligations of the city with respect thereto shall be governed by the provisions of this act relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

Sec. 7. Sec. 4c is added to No. 298 of the Acts of 1953 to read:

Sec. 4c. Bond anticipation notes. Unless otherwise provided in the authorizing proceedings, if bonds are authorized under this act, temporary notes may be issued in anticipation thereof. The board of light commissioners may delegate the sale of temporary notes to an officer or officers thereof. The principal of and interest on notes may be renewed or paid from time to time by the issue of other notes. Except as otherwise provided, notes issued under this section shall be governed by the provisions of this act relating to bonds insofar as the same may be applicable.

Sec. 8. Sec. 4d is added to No. 298 of the Acts of 1953 to read:

Sec. 4d. Regulation. (a) The public service board shall exercise its regulatory powers in such a manner as to permit the city to fulfill all of its obligations, including its obligations to the holders of the bonds issued hereunder.

(b) The public service board shall not be empowered to suspend the effective date of any change in the rates and charges of the city's electric plant pending final determination as to the justness or reasonableness of such change, but the board may require that the city undertake to refund rates and charges collected in excess of those which are finally determined just and reasonable. Any increase in the rates and charges of the city's electric plant shall be implemented by means of an identical percentage increase to each class or division of electric plant ratepayers under rate design tariffs previously approved by the public service board until such time as the public service board

shall specifically approve an alteration in such rate design and corresponding tariffs.

Sec. 9. Sec. 6 of No. 298 of the Acts of 1953 is amended to read:

Sec. 6. Same; right of city. The city shall have power by resolution of its board of light commissioners to confer upon any holder or holders of a specified amount or percentage of bonds, including a trustee or trustees for such holders, the right in the event of an "event of default" as defined in such resolution or as may be defined in any agreement with the holder or holders of such bonds or the trustee or trustees therefor:

(a) By suit, action or proceedings in any court of competent jurisdiction to obtain the appointment of a receiver of the electric plant or any part or parts thereof. If such receiver be appointed he may enter and take possession of such electric plant or any part or parts thereof and operate and maintain the same, and collect and receive all revenues thereafter arising therefrom in the same manner as the city itself might do and shall deposit such moneys in a separate account or accounts and apply the same in accordance with the obligations of the city as the court shall direct.

(b) By suit, action or proceeding in any court of competent jurisdiction to require the city to account as if it were the trustee of an express trust.

Any such resolution shall constitute a contract between the city and the holders of bonds of such issue.

Sec. 10. Sec. 8 of No. 298 of the Acts of 1953 is amended to read:

Sec. 8. Bonds; proceeds. All moneys received from the issue of bonds (other than refunding bonds) shall be used solely to defray the cost of improving the electric plant of the city. The cost of improving the electric plant shall include all cost of acquisition, or improvement, including all preliminary expenses, the cost of acquiring all property, franchises, easements, and rights necessary or convenient therefor, engineering and legal expenses, expenses for estimates of costs and revenues, expenses for plans, specifications and surveys, other expenses incident or necessary to determining the feasibility or practicability of the enterprise, administrative expense, interest prior to and during the carrying out of any project and for a reasonable period thereafter, such reserves for debt service or other capital or current expenses as may be required by the ordinance or resolution under which the bonds are issued, and such other expenses as may be incurred in the financing herein authorized, the acquisition or improvement of the electric plant, the placing of such plant in operation, including the creation of a cash working fund, and the performance of the things herein required or permitted in connection therewith.

Sec. 11. Sec. 8a is added to No. 298 of the Acts of 1953 to read:

Sec. 8a. Energy conservation facilities. The city is hereby authorized and empowered to provide or finance energy conservation facilities within the customer service area of its electric plant. The term "energy conservation facilities" includes facilities or improvements to

facilities (whether owned by the city or by others) for load management or the conservation of electric or other energy. Such facilities or improvements may be owned or operated by the city as part of its electric plant or may be owned or operated by others, and may be leased or licensed by the city to others or may be financed by loans by the city to others. Such facilities or improvements may be treated as part of the electric plant and financed under this act or other enabling law. Loans to others for the purposes of this section may also be financed under this act in the same manner as improvements to the electric plant and receipts from such loans may be pledged under this act as revenues. A lending program initiated under the authority of this section shall be managed in accordance with the provisions of section 228 of the city charter relating to the electric plant.

Sec. 12. Sec. 12 of No. 298 of the Acts of 1953 is amended to read:

Sec. 12. Ratification.

(a) Notwithstanding the foregoing provisions of this act, and except as provided in subsection (b) of this section, no bonds shall be issued under this act unless and until more than fifty percent of the legal voters of the city present and voting thereon at any annual or special city meeting duly warned for that purpose shall have first voted to authorize the project or improvement for which such bonds are to be issued. The warning shall describe in general terms such project or improvement, shall estimate its cost, and shall state the amount of bonds proposed to be issued to finance it.

(b) The city may issue bonds under this act without voter approval (1) to pay the costs of (A) the completion of a project or improvement previously authorized by the voters of the city, provided that such costs of completion do not exceed by more than fifty percent the estimated cost of the city's share of the project or improvement as set forth in the warning submitting the question to the voters, and (B) repairs, alterations or other improvements necessary to maintain the operational status of any facilities of the electric plant, whether necessitated by casualty, regulatory or licensing requirements, or other cause; or (2) in the case of jointly-owned facilities not controlled by the city, to pay the city's share of the costs of improvements which the lead participants are empowered to make; or (3) for refunding as provided in Sec. 4b of this act.

Sec. 13. Sec. 14 of No. 298 of the Acts of 1953 is added to read:

Sec. 14. Powers exercised through board of light commissioners. The powers granted to the city hereunder shall be exercised by its board of light commissioners, subject, however, to the provisions of section 228 of the city charter. No provisions hereof or of said section 228 shall be deemed to permit the exercise of any power in violation of the rights of bond or note holders.

Sec. 14. Subdivision XLIII of Sec. 48 of No. 298 of the Acts of 1949, as amended, is hereby repealed.

Sec. 15. Sec. 114 of No. 298 of the Acts of 1949 is amended to read:

Sec. 114. The city council shall establish rates to be paid for the use of water supplied by the city water works which shall be called

"service rates". Such service rates and the rates for electricity supplied at retail by the electric light plant shall be and hereby are made a lien in the nature of a tax upon the real estate so supplied with water and electricity and shall be collected and enforced under such regulations and ordinances as the city council shall prescribe. The city council may by ordinance prescribe the nature and character of connections between the water mains and lands and buildings to be supplied with water and what lands and buildings shall be so connected and when, under what circumstances, and in what manner, and that the connections and all repairs to the same shall be made by the city at the expense of the owner of the property, and that the cost of all materials and labor for the same may be charged against the owner of the property served, and shall be a lien in the nature of a tax upon the real estate so supplied with water, and may likewise prescribe the means of collecting and enforcing such lien and payment of all such charges.

Sec. 16. Sec. 228 of No. 298 of the Acts of 1949 is amended to read:

Sec. 228. (a) The city shall have power to purchase, hire, construct or otherwise acquire or acquire an interest in, to maintain, operate, and to sell, lease or otherwise dispose of any plant or system, located within or outside the state, for the production, distribution, purchase or sale of electricity, to extend, enlarge or improve the same and for that purpose to purchase, hire, construct or otherwise acquire any real or personal property. These powers may be exercised through a taking by eminent domain in the manner prescribed by law except that the

city shall have no power to acquire timberlands or other fuel sources by eminent domain. The city shall also have the power to purchase, sell and otherwise acquire and dispose of electricity including sale to electric distribution companies, cooperative, municipal and privately owned, within or without the state and to make all agreements, conveyances and regulations necessary or convenient in connection therewith; all of the foregoing powers to be in addition to and not in substitution for or in limitation of any other power conferred by law. Such plant or system may include facilities described in No. 298 of the Acts of 1953 as amended.

(b) Subject to the provisions of section 114 of this act and this section, but notwithstanding any other provision of this charter or any other law, the powers of the city with respect to its electric plant except for the power to take property by eminent domain shall be exercised by the board of light commissioners. The power to take property by eminent domain, and the ultimate authority to determine the wages and salaries for employee positions within the city electric light department, shall be exercised by the city council.

(c) The following votes or resolutions of the board of light commissioners, unless approved by the city council, shall be subject to veto by vote of a majority of the whole number of the aldermen, passed within thirty days after the adoption of the vote or resolution by the board of light commissioners:

(1) the authorization (but not the sale) of revenue bonds or the adoption of a resolution to provide for the security of revenue bonds or of notes in anticipation thereof;

(2) the authorization of a construction contract or a contract for the purchase of property involving in either case the expenditure of more than $100,000.00;

(3) the establishment of rates and charges for electric service (but not changes made in such rates or charges pursuant to any previously established schedules or formulae); and

(4) the authorization of a contract to run for a period of more than one year.

Any such votes or resolutions shall be reported to the city council in writing within five days after adoption by the board of light commissioners, and the commissioners shall, upon request, appear before the city council to explain the votes or resolutions.

(d) A vote so passed within thirty days shall be subject to the mayor's veto, and to the overriding thereof, in accordance with the city charter.

(e) The provisions of this section shall not affect the manner of authorizing or issuing general obligation bonds or notes of the city or of appropriating moneys other than revenues of the electric department.

Sec. 17. 30 V.S.A. § 602 is amended to read:

§ 602. AUTHORIZATION

The city of Burlington is hereby authorized to enter into a New England power pool agreement and to participate within and without the state of Vermont in the New England power pool created thereby. Any action taken by the city in connection with entering into or

participating in such pool prior to the effective date of this chapter shall be deemed to be as effective as if this chapter had then been in effect.

Sec. 18. 30 V.S.A. § 604 is amended to read:

§ 604. ADDITIONAL AUTHORITY

(a) Notwithstanding any contrary provision of any general or special law relating to the powers and authorities of electric utilities or any limitation imposed by its charter, the city of Burlington shall have the following additional powers:

(1) jointly or separately to plan, finance, construct, purchase, operate, maintain, use, share costs of, own, mortgage, lease, sell, dispose of or otherwise participate in electric power generating and transmission facilities or portions thereof within or without the state or the product or service therefrom or securities issued in connection with the financing of such facilities or portions thereof;

(2) to enter into and perform contracts for such joint or separate planning, financing, construction, purchase, operation, maintenance, use, sharing costs of, ownership, mortgaging, leasing, sale, disposal of or other participation in electric power generating and transmission facilities, or portions thereof, within or without the state or the product or service therefrom, or securities issued in connection with the financing of electric power facilities or portions thereof, including, without limitation, contracts for the payment of obligations imposed without regard to the operational status of a facility or facilities and contracts for the sale or purchase of electricity

from an electric power facility or facilities for long or short periods of time or for the life of a specific electric generating unit or units.

(b) Other electric utilities, whether cooperative, municipal or privately owned, may enter into and perform contracts with the city of Burlington for the purposes of this section. The provisions of this chapter shall not otherwise affect the jurisdiction of the public service board regarding the activities of the Burlington electric light department within the state of Vermont.

(c) Cooperative and municipal electric utilities, in accordance with chapter 83 of this title, and other electric utilities may enter into and perform contracts with the city of Burlington and the village of Lyndonville for the purposes of this section.

Sec. 18a. City of Burlington utility facilities; taxation of

Section 3659 of Title 32 shall not apply to land, buildings and other facilities of the city of Burlington used for the generation of electric energy. Such land, buildings and facilities owned by the city of Burlington and situated outside of its territorial limits shall be taxed by the municipality in which it is located either in the manner provided for privately owned property, or pursuant to a contract entered into by the municipalities providing for any mutually agreeable methods and amounts of taxation.

Sec. 19. Effective date

(a) This act shall take effect from passage.

(b) The votes of the voters of the city of Burlington at the 1978 annual city meeting authorizing improvements to the electric plant or the financing thereof shall be deemed valid and effective and governed by the provisions of this act as if this act had then been in force and applicable.

Approved: April 12, 1978

House Bill No. 5497

PUBLIC ACT NO. 78-100

AN ACT CONCERNING PUBLIC SERVICE COMPANY SECURITIES ISSUES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) Any stock, notes, bonds or other evidences of indebtedness or securities of any nature issued or sold pursuant to or in reliance on and in accordance with any order, authorization or decision of the public utilities control authority pursuant to title 16 of the general statutes shall be valid and binding in accordance with their terms notwithstanding such order, authorization or decision of the authority is later vacated, modified, or otherwise held to be wholly or partly invalid, unless operation of such order, authorization or decision of the authority has been stayed or suspended by the authority or the reviewing court prior to such issuance.

Certified as correct by

_____

Legislative Commissioner.

_____

Clerk of the Senate.

_____

Clerk of the House.

Approved _____, 1978

_____

Governor.

House Bill No. 5754

PUBLIC ACT NO. 78-119

AN ACT CONCERNING THE FORECAST OF ELECTRIC POWER LOADS AND RESOURCES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 16-50r of the general statutes is repealed and the following is substituted in lieu thereof:

Every person engaged in generating electric power in the state shall, annually, on or before [January] MARCH first, furnish a report to the council for its review containing a ten-year forecast of loads and resources, and each report required to be filed on or before [January] MARCH first in each even-numbered year shall contain a twenty-year forecast of loads and resources. The report shall describe the facilities that, in the judgment of such utility, will be required to supply system demands during the forecast period. The report shall cover the ten-year period and, where applicable, the twenty-year period [next succeeding the date] BEGINNING WITH THE YEAR of the report. The report shall be made available to the public and shall be furnished to the chief executive officer of each municipality in the service area of such utility, the regional planning agency which encompasses each such municipality, the attorney general, each member of the general assembly, each state department, agency and commission named in subsection (f) of section 16-50j and such other state and municipal bodies as the council may by regulation designate. The report shall include: (1) A tabulation of estimated peak loads, resources and margins for each year; (2) DATA ON ENERGY USE AND PEAK LOADS FOR THE FIVE PRECEDING CALENDAR YEARS; [(2)] (3) a list of existing generating facilities in service; [(3)] (4) a list of scheduled generating facilities for which property has been acquired, for which certificates have been issued and for which certificate applications have been filed; [(4)] (5) a list of planned generating units at plant locations for which property has been acquired, or at plant locations not yet acquired, that will be needed to provide estimated additional electrical requirements, and the location of such facilities; [(5)] (6) a list of planned transmission lines on which proposed route reviews are being undertaken or for which certificate applications have already been filed;

[(6)] (7) a description of the steps taken to upgrade existing facilities and to eliminate overhead transmission and distribution lines in accordance with the regulations and standards described in section 16-50t. A full description of the methodology used to arrive at said load forecast shall also be filed with the council. The council shall hold a public hearing on such reports annually. At least one session of such hearing shall be held after six-thirty p.m.

Certified as correct by

_____
Legislative Commissioner.

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Clerk of the Senate.

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Clerk of the House.

Approved _____, 1978

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Governor.



DELAWARE STATE SENATE

129TH GENERAL ASSEMBLY

FIRST SESSION - 1977

APR 28 1978 61 254

SENATE BILL NO. 142
AS AMENDED BY
SENATE AMENDMENT NO. 2
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER I, SUBCHAPTER III, TITLE 26, DELAWARE CODE RELATING TO RATE CHANGES OF PUBLIC UTILITIES.

WHEREAS, public utilities who file for a rate increase are permitted to place fifteen percent (15%) of such rate increase in effect by filing with the Commission a reasonable bond, the amount of which must be approved by the Commission until the Commission finally approves of the request; and

WHEREAS, the public utility is required to refund with interest any rate placed in effect by a public utility which is not approved by the Commission;and

WHEREAS, it seems most unfair to the customers to have a rate increase arbitrarily imposed upon them prior to the Commission finally approving or denying such rate increase, notwithstanding the fact that such fees are reimbursed with interest; and

WHEREAS, public utilities of this State should be able to project their needs sufficiently in advance so as not to warrant the need for revenue prior to the date which their request is scheduled to go into effect, assuming it is approved by the Commission; and

WHEREAS, it would appear that any rate request placed in effect prior to the Commission's approval warrants additional administrative costs.

NOW THEREFORE,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §306 (a) (1) of Chapter I, Subchapter III, Title 26, Delaware Code by striking said subsection 1 in its entirety and inserting a new subsection 1 to read as follows:

"(1) Suspend the operation of such rate change for a period not to exceed 7 months after said filing; provided, however, that if the Commission has not reached its decision within said 7 months after filing, the public utility may place their rate into effect under bond in accordance with subsection (b) of this section."

Section 2. Amend §306 (b) of Chapter I, Subchapter III, Title 26, Delaware Code by striking said subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) to read as follows:

"(b) Upon termination of the 7 months as set forth in subsection (a) (1) of this section the proposed rate change shall automatically become effective if the public utility files with the Commission a bond in a reasonable amount approved by the Commission with sureties approved by the Commission, conditioned upon the refund, in a manner to be prescribed by order of the Commission, to the persons entitled thereto of the amount of the excess, if the rate so put into effect is finally determined to be excessive; or there may be substituted for such bond other arrangements satisfactory to the Commission for the protection of the parties interested. In no event shall a public utility put a rate into effect under bond as authorized in this subsection that would constitute an increase in excess of 15 percent of the public utility's gross intrastate operating revenues."

Section 3. Amend §306, Chapter 1, Subchapter III, Title 26, Delaware Code, by adding thereto a new sub-section (c) to read as follows:

"(c) Notwithstanding subsections (a) and (b) of this section, 60 days after said filing, a public utility may put a rate into effect under bond as authorized in subsection (b) of this section, provided that the increase does not constitute an increase in excess of fifteen percent (15%) of the public utility's annual gross intrastate operating revenues or $1,000,000 annually, whichever is less."

(To be made one and ten copies)

HOUSE OF REPRESENTATIVES
NINTH LEGISLATURE, 19 78
STATE OF HAWAII

H.B. NO. 2165-78 H.D. 1

Act 132-78

A BILL FOR AN ACT

RELATING TO THE PURCHASE BY A PUBLIC UTILITY OF GEOTHERMAL ENERGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Legislature finds commercial development of the State's geothermal energy resources requires an assurance to the producer of geothermal energy that his product can be sold at a just and reasonable rate. The Legislature further finds that it is in the public interest to establish procedures in order that the interests of the producer, the public utility, and the consumer may be considered in establishing a just and reasonable rate for the purchase of geothermal energy by a public utility.

It is the purpose of this Act to promote the commercial development of geothermal energy and to protect the interests of the producer, the public utility, and the consumer by establishing procedures under which the public utilities commission shall determine just and reasonable rates payable by a public utility to a producer of geothermal energy.

HCPC 318-016

SECTION 2. Means. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 269- Establishment of geothermal energy rates. (a) The rate payable by a public utility to the producer of geothermal steam or electricity generated from geothermal steam shall be established by agreement between the public utility and the supplier, subject to approval by the public utilities commission; provided that, if the public utility and the supplier fail to reach an agreement for such rate, or if the agreed upon rate is disapproved by the commission, the public utilities commission shall establish a just and reasonable rate for the geothermal steam or electricity generated from geothermal steam supplied to the public utility by the producer.

(b) The producer of geothermal steam or electricity generated from geothermal steam shall be excluded from coverage of the term "public utility" as defined in section 269-1."

SECTION 3. New material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.

SECTION 4. This Act shall take effect upon its approval.

PRINTING CODE—The parts in **this style type** are additions to the text of the existing section of the law. The parts in ~~this style type~~ are deletions from the text of the existing section of the law. The absence of either of the above type styles in an amendatory SECTION indicates that an entirely new section or chapter is to be added to the existing law.

SENATE ENROLLED ACT No. 256

AN ACT to amend IC 8-1-1 concerning the proceedings of the public service commission.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-1-5 is amended to read as follows: Sec. 5. The commission created by this ~~act~~ **chapter** shall in all controversial proceedings heard by it be an impartial fact-finding body and shall make its orders in such cases upon the facts impartially found by it. The commission shall in no such proceeding, during the hearing, act in the role either of a proponent or opponent on any issue to be decided by it. All evidence given in any such proceeding shall be offered on behalf of the respective parties to, or appearing in, the proceeding and not in the name or behalf of the commission itself. **Any report, audit, examination or analysis prepared by the commission staff at the request or direction of the commission may be made a part of the record of the proceeding, subject to cross-examination by any party of the person who performed or directed the preparation of the report, audit, examination or analysis.** If in any such proceeding the public interest is not otherwise adequately represented by counsel, in the opinion of the commission, it shall be the duty of the public counselor, if requested by the commission, to make adequate preparation for the presentation of the interests of the public in such proceeding and he shall at the hearing represent the public interests therein involved: Provided, however, That nothing in this section contained shall prevent the public service commission of

Indiana from instituting, prosecuting, hearing or determining any investigation or proceeding which it is authorized to do, or make, on its own motion by any law with the administration of which it is charged.

SECTION 2. Because an emergency exists, this act takes effect upon passage.

HOUSE BILL No. 2070

AN ACT relating to the state corporation commission; concerning valuation of certain property of public utilities and common carriers; amending K.S.A. 66-128, and repealing the existing section.

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

Section 1. K.S.A. 66-128 is hereby amended to read as follows: 66-128. Said commission shall have the power and it shall be its duty to ascertain the reasonable value of all property of any common carrier or public utility governed by the provisions of this act used or required to be used in its services to the public within the state of Kansas, whenever it deems the ascertainment of such value necessary in order to enable the commission to fix fair and reasonable rates, joint rates, tolls and charges, and in making such valuations they may avail themselves of any reports, records or other things available to them in the office of any national, state or municipal officer or board. *For the purposes of this act, property of any public utility which has not been completed and dedicated to commercial service shall not be deemed to be used or required to be used in said public utility's service to the public, except that, any property of a public utility, the construction of which will be completed in one (1) year or less, may be deemed to be completed and dedicated to commercial service.*

Sec. 2. K.S.A. 66-128 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the official state paper.

I hereby certify that the above BILL originated in the HOUSE, and passed that body.

_____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE _____

_____
President of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.

HOUSE BILL No. 3206

AN ACT relating to the state corporation commission; concerning proceedings for review of the commission's orders or decisions; amending K.S.A. 66-118a, 66-118c, 66-118d, 66-118f, 66-118g and 66-118h, and repealing the existing sections.

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

Section 1. K.S.A. 66-118a is hereby amended to read as follows: 66-118a. The term "party" as used in this act, *and any amendments thereto*, shall include any person, firm, corporation, association, municipality, taxpayer, municipal organization, mercantile, agricultural or manufacturing organization or system, public utility or common carrier interested in any matter pending before the state corporation commission or in proceedings for review of an order or decision of the commission. *As used in this act, "public utility" means a public utility as defined by K.S.A. 1977 Supp. 66-104 and amendments thereto. The court of appeals shall have exclusive jurisdiction of proceedings for review of an order or decision of the state corporation commission arising from a rate hearing requested by a public utility or requested by the state corporation commission when a public utility is a necessary party. Proceedings for review of other orders or decisions of the state corporation commission shall be to a district court having venue, as provided in K.S.A. 66-118c, as amended. Any proceeding for review of an order or decision of the corporation commission which is pending at the time this act takes effect shall not be affected by the provisions of this act.* In proceedings for review of an order or decision of the commission, the state corporation commission shall be a party to the proceedings and shall have all rights and privileges granted by this act to any other party to such proceedings.

Sec. 2. K.S.A. 66-118c is hereby amended to read as follows: 66-118c. Within thirty (30) days after the application for a rehearing is denied, or if the application is granted, then within thirty (30) days after the rendition of the decision on rehearing, the applicant may apply ~~to the district court of the county in which the order of the commission is to become effective~~ for a *court* review of such order or decision. *Venue for proceedings for review by a district court shall be in any district court of a county in which the order or decision of the commission is to become effective* ~~if the order of the commission is to become effective in more than one county the application must be to the district court of one of such counties~~. The application for review shall be filed in the office of the clerk of the ~~district~~ court ~~of the proper county~~ *in which the review is sought* and shall specifically state the grounds for review upon which the applicant relies and shall designate the order or decision sought to be reviewed. The clerk of the ~~district~~ court shall immediately serve a certified copy of said application upon the state corporation commission by transmitting a certified copy thereof by registered mail to the secretary of the state corporation commission at ~~his~~ *the secretary's* office ~~at the state capitol~~ *in Topeka*. The secretary shall immediately notify all parties who appeared in the proceedings before the commission by registered mail, that such application for review has been filed.

Sec. 3. K.S.A. 66-118d is hereby amended to read as follows: 66-118d. The secretary upon receipt of said copy of the application for review shall forthwith transmit to the clerk of the ~~district~~ court in which the application for review has been filed, a certified transcript of all pleadings, applications, proceedings, orders or decisions of the commission and of the evidence heard by the commission on the hearings of the matter or cause: ~~*Provided,*~~ *except* that the parties, with the consent and approval of the commission, may stipulate in writing that only certain portions of the record be transcribed. Said proceedings for review shall be for the purpose of having the lawfulness or reasonableness of the original order or decision or the order or decision on rehearing inquired into and determined, and the ~~district~~ court hearing said cause shall have the power to vacate or set aside such order or decision on the ground that such order or decision is

unlawful or unreasonable. After the ~~said~~ transcript ~~shall be~~ *is* filed in the office of the clerk of the ~~district~~ court ~~of the county~~ in which the application is filed, the ~~judge of said district~~ court ~~may, on his~~ *, on its own* motion, or on application of any of *the* parties interested therein, *may* make an order fixing a time for the filing of abstracts and briefs and shall fix a day for the hearing of such cause.

All proceedings under this section shall have precedence in any court in which they may be pending, and the hearing of the cause shall be by the court without the intervention of a jury. The procedure ~~upon the trial of such proceedings in the district court and~~ upon appeal ~~to the supreme court of this state~~ shall be the same as in other civil actions, except as herein provided. No court of this state shall have power to set aside, modify or vacate any order or decision of the commission, except as herein provided.

Sec. 4. K.S.A. 66-118f is hereby amended to read as follows: 66-118f. No new or additional evidence may be introduced upon the trial or any proceedings for review under the provisions of this act; ~~but~~. The cause shall be heard upon the questions of fact and law presented by the evidence and exhibits introduced before the commission and certified by it. ~~*Provided, That*~~, *but* if it shall be shown to the satisfaction of the court that any party to said proceeding has additional material evidence which could not, by the exercise of due diligence, have been produced at the hearing before the commission, or which for some good reason it was prevented from producing at such hearing, or if upon the trial of the proceeding the court shall find that the commission has erroneously refused to admit or consider material evidence proffered by any party at the hearing before the commission, the court ~~may~~, in its discretion, *may* stay the proceedings and make an order directing the commission to hear and consider such evidence. In such cases it shall be the duty of the commission immediately to hear and consider such evidence and make an order modifying, setting aside or affirming its former decision.

The commission, after hearing and considering such additional evidence, shall vacate, modify or affirm its decision, and a transcript of the additional evidence and the order or decision of the commission shall be certified and forwarded to the clerk of the ~~district~~ court in which such proceeding is pending, and said ~~district~~ court ~~shall~~, on motion of any interested party, *shall* order the trial to proceed upon the transcript as supplemented, so as to enable the court to properly determine if the order or decision of the commission as originally made or as modified is in any respect unlawful or unreasonable.

Sec. 5. K.S.A. 66-118g is hereby amended to read as follows: 66-118g. *(a)* The filing or pendency of the application for review provided for in this act shall not in itself stay or suspend the operation of any order or decision of the commission, *except as provided in subsection (b)*, but, during the pendency of such proceeding the court, in its discretion, may stay or suspend, in whole or in part, the operation of the order or decision of the commission. No order so staying or suspending an order or decision of the commission shall be made by any court of this state otherwise than on five days' notice and after a hearing, and if a stay or suspension is allowed the order granting the same shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage.

(b) If the court of appeals does not issue a final order within one hundred eighty (180) days after the filing with the clerk of the court of appeals of an application for judicial review of an order or decision of the commission in a public utility rate case, the court of appeals shall automatically stay the order or decision of the commission, to the extent hereafter described, when such stay is requested by motion of a public utility that is a party to the action. The commission's order or decision shall be stayed only to the extent that the commission did not grant the amount that is

being contested by the public utility on appeal. The public utility may collect, pursuant to K.S.A. 68-118h, as amended, rates up to but not exceeding the amount that is being contested by the public utility on appeal. The provisions of K.S.A. 66-118h through 66-118k, inclusive, shall be applicable to orders or decisions stayed pursuant to this section.

Sec. 6. K.S.A. 66-118h is hereby amended to read as follows: 66-118h. In case the order or decision of the commission is stayed or suspended, the order or judgment of the court shall not become effective until a suspending bond shall have been executed and filed with and approved by the court, payable to the people of the state of Kansas, sufficient in amount and security to secure the prompt payment, by the party petitioning for the stay, of all damages caused by the delay in the enforcement of the order or decision of the commission, and repayment of all moneys which any person, firm, corporation or any organization or association of any kind or character may be compelled to pay for any service in excess of the charges fixed by the order or decision of the commission in case such order or decision is sustained or in excess of the rate, fare, toll, rental, charge or classification finally established as lawful and reasonable if the order or decision be vacated or set aside, and in addition thereto or in lieu thereof the court granting a stay or suspending the order or decision of a commission in any manner affecting rates, fares, tolls, rentals, charges or classifications shall direct the petitioner to pay into court from time to time all sums of money collected from any person, firm or corporation in excess of the sum that such person, firm or corporation would have been compelled to pay if the order of the commission had not been stayed or suspended. The sums so paid into court shall be deposited, as the court may direct, in any bank, trust company or other depository paying interest on deposits.

The court shall require the party collecting such sums to keep such records and issue such receipts as will facilitate the repayment of said sums to the proper persons, firm or corporations if the order of decision of the commission be sustained, or if the rate, fare, toll, rental [,] charge or classification finally established as reasonable or lawful be less than the sum collected. If the order or decision of the commission be sustained or if the rate, fare, toll, rental, charge or classification finally established as lawful and reasonable be less than the sum collected, the court shall require notice be given, by publication or otherwise, to the persons, firms or corporations entitled to be reimbursed and shall provide for the payment and distribution of such sums of money so impounded or due under the bond herein provided. *All sums of money collected under bond which are paid and distributed as herein provided shall bear interest from the date of collection, at the rate prescribed by K.S.A. 16-204, and amendments thereto.*

Sec. 7. K.S.A. 66-118a, 66-118c, 66-118d, 66-118f, 66-118g and 66-118h are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body.

_____

HOUSE concurred in SENATE amendments _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE as amended _____

_____
President of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.

Regular Session, 1978

SENATE BILL NO. 557 ACT NO. 77

BY MESSRS. MOUTON, DUVAL, KNOWLES, AND DOUCET AND REPRESENTATIVES FREEMAN, TAUZIN, WEAVER, JOHN, DOWNER, CHABERT, DUPUIS, LANIER, SIRACUSA, BARES, DISCHLER, AND SHERIDAN

AN ACT

To amend and reenact Section 1163 of Title 45 of the Louisiana Revised Statutes of 1950, relative to the power of the Public Service Commission to regulate rates and service, to except from the commission's regulatory power electric cooperative rates approved by the board of directors of the electric cooperative and by the federal government or any agency thereof.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 1163 of Title 45 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted to read as follows:

§1163. Power to regulate rates and service; exceptions

The commission shall exercise all necessary power and authority over any street railway, gas, electric light, heat, power, waterworks, or other local public utility for the purpose of fixing and regularing the rates charged or to be charged by and service furnished by such public utilities; however, no aspect of direct sales of natural gas by natural gas producers, natural gas pipeline companies, natural gas distribution companies, or any other person engaging in the direct sale of natural gas to industrial users for fuel or for utilization in any manufacturing process shall be subject to such regulation by the commission. In addition, a schedule of rates of an electric cooperative shall not require approval of the commission if the schedule previously was approved by the board of directors of the electric cooperative and by the federal

government or any agency thereof, nor shall the authority of the commission extend to the service rendered by electric cooperatives except to the extent provided in R.S. 45:123 and in orders of the commission promulgated to effectuate the purposes of R.S. 45:123.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

_____
PRESIDENT OF THE SENATE

_____
SPEAKER OF THE HOUSE OF REPRESENTATIVES

_____
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

S E N A T E O F M A R Y L A N D

81r4072 No. 1073

By: Senator McGuirk
Introduced and read first time: February 23, 1978
Assigned to: Economic Affairs

Committee report: Favorable
Senate action: Adopted
Read second time: March 17, 1978

CHAPTER 542

AN ACT concerning

Public Service Commission - Proceedings on Proposed New Rates

FOR the purpose of clarifying existing language concerning proceedings upon suspension of proposed new rates of public service companies.

BY repealing and reenacting, with amendments,

Article 78 - Public Service Commission Law
Section 69B(a)
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 78 - Public Service Commission Law

69B.

(a) Upon the suspension of a proposed new rate for a gas, electric, or telephone company which is based upon the existing authorized fair rate of return, the Commission shall promptly institute proceedings to determine [the] IF ADDITIONAL revenues ARE required to provide the company the opportunity to earn the existing authorized fair rate of return. The Commission shall serve each of the parties to the last preceding case with a copy of the suspension order and shall order the applicant to have published a display advertisement in newspapers of general circulation in its service area advising of the proposal. These proceedings

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

shall account for revenues, expenses, and rate base in a manner identical to that employed by the Commission in determining the justice and reasonableness of rates in the last preceding base rate proceeding, and shall exclude consideration of any increase in the rate of return, any alteration in the rate structure, or an accounting approach to any item pertaining to revenues, expenses, or rate base inconsistent with that employed by the Commission in determining the justice and reasonableness of rates in the last preceding base rate proceeding, except that the Commission may use a more recent past test period. The Commission shall enter a final order as to the revenue requirement determined pursuant to this section within 90 days of the filing of the proposed new rate. The final order entered shall authorize a new rate distributing any change in the revenue requirement proportionally among the ratepayers without change in the rate structure.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
President of the Senate.

_____
Speaker of the House of Delegates.

H O U S E O F D E L E G A T E S

81r2916 No. 1324

By: Delegates Young, Delphey, Riley, Dixon, Lee, Dyson, McCoy, Hixson, Cox, Dypski, Adams, Kach, Harkness, Toth, Weir, Minnick, Thomas, Aiken, and Howell
Introduced and read first time: February 8, 1978
Assigned to: Environmental Matters

Committee report: Favorable
House action: Adopted
Read second time: March 22, 1978

CHAPTER 374

AN ACT concerning

Public Service Commission - Just and Reasonable Rates

FOR the purpose of requiring "just and reasonable rates" for public service companies to be rates which fully consider and are consistent with the public good.

BY repealing and reenacting, with amendments,

Article 78 - Public Service Commission Law
Section 69(a)
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 78 - Public Service Commission Law

69.

(a) "Just and reasonable rates" means rates which are not in violation of any of the provisions of this article, WHICH FULLY CONSIDER AND ARE CONSISTENT WITH THE PUBLIC GOOD, and which will result in an operating income to the public service company, except carriers of inflammables, yielding, after reasonable deduction for depreciation and other necessary and proper expenses and reserves, a reasonable return upon the fair value of the company's property used and useful in rendering service to the public.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

CHAPTER 795-H.F.No.830

[Coded in Part]

An act relating to public utilities; reducing regulation of certain cooperative electric associations unless an election to continue regulation is made; amending Minnesota Statutes 1976, Sections 216B.01; 216B.02, Subdivision 4; 216B.06; 216B.17, by adding a subdivision; 216B.36; 216B.38, Subdivision 5; 216B.45; 216B.47; 216B.62, by adding a subdivision; repealing Minnesota Statutes 1976, Sections 216B.48, Subdivision 7; 216B.49, Subdivision 6; 216B.50, Subdivision 2; and 216B.51, Subdivision 2.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1976, Section 216B.01, is amended to read:

216B.01 LEGISLATIVE FINDING. It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates, consistent with the financial and economic requirements of public utilities and their need to construct facilities to provide such services or to otherwise obtain energy supplies, to avoid unnecessary duplication of facilities which increase the cost of service to the consumer and to minimize disputes between public utilities which may result in inconvenience or diminish efficiency in service to the consumers. Because municipal utilities are presently effectively regulated by the residents of the municipalities which own and operate them, and cooperative electric associations are presently effectively regulated and controlled by the membership under the provisions of Minnesota Statutes, Chapter 308, it is deemed unnecessary to subject such utilities to regulation under ~~Laws 1974,~~ this chapter ~~429~~ except as specifically provided herein.

Sec. 2. Minnesota Statutes 1976, Section 216B.02, Subdivision 4, is amended to read:

Subd. 4. "Public utility" means persons, corporations or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured or mixed gas or electric service to or for the public ~~or its members~~ or engaged in the production and retail sale thereof but does not include a municipality or a cooperative electric association, organized under the provisions of Minnesota Statutes, Chapter 308 producing or furnishing natural, manufactured or mixed gas or electric service. Except as otherwise provided, the provisions of Laws 1974, Chapter 429 shall not be applicable to any sale of natural gas or electricity by a public utility to another public utility for resale. No person shall be deemed to be a public utility if it presently furnishes its services only to tenants in buildings owned, leased or operated by such person. No person shall be deemed to be a public utility if it presently furnishes service to occupants of a mobile home or trailer park owned, leased, or operated by such person. No person shall be deemed to be a public utility if it presently produces or furnishes service to less than 25 persons.

A cooperative electric association may elect to become subject to rate regulation by the commission pursuant to sections 216B.03 to 216B.23. The election shall be (a) approved by July 1, 1978 by the board of directors of the association in accordance with the procedures for amending the articles of incorporation contained in section 308.15, subdivision 1, excluding the filing requirements; or (b) approved by a majority of members of stockholders voting by mail ballot initiated by petition of no less than five percent of the members or stockholders of the association. The ballot to be used for the election shall be approved by the board of directors and the department of public service. The department shall mail the ballots to the cooperative's members who shall return the ballots to the department. The department will keep the ballots sealed until a date agreed upon by the department and the board of directors. On this date, representatives of the department and the cooperative shall count the ballots. If a majority of the cooperative's members who vote elect to become subject to rate regulation by the commission, the election shall be effective 30 days after certified copies of the resolutions approving the election are filed with the commission. Any cooperative electric association subject to regulation of rates by the commission shall be exempt from the provisions of sections 216B.48, 216B.49, 216B.50, and 216B.51.

Sec. 3. Minnesota Statutes 1976, Section 216B.06, is amended to read:

216B.06 RECEIVING DIFFERENT COMPENSATION. No public utility shall directly or indirectly, by any device whatsoever, or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedules of rates of the public utility applicable thereto when filed in the manner provided in Laws 1974, Chapter 429, nor shall any person knowingly receive or accept any service from a public utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a public utility upon January 1, 1975 may be continued until schedules are filed. ~~Nothing in Laws 1974, Chapter 429 shall prevent a cooperative association from returning to its patrons the whole, or any part of, the net earnings resulting from its operations in proportion to their purchases from or through the association.~~

Sec. 4. Minnesota Statutes 1976, Section 216B.17, is amended by adding a subdivision to read:

Subd. 6a. For the purposes of this section, public utility shall include cooperative electric associations with respect to service standards and practices only.

Sec. 5. Minnesota Statutes 1976, Section 216B.36, is amended to read:

216B.36 FRANCHISES CONTINUED. Any public utility furnishing the utility services enumerated in Laws 1974, Chapter 429 or occupying streets, highways, or other public property within a municipality may be required to obtain a license, permit, right or franchise in accordance with the terms, conditions, and limitations of regulatory acts of the municipality, including the placing of distribution lines and facilities underground, and under the license, permit, right, or franchise, the utility may be obligated by any municipality to pay to the municipality fees to raise revenue or defray increased

municipal costs accruing as a result of utility operations, or both including but not limited to a sum of money based upon gross operating revenues or gross earnings from its operations in the municipality so long as the public utility shall continue to operate in the municipality, unless upon request of the public utility it is expressly released from the obligation at any time by such municipality. All existing licenses, permits franchises and other rights acquired by any public utility or municipality prior to the passage of Laws 1974, Chapter 429 including the payment of existing franchise fees, shall not be impaired or affected in any respect by the passage of Laws 1974, Chapter 429, except with respect to matters of rate and service regulation and service area assignments that have been vested to the jurisdiction of the commission by Laws 1974, Chapter 429. However, in the event that a court of competent jurisdiction determines, or the parties by mutual agreement determine, that an existing license, permit, franchise or other right has been abrogated or impaired by Laws 1974, Chapter 429, or its execution, the municipality affected shall impose and the public utility shall collect an excise tax on the utility charges which from year to year yields an amount which is reasonably equivalent to that amount of revenue which then would be due as a fee, charges or other thing or service of value to the municipality under the franchise, license or permit. The authorization shall be over and above taxing limitations including, but not limited to those of section 477A.01, subdivision 18. Franchises granted pursuant to this section shall be exempt from the provisions of chapter 80C. For purposes of this section, a public utility shall include a cooperative electric association.

Sec. 6. Minnesota Statutes 1976, Section 216B.38, Subdivision 5, is amended to read:

Subd. 5. "Electric utility" means persons, their lessees, trustees, and receivers, separately or jointly, now or hereafter operating, maintaining or controlling in Minnesota equipment or facilities for providing electric service at retail and which fall within the definition of "public utility" in section 216B.02, subdivision 4, and includes facilities owned by a municipality or by a cooperative electric association.

Sec. 7. Minnesota Statutes 1976, Section 216B.45, is amended to read:

216B.45 **MUNICIPAL PURCHASE OF PUBLIC UTILITY.** Any public utility operating in a municipality under a license, permit, right or franchise shall be deemed to have consented to the purchase by the municipality, for just compensation, of its property operated in the municipality under such license, permit, right or franchise. The municipality, subject to the provisions of Laws 1974, Chapter 429, may purchase the property upon notice to the public utility as herein provided. Whenever the commission is notified by the municipality or the public utility affected that the municipality has, pursuant to law, determined to purchase the property of the public utility, and that the parties to the purchase and sale have been unable to agree on the amount to be paid and received therefor, the commission shall set a time and place for a public hearing, after not less than 30 days notice to the parties, upon the matter of just compensation or the matter of the property to be purchased. Within a reasonable time the commission shall, by order, determine the just compensation for the property to be purchased by the municipality. In determining just compensation, the commission shall consider the original cost of the property less depreciation, loss of revenue to the utility, expenses resulting from

integration of facilities and other appropriate factors. The order of the commission may be reviewed as provided in section 216B.52. Commission expenses arising out of the exercise of its jurisdiction under this section shall be assessed to the municipality. For purposes of this section, a public utility shall include a cooperative electric association.

Sec. 8. Minnesota Statutes 1976, Section 216B.47, is amended to read:

216B.47 **ACQUISITION BY EMINENT DOMAIN.** Nothing in Laws 1974, Chapter 429 shall be construed to preclude a municipality from acquiring the property of a public utility by eminent domain proceedings; provided that damages to be paid in eminent domain proceedings shall include the original cost of the property less depreciation, loss of revenue to the utility, expenses resulting from integration of facilities, and other appropriate factors. For purposes of this section, a public utility shall include a cooperative electric association.

Sec. 9. Minnesota Statutes 1976, Section 216B.62, is amended by adding a subdivision to read:

Subd. 5. The commission shall be authorized to charge cooperative electric associations their proportionate share of the expenses incurred in the adjudication of service area disputes and all of the costs incurred in the adjudication of complaints over service standards and practices. Cooperative electric associations electing to become subject to rate regulation by the commission pursuant to section 216B.02, subdivision 4, shall be subject to this section.

Sec. 10. Minnesota Statutes 1976, Sections 216B.48, Subdivision 7; 216B.49, Subdivision 6; 216B.50, Subdivision 2; and 216B.51, Subdivision 2 are repealed.

Sec. 11. This act shall be effective on the date following final enactment. This act is effective in respect to applications for rate changes pending before the commission on the effective date; and no refunds of increased rates put into effect after suspension in proceedings pending before the commission on the effective date shall be necessary.

Approved April 7, 1978.

Signed into law June 19, Chapter 394

STATE OF NEW YORK

Cal. No. 178 7019—C

IN SENATE

January 4, 1978

Introduced by Sens. McFARLAND, ANDERSON, AUER, BRUNO, CAEMMERER, CALANDRA, CONKLIN, DONOVAN, DUNNE, FARBER, FARLEY, FLYNN, GOODMAN, GORDON, JOHNSON, KNORR, LaVALLE, LEVY, MARCHI, MARINO, MASON, PADAVAN, PATERSON, PISANI, PRESENT, SCHERMERHORN, B. C. SMITH, W. T. SMITH, TRUNZO, VOLKER, WARDER—read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Public Utilities—reported favorably from said committee with amendments and ordered reprinted as amended and when reprinted to be committed to the order of first report—ordered to second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading—passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the public service law, in relation to power of the commission to refund certain revenue

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section sixty-six of the public service law is hereby amended by adding a new subdivision twenty to read as follows:

20. Notwithstanding any general or special law, rule or regulation, the commission shall have the power to provide for the refund of any revenues received by any gas or electric corporation which cause the corporation to have revenues in the aggregate in excess of its authorized rate of return for a period of twelve months. The commission may initiate a proceeding with respect to such a refund after the conclusion of any such twelve month period.

§ 2. This act shall take effect immediately.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

LBD8-39-524(

CHAPTER NO. 615

SENATE BILL NO. 410

By Blank, White

Substituted for: House Bill No. 134

By Murphy (Davidson), Davis, Bissell, Steinhauer, Ozment, Darnell, Ellis, Murphy (Shelby), Hurley, McKinney, King, Clark, Love, Miller, Nolan, Kernell, Tanner, Longley, Burnett (Sumner), Martin, Rhinehart, Naifeh, Spence, Watson, Gaia, DeBerry, Starnes, Burks, Bewley, Robinson (Hamilton), Withers, Carter, Murray (Madison), Work, Davidson (Robertson), Blackburn, Robinson (Davidson), Elkins, Pruitt, Ford (Shelby), Brewer, Fleming, Williams

AN ACT To provide a method for averaging monthly utility bills.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Each utility company or service, serving over fifteen thousand (15,000) residential customers, providing electricity, natural gas, or other fuel to consumers in Tennessee shall provide a method by which their customers may pay fuel bills monthly on an average basis.

SECTION 2. Participation in any payment averaging program shall be optional, but shall be offered to each residential customer of a utility who has been a customer for at least twelve (12) months unless otherwise mutually agreed by the company and the customer.

SECTION 3. A customer may be required to pay all delinquent bills before participating in a payment averaging program.

SECTION 4. A participating customer may remove himself from the payment averaging program at any time by giving notice to the utility. When a customer leaves the program, his actual use up to

that point shall be determined and, at the next billing date, he shall receive either a credit to his account or, at his written request, a payment in case of overestimated payment or shall pay the utility any amount not covered by his averaged monthly payments.

SECTION 5. A customer failing to make an average payment in any month may be subject to removal from the program in which case the computations required in Section 4 will be made and the customer will resume being billed for actual use each billing period.

SECTION 6. If the cost of power or fuel supplies to a utility increases or decreases significantly at any time and appears likely to remain at this new level so that the adjustment in the twelfth (12th) month would exceed the averaged monthly payment, the utility may adjust the averaged monthly payments.

SECTION 7. This act shall take effect on or before September 1, 1978, the public welfare requiring it.

PASSED: February 22, 1978

John S. Wilder,
SPEAKER OF THE SENATE

Ned R. McWherter,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED: March 13, 1978

Ray Blanton,
GOVERNOR

Wisconsin - CH 418

1977 Assembly Bill 1220

SECTION 518. 73.10 (5) of the statutes, as affected by chapter 29, laws of 1977, is amended to read:

73.10 (5) The department shall inquire into the system of accounting of public funds in use by towns, villages, cities, counties, vocational, technical and adult education districts and all other local public bodies, boards, commissions, departments or agencies except school districts and boards of education; devise, prescribe and at the request of any town, village, city, county, vocational, technical and adult education districts or other local public body, board, commission, department or agency except school districts and boards of education, install a system of accounts which is as nearly uniform as practicable and when so installed the system shall be retained in use and at the request of school districts and boards of education, install accounting systems which conform to the uniform financial accounting system prescribed by s. 115.28 (13); and audit the books of the town, village, city, county, school district, board of education, vocational, technical and adult education districts or other local public body, board, commission, department or agency, or any municipal electric utility upon the request of the governing board, council, commission or body thereof, or upon its own motion or under a contractual arrangement with a state agency which has statutory authority and responsibility for auditing specified activities of towns, villages, cities, counties, school districts, boards of education, vocational, technical and adult education districts, or other local public bodies, boards, commissions, departments or agencies and has sufficient funds to pay the department amounts specified by the contract. Nothing in this subsection may be construed to be exclusive and prevent a local governing body from employing an auditor of its own choice duly licensed under ch. 442.

79.03 (4) (b) 1. $300,000,000 increased by the actual rate of annual increase in the amount of general fund tax revenue collected by the state in the fiscal year ending during the calendar year of the distribution under this section, ~~excluding the amount transferred under s. 86.35,~~ but not more than 12% or less than 5%.

(c) Annually, beginning in 1979, the amount entered into the shared revenue account for total distributions under this subchapter shall increase over the amount entered for the prior year, excluding the amount transferred from the appropriation under s. 20.835 (2) (b) pursuant to s. 79.16, by the same rate as the actual rate of annual increase in the amount of general fund tax revenue collected by the state in the fiscal year ending during the calendar year of the distribution under this section, ~~excluding the amount transferred under s. 86.35,~~ but not more than 12% or less than 5%. The amount entered in the shared revenue account in fiscal year 1982-83 under s. 79.17 (7) shall be considered as part of the prior year base amount for the purpose of computing the calendar year 1983 distribution under this paragraph. The total amount paid to municipalities and counties in 1983 under s. 70.996 shall be considered as part of the prior year base amount for the purpose of computing the calendar year 1984 distribution under this paragraph.

SECTION 559. 79.03 (4) (d) of the statutes is created to read:

79.03 (4) (d) To maintain comparability for the purpose of computing the actual rate of annual increase in pars. (b) 1 and (c), adjustments shall be made to reflect reclassification of tax revenues as between state general fund tax revenues and program revenue, segregated revenue and local tax revenue appropriated under s. 20.835 (4). If a tax, or part thereof, is included in state general fund tax revenue in the most recent fiscal year, such tax, or corresponding part thereof, shall also be included in state general fund tax revenue for the prior fiscal year. If a tax, or part thereof, is not included in state general fund tax revenue in the most recent fiscal year because of any reclassification, such tax, or corresponding part thereof, shall be excluded from state general fund tax revenue for the prior fiscal year.

SECTION 559g. 79.03 (4) (e) of the statutes is created to read:

79.03 (4) (e) In this subsection "state general fund tax revenue" means tax revenue collected by the state except taxes classified as program revenue, segregated revenue and local tax revenue appropriated under s. 20.835 (4).

SECTION 560. 79.04 (1) (intro.) of the statutes is amended to read:

79.04 (1) (intro.) Annually, beginning on the 3rd Monday in November ~~1976~~ 1977, the department of administration, upon certification by the department of revenue, shall distribute to a municipality having within its boundaries a production plant or a general structure, including production plants and general structures under construction, used by a light, heat or power company assessed under s. 76.07 except those described in s. 66.069 (2) or by an electric cooperative association assessed under ss. 76.07 and 76.48, respectively, the following amounts, except as affected by s. 79.06 (1) and, except that no distribution shall be made for a production plant if the municipality received a distribution under sub. (3), pertaining to the same production plant ~~or any production plant or general structure under construction~~:

SECTION 561. 79.04 (1) (a) of the statutes, as affected by chapter 29, laws of 1977, is amended to read:

79.04 (1) (a) An amount from the shared revenue account determined by multiplying by 3 mills in the case of a town, and 6 mills in the case of a city or village, the first $100,000,000 of the amount shown in the account, plus leased property, of each public utility on December 31 of the preceding year for either "production plant, exclusive of land" and "general structures", or "work in progress" for production plants and general structures under construction, in the case of light, heat and power companies or electric cooperatives, for all property within a municipality in accordance with the system of accounts established by the public service commission or rural electrification administration, less depreciation thereon as determined by the department of revenue. The total of amounts, as depreciated, from the accounts of all public utilities for the same production plant is also limited to not more than $100,000,000. The amount distributable to a municipality in any year shall not exceed $300 times the population of the municipality, except for the guaranteed payment under par. (b).

SECTION 562. 79.04 (2) (a) of the statutes, as affected by chapter 29, laws of 1977, is amended to read:

79.04 (2) (a) Annually, beginning November 15, ~~1976~~ 1977, the department of administration, upon certification by the department of revenue shall distribute from the shared revenue account to any

county having within its boundaries a production plant or a general structure, including production plants and general structures under construction, used by a light, heat or power company assessed under s. 76.07 or by an electric cooperative association assessed under ss. 76.07 and 76.48, respectively, an amount determined by multiplying by 6 mills the first $100,000,000 of the amount shown in the account, plus leased property, of each public utility on December 31 of the preceding year for either "production plant, exclusive of land" and "general structures", or "work in progress" for production plants and general structures under construction, in the case of light, heat and power companies or electric cooperatives, for all property within a town in accordance with the system of accounts established by the public service commission or rural electrification administration, less depreciation thereon as determined by the department of revenue and by multiplying by 3 mills ~~times~~ the first $100,000,000 of the amount as defined in this subsection for all property within a city or village. Amounts from the accounts, plus leased property, for production plants for which sub. (3) distributions pertain, shall be excluded in computing the distribution under this subsection. The total of amounts, as depreciated, from the accounts of all public utilities for the same production plant is also limited to not more than $100,000,000. The amount distributable to a county in any year shall not exceed $100 times the population of the county.

SECTION 563. 79.04 (3) of the statutes, as affected by chapter 29, laws of 1977, is amended to read:

79.04 (3) During each of the first 4 years after commencement of construction of a production plant described in sub. (1), which the public service commission certifies to the department of revenue will produce a nominal rated capacity of 250 megawatts or more, the ~~county~~ counties in which the plant is located shall receive from the shared revenue account a payment of $100,000 and the ~~municipality~~ municipalities in which the plant is located shall receive from the shared revenue account a payment of $100,000 and ~~the county and municipality shall not be subject to~~ for purposes of these payments the limitations of $100 multiplied by the population of the county and $300 multiplied by the population of the municipality shall not apply. When a production plant is located in more than one county or municipality, the payment shall be proportioned according to the amounts shown on the preceding December 31 for the production plant in the account described in sub. (1) for "production plant exclusive of land" within each county or municipality, except that each county and municipality shall receive a minimum payment of $20,000 and the remainder of the $100,000 payment shall be proportioned according to the remaining utility plant value in other counties or municipalities. Payments received under this subsection shall be excluded in determining maximum payments under s. 79.06 (1).

SECTION 564. 79.10 (4) (a) of the statutes, as affected by chapter 29, laws of 1977, is amended to read:

79.10 (4) (a) "Computed full value rate" means the sum total of all general property taxes (including state, county, local and school taxes~~, but excluding~~ and tax increments paid by any taxing jurisdiction under s. 66.46 ~~unless such tax increments revert in whole or in part to the jurisdiction of origin on termination of the tax incremental district~~), the total amount of all special assessments made, assessed or levied for the year irrespective of the manner or time of collection, sewer service charges, occupational taxes, forest crop taxes and woodlands taxes levied and extended by a town, village or city, as reported to the department of revenue in its abstract of assessments and taxes, divided by the full value of all taxable property in the municipality as equalized for state purposes under s. 70.57 including value increments under s. 66.46, and the quotient expressed in mills per dollar of valuation.

SECTION 566. 79.17 (6) (a) of the statutes, as created by chapter 29, laws of 1977, is amended to read:

79.17 (6) (a) "Computed full value rate" means the sum total of all general property taxes (including state, county, local and school taxes~~, but excluding~~ and tax increments paid by any taxing jurisdiction under s. 66.46~~, unless such tax increments revert in whole or in part to the jurisdiction of origin on termination of the tax incremental district~~), the total amount of all special assessments made, assessed or levied for the year irrespective of the manner or time of collection, sewer service charges, occupational taxes, forest cropland taxes and woodlands taxes levied and extended by a town, village or city, as reported to the department of revenue on forms prescribed by it, divided by the full value of all taxable property in the municipality including value increments under s. 66.46, and the quotient expressed in mills per dollar of valuation.

SECTION 567. 79.17 (6) (b) of the statutes, created by chapter 29, laws of 1977, is amended to read:

Senate Bill No. 565

PUBLIC ACT NO. 78-370

AN ACT CONCERNING THE DISALLOWANCE OF RECOUPMENT OF THE CONNECTICUT GROSS EARNINGS TAX UNDER FOSSIL FUEL OR PURCHASED GAS ADJUSTMENT CLAUSES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Subsection (a) of section 16-19b of the general statutes is repealed and the following is substituted in lieu thereof:

(a) No adjustment clause of any kind whatsoever shall be authorized by the authority if such a clause operates automatically to permit charges, assessments or amendments to existing rate schedules to be made which have not been first approved by the authority. If the authority finds that the changed price of fossil fuels required for the generation of electricity by any electric company, or that the changed price of purchased gas required for distribution by any gas company, substantially threatens the ability of such companies to earn a reasonable rate of return, or will cause the company to have an excessive rate of return, the authority shall, after investigation and public hearing, approve suitable fossil fuel adjustment or purchased gas adjustment clauses to be superimposed upon the existing rate schedule of such companies and designed to recapture only such increased costs. The authority shall design such adjustment clauses to allow the electric or gas public service companies to charge or to reimburse the consumer only for the changes in the cost of fossil fuel or purchased gas which occur in any case when the price of such fuels differs from the price thereof which is reflected in the basic rates PROVIDED,

THE GROSS EARNINGS TAX IMPOSED BY SECTION 12-264 SHALL NOT BE INCLUDED IN THE COST OF SUCH FOSSIL FUEL OR PURCHASED GAS.

Certified as correct by

_____
Legislative Commissioner.

_____
Clerk of the Senate.

_____
Clerk of the House.

Approved _____, 1978

_____
Governor.

SPONSOR Rep. Worthen

COMMITTEE

NOT APPROVED
JUN 14 1977
BY THE GOVERNOR

HOUSE OF REPRESENTATIVES

129TH GENERAL ASSEMBLY

FIRST SESSION - 1977

HOUSE BILL NO. 183

AN ACT TO AMEND CHAPTER 431, VOLUME 60, LAWS OF DELAWARE RELATING TO PUBLIC HEARINGS ON APPLICATIONS TO CHANGE THE FUEL ADJUSTMENT RATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Chapter 431, Volume 60, Laws of Delaware is hereby repealed.

SYNOPSIS

This bill eliminates the requirement that the Public Service Commission hold public hearings on applications to change the fuel adjustment rate. These hearings have no application to the basic tariff provisions permitting the fuel adjustment charge but rather deal only with the question of whether the utility has computed the adjustment in conformity with the tariff provisions. The verification of utilities' calculations and the determination of the conformity of such calculations with the formula set forth in the basic fuel adjustment tariffs does not require or necessitate formal public evidentiary hearings but is rather an auditing task which can be effectively performed without the additional expense to the ratepaying public of requiring that the same material be presented again to the Commission at a formal evidentiary hearing.

SPONSOR Rep. Worthen, Bennett

COMMITTEE _____



HOUSE OF REPRESENTATIVES

129TH GENERAL ASSEMBLY

FIRST SESSION - 1977

HOUSE BILL NO. 539 JUN 24 1977

AN ACT TO AMEND CHAPTER 431, VOLUME 60, LAWS OF DELAWARE AND CHAPTER 1, TITLE 26, DELAWARE CODE, RELATING TO HEARINGS CONCERNING FUEL ADJUSTMENTS CHARGED BY UTILITIES BY DESIGNATING THE ADJUSTMENTS SUBJECT TO HEARINGS AND BY PROVIDING THE PROCEDURES TO BE USED BY THE PUBLIC SERVICE COMMISSION WITH RESPECT TO INCREASES IN FUEL ADJUSTMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Chapter 431, Volume 60, Laws of Delaware is hereby repealed.

Section 2. Amend §303, Subchapter III, Chapter 1, Title 26, Delaware Code by designating the existing paragraph therein as subsection (a) and by adding to said section the following new subsections:

"(b) Every electric utility subject to the jurisdiction of the Public Service Commission which uses fuel to generate electrical energy and is permitted to increase its charges to customers by virtue of a fuel adjustment clause shall present to the Public Service Commission full and complete justification for all such increases at a formal public hearing. Such hearing shall be held by the Public Service Commission within 30 days following the end of any quarter-annual period during which there has been such an increase, unless the Commission shall find that further proceedings or investigations are necessary that cannot be accomplished within the period provided, in which event, the Commission may extend the period for an additional 30 days. If action cannot be taken by the Commission as required by this subsection due to the illness or absence from the State of a majority of the Commissioners appointed to the Commission, then any one of the other Commissioners may extend the period required by this subsection for a period not to exceed 30 days from the date of such action. At such hearing, the utility shall bear the burden of proving that such increase was justified under the approved tariff. In the event that the Public Service Commission finds that in whole or in part such

increase is not supported by substantial evidence of record, the Commission shall order a refund or credit of that portion of the increase not justified under the fuel adjustment clause on such terms and conditions as justice may require.

(c) Notwithstanding the provisions of subsection (b), no public utility therein described shall place into effect any increase in the fuel adjustment which will increase the total charge for 500 KWH of electricity, taken at the standard residential rate, by 4% or more of the total charges for the preceding month or by 7% or more of the total charges for the second preceding month, unless the public utility shall have filed an application for the approval of such increase, and unless the Commission, after a public hearing, shall have found that the increase is in accordance with the fuel adjustment clause. Approval of the increase shall be by an affirmative vote of the majority of all members appointed to the Commission. As used herein, the term 'total charges' means the sum of all charges for 500 KWH of electricity permitted under the standard residential tariff then in effect under the provisions of this Title.

If the Commission shall decide that additional proceedings or investigations with respect to a proposed increase are required and that such proceedings or investigations cannot be accomplished before the proposed change would otherwise go into effect, then the Commission may permit such change to go into effect temporarily, subject to refund, pending proceedings and upon such conditions as the Commission may prescribe.

If action cannot be taken as required by this subsection because of the illness or the absence from the State of a majority of the Commissioners appointed to the Commission before such change would otherwise take effect under the fuel adjustment clause, then any one member of the Commission may permit such change to go into effect temporarily, subject to refund, pending a hearing before a majority of the Commissioners appointed, to be held within 30 days after such action.

If no action be taken by the Commission with respect to an application for approval of an increase in a fuel adjustment prior to the time that the change would go into effect under a fuel adjustment clause, then the last approved fuel adjustment shall continue, but the Commission shall hold a hearing within 30 days to determine the proper adjustment, and shall order such adjustments to future charges as shall restore all parties to the position they would have been had the proper adjustment been charged.

(d) In any proceeding under this subsection, the burden of proof shall be on the public utility as provided in Title 26, Delaware Code, §307, and the Commission shall consider the evidence for and against the proposed increase as it would all evidence in any other rate-making procedure. Prior notice of all hearings under this subsection shall be published in two newspapers of general circulation."

SYNOPSIS

This bill expresses the intention of the original statute by requiring hearings with respect to increases in fuel adjustments by those utilities that burn fuel to generate electric power.

The bill also specifies procedures to be employed when the Commission cannot or does not act before the adjustment would otherwise go into effect under the fuel adjustment clause.

In order to save costs when a hearing is not necessary, the bill requires quarterly hearings unless the increase in the fuel adjustment in a given month exceeds specified limits.

THE SENATE
.....NINTH..... LEGISLATURE, 19 78
STATE OF HAWAII

S.R. NO. 41

Adopted

SENATE RESOLUTION

REQUESTING THE UNITED STATES CONGRESS TO EXEMPT THE STATE OF HAWAII FROM THE FEDERAL MANDATORY REQUIREMENT OF CONVERTING NEW AND EXISTING POWER PLANTS TO COAL AND TO PROVIDE THE STATE OF HAWAII WITH RELIEF FROM THE FUEL OIL PENALTY TAX AND OTHER RESTRICTIVE MEASURES.

WHEREAS, H.R. 8444 and several other national energy bills are currently under consideration by the United States Congress; and

WHEREAS, U.S. Senate and House conferees have agreed to grant Hawaii an exemption from the federal mandatory requirement of converting new and existing power plants to coal in recognition of the State's unique geographic location and the excessive costs involved; and

WHEREAS, H.R. 8444 contains a provision requiring electric utilities in the State of Hawaii to pay a penalty tax of $1.50 per barrel of fuel oil, adjusted upward by inflation factors, commencing in 1983, and it is estimated that in 1983, this penalty tax will amount to more than $30 million for all electric companies and their ratepayers in the State; and

WHEREAS, H.R. 8444 also contains a provision eliminating accelerated depreciation and the investment tax credit on new boilers using fuel oil, commencing in 1977; and

WHEREAS, since the penalty tax as well as the provision providing for the loss of accelerated depreciation and the investment tax credit for new boilers are intended as incentives for utility companies to convert to coal, their applicability to Hawaii is totally inconsistent with the coal conversion exemption for Hawaii already agreed to by the U.S. Senate and House conferees; and

WHEREAS, U.S. Senate and House conferees have not yet reached any decisions on the aforementioned user tax, accelerated depreciation and investment tax credit parts of the energy bill; now, therefore,

S.R. NO. 47

BE IT RESOLVED by the Senate of the Ninth Legislature of the State of Hawaii, Regular Session of 1978, that the United States Congress is requested to approve the U.S. Senate-House conferees' decision to exempt Hawaii from the federal mandatory requirement of converting new and existing power plants to coal; and

BE IT FURTHER RESOLVED that the United States Congress and the U.S. Senate-House Conference Committee is requested to give favorable consideration to providing the State of Hawaii with relief from the fuel oil penalty user tax as well as the loss of accelerated depreciation and investment tax credit on new boilers using fuel oil; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of Hawaii's delegation to the United States Congress.

OFFERED BY:

1/19/78

SENATE BILL No. 1169
(81r4224)

Introduced by ~~Senator Bozick~~ Senators Bozick, Wiser, Mason, Thomas, and the Administration

Read and Examined by Proofreader:

_____
Proofreader.

_____
Proofreader.

Sealed with the Great Seal and presented to the Acting Governor, for his approval this_____day of_____ at_____o'clock,_____M.

_____
President.

CHAPTER 173

AN ACT concerning

Public Service Commission - Fuel and Purchased Power Rate Adjustments

FOR the purpose of providing more definite standards for the Public Service Commission to evaluate whether fuel and purchased power rate adjustments are justified; providing for separate standards concerning electric ~~utility~~ companies that produce or generate power and whose gross annual revenues exceed $25,000,000; and generally relating to fuel and purchased power rate adjustments.

BY repealing and reenacting, with amendments,

Article 78 - Public Service Commission Law
Section 54
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

Article 78 - Public Service Commission Law
Section 54D
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

BY adding to

Article 78 - Public Service Commission Law
Section 54F
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 78 - Public Service Commission Law

54.

The Commission may when it deems necessary [allow any gas or electric company to establish a sliding scale for the automatic adjustment of charges only for the cost of purchased or leased fuel to the extent that the cost is determined by factors beyond the control of the company and may allow any nongenerating electric company to establish a sliding scale for purchase power cost adjustment. The Commission may allow any gas or electric company to automatically adjust charges for any rate change approved by the Federal Power Commission or any State or federal agency and may allow automatic reimbursement for any State or local tax or surcharge. No such scale shall be effective, however, until filed with the Commission subject to the provisions of §54D; and nothing in this section shall be construed as derogating in any respect from the paramount jurisdiction of the Commission over the rates of such companies], AND IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 54D AND SECTION 54F OF THIS ARTICLE, PERMIT A GAS OR ELECTRIC UTILITY TO ESTABLISH A SLIDING SCALE FOR THE ADJUSTMENT OF ITS FUEL COSTS, COSTS OF PURCHASED POWER, OR COSTS OF PURCHASED GAS.

54D.

(A) Any gas or electric ~~company~~ UTILITY which directly passes on to its customers any change in its fuel costs ~~OR~~, COSTS OF PURCHASED POWER OR COSTS OF PURCHASED GAS is required each month to verify and justify the adjusted [fuel] costs to the Commission. The Commission shall conduct a public EVIDENTIARY hearing [in the service area affected] no less frequently than once every six months on these changes. The Commission shall order a ~~company~~ UTILITY to charge off and amortize, by means of a temporary decrease of rates any charges it finds were unjustified [by

determining that the company has improperly calculated the charge, has failed to use proper fuel procurement practices, or has used this charge to the detriment of the public.] UPON THE FAILURE OF THE COMPANY TO SHOW THAT ITS CHARGES WERE BASED SOLELY ON INCREASED FUEL PURCHASED POWER OR PURCHASED GAS COSTS OR UPON THE FAILURE OF THE COMPANY TO FOLLOW COMPETITVE PRACTICES IN THE PROCUREMENT AND PURCHASING OF SAID FUEL, PURCHASED POWER, OR PURCHASED GAS OR UPON A SHOWING THAT THE COMPANY WAS ~~REASONABLE~~ UNREASONABLE IN ITS FUEL PROCUREMENT AND PURCHASING PRACTICES.

~~(B) THIS SECTION SHALL APPLY TO ALL PURCHASED POWER ADJUSTMENT CLAUSES, ALL PURCHASED GAS ADJUSTMENT CLAUSES, AND TO ELECTRIC FUEL RATE ADJUSTMENT CLAUSES OF THOSE ELECTRIC PUBLIC UTILITY COMPANIES NOT SUBJECT TO THE PROVISIONS OF § 54F.~~

(B) THIS SECTION SHALL APPLY TO ELECTRIC FUEL RATE ADJUSTMENT CLAUSES OF THOSE ELECTRIC PUBLIC UTILITY COMPANIES NOT SUBJECT TO THE PROVISIONS OF SECTION 54F, AND TO ALL PURCHASED POWER ADJUSTMENT CLAUSES AND ALL PURCHASED GAS ADJUSTMENT CLAUSES.

54F.

(A) THE PROVISIONS OF THIS SECTION SHALL APPLY ONLY TO ELECTRIC ~~UTILITY~~ COMPANIES THAT PRODUCE OR GENERATE POWER AND WHOSE GROSS ANNUAL REVENUES EXCEED $25,000,000.

(B) AN ELECTRIC ~~PUBLIC UTILITY~~ COMPANY MAY HAVE AS PART OF ITS RATES TO ALL ITS CUSTOMERS A SEPARATELY STATED, ZERO-BASED, FUEL RATE WHEREIN IT CHARGES FOR ITS ACTUAL COSTS OF FUEL COMPUTED ON A KILOWATT-HOUR BASIS.

(C) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS ARTICLE, UPON APPLICATION BY AN ELECTRIC ~~PUBLIC UTILITY~~ COMPANY, ~~AS DEFINED IN~~ MEETING THE CRITERIA OF SUBSECTION (A) OF THIS SECTION, FOR PERMISSION AND AUTHORITY TO ~~INCREASE~~ ADJUST ITS ~~ACTUAL~~ RATES AND CHARGES BASED SOLELY UPON THE ~~INCREASED~~ ACTUAL COST OF FUEL ~~USED IN THE GENERATION OR PRODUCTION OF ELECTRIC POWER OR THE SALE OR PURCHASE OF ENERGY ON AN ECONOMIC DISPATCH BASIS~~ PER KILOWATT HOUR SOLD, THE COMMISSION ~~SHALL~~ MAY SUSPEND SUCH PROPOSED ~~INCREASE~~ ADJUSTMENT FOR A PERIOD NOT TO EXCEED ~~90~~ 30 DAYS BEYOND THE FILING OF SUCH APPLICATION TO ~~INCREASE~~ ADJUST RATES. THE COMMISSION SHALL PROMPTLY INVESTIGATE APPLICATIONS FILED PURSUANT TO THIS SUBSECTION AND SHALL ~~HOLD A~~ COMMENCE PUBLIC EVIDENTIARY ~~HEARING WITHIN 30~~ HEARINGS WITHIN 30 DAYS OF THE DATE OF THE FILING OF THE APPLICATION TO CONSIDER SUCH APPLICATION, AND SHALL BASE ITS ORDER UPON THE RECORD ADDUCED AT THE ~~HEARING~~ HEARINGS. THE COMMISSION'S FINAL ORDER SHALL BE ISSUED PROMPTLY BUT IN NO EVENT LATER THAN 90 DAYS AFTER THE FILING OF THE APPLICATION. IF THE SUSPENSION PERIOD TERMINATES BEFORE THE FINAL ORDER IS ISSUED, THE ORDER SHALL PROVIDE FOR REFUNDS

OF ANY DIFFERENCE BETWEEN THE RATE THE UTILITY CHARGED AND THE RATE ESTABLISHED BY THE FINAL ORDER.

(D) ALL FUEL RATE ~~ADJUSTMENT INCREASES~~ ADJUSTMENTS AS PRESENTLY APPROVED BY THE COMMISSION SHALL FULLY TERMINATE EFFECTIVE ~~NOVEMBER~~ OCTOBER 1, 1978 OR UPON ISSUANCE OF A FINAL ORDER BY THE COMMISSION PURSUANT TO THIS SECTION, WHICHEVER SHALL FIRST OCCUR.

(E) ~~AN ELECTRIC PUBLIC UTILITY HAVING A DECREASE IN ITS COST OF FUEL SHALL PROMPTLY FILE AN APPLICATION TO DECREASE ITS FUEL RATE CHARGES.~~ THE FUEL RATE MAY BE ADJUSTED IN ACCORDANCE WITH THIS SECTION ONLY IF THE ~~ACTUAL SUM OF THE COMPONENTS OF THE~~ CURRENTLY CALCULATED ACTUAL FUEL RATE IS MORE THAN 5 PERCENT ABOVE OR BELOW THE SUM OF THE COMPONENTS OF THE FUEL RATE THEN IN EFFECT. AN ELECTRIC ~~PUBLIC UTILITY~~ COMPANY HAVING A DECREASE OF MORE THAN 5 PERCENT SHALL PROMPTLY FILE AN APPLICATION TO ADJUST ITS FUEL RATE DOWNWARD. TO THE EXTENT THAT ACTUAL ACCUMULATED FUEL COSTS ARE NOT RECOVERED UNDER THIS SECTION, THEY MAY BE DEFERRED AS AN OPERATING EXPENSE AND BE RECOVERED IN ANY BASE RATE PROCEEDING IF THE COMMISSION FINDS THAT ~~RECOVERY IS~~ THE COSTS WERE JUSTIFIED AND RECOVERY OF THE COSTS IS CONSISTENT WITH THE PROVISIONS OF THIS ARTICLE GOVERNING RATES.

(F) THE ISSUES TO BE DETERMINED, AND UPON WHICH THE COMMISSION SHALL MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS BASED THEREON, SHALL BE WHETHER ~~THE APPLICANT HAS REASONABLY TAKEN INTO ACCOUNT IN ITS PROPOSED CHARGES, SOLELY THE CHANGES IN THE COST OF FUEL AND WHETHER THE APPLICANT HAS BEEN REASONABLE IN ITS FUEL PROCUREMENT AND PURCHASING PRACTICES.~~:

(1) ONLY CHANGES IN THE ACTUAL COSTS OF THE COMPONENTS OF THE FUEL RATE ARE INCLUDED IN THE PROPOSED CHANGE;

(2) THE APPLICANT HAS USED THE MOST ECONOMICAL MIX OF ALL TYPES OF GENERATION AND PURCHASE;

(3) THE APPLICANT HAS MADE EVERY REASONABLE EFFORT TO MINIMIZE FUEL COSTS AND FOLLOWED COMPETITIVE PROCUREMENT PRACTICES;

(4) THE APPLICANT HAS MAINTAINED THE PRODUCTIVE CAPACITY OF ALL ITS GENERATING PLANTS AT A REASONABLE LEVEL.

(G) THE COMMISSION MAY DISALLOW SUCH INCREASED COSTS AS IT FINDS WERE A RESULT OF THE APPLICANT'S FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS ~~SUBSECTION~~ SECTION, UNLESS CAUSE BE SHOWN TO THE CONTRARY.

~~(G)~~ (H) THE APPLICANT'S PROPOSED INITIAL DIRECT TESTIMONY AND EXHIBITS SHALL BE FILED AT THE SAME TIME THE APPLICATION IS FILED.

~~(H)~~ (I) THE APPLICANT SHALL HAVE THE BURDEN OF PROVING THAT IT HAS COMPLIED WITH THE ~~REQUIREMENT~~ REQUIREMENTS OF THIS SECTION.

~~(I)~~ (J) THE COMMISSION SHALL REPORT TO THE GENERAL ASSEMBLY BY JANUARY 15, 1979 AND PROPOSE SUCH LEGISLATION AS MAY BE DESIRABLE REGARDING PURCHASED GAS ADJUSTMENT CLAUSES, PURCHASED POWER ADJUSTMENT CLAUSES, AND FUEL RATES OF ELECTRIC PUBLIC UTILITY COMPANIES THAT PRODUCE OR GENERATE POWER AND WHOSE GROSS ANNUAL OPERATING REVENUES DO NOT EXCEED $25,000,000.

(K) (1) THE COMMISSION SHALL CONDUCT, OR CAUSE TO BE CONDUCTED, ANNUAL AUDITS OF THE FUEL PROCUREMENT AND PURCHASING PRACTICES OF ALL UTILITIES SUBJECT TO THE PROVISIONS OF THIS SECTION.

(2) THE DEPARTMENT OF FISCAL SERVICES MAY CONDUCT AUDITS AND STUDIES OF THE FUEL PROCUREMENT AND PURCHASING PRACTICES OF ANY UTILITY AND MAY EXAMINE AUDITS BY THE COMMISSION UNDER THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~July~~ June 1, 1978.

Approved:

_____
Acting Governor.

_____
President of the Senate.

_____
Speaker of the House of Delegates.

MISSISSIPPI LEGISLATURE

REGULAR SESSION 1978
HRTSW03

By: Representative Hendry

Public Utilities

APPROVED BY THE GOVERNOR

HOUSE BILL NO. 581
(As sent to Governor)

AN ACT TO AMEND SECTION 77-3-41, MISSISSIPPI CODE OF 1972, TO LIMIT THE ITEMS OF FUEL COST THAT CAN BE INCLUDED IN A PUBLIC UTILITIES FUEL ADJUSTMENT CLAUSE; TO MANDATE AND DIRECT THE PUBLIC SERVICE COMMISSION TO CAUSE A FULL AND COMPLETE CONTINUOUS AUDIT OF ALL PUBLIC UTILITIES FUEL ADJUSTMENT CLAUSES; TO REQUIRE ANNUAL REPORTS TO THE MISSISSIPPI LEGISLATURE; TO AMEND SECTION 77-3-67, MISSISSIPPI CODE OF 1972, TO ALLOW PUBLIC UTILITIES TO APPEAL RULINGS OF THE COMMISSION IN THE CHANCERY COURT DISTRICT IN WHICH THE MAIN OFFICE IS LOCATED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 77-3-41, Mississippi Code of 1972, is amended as follows:

77-3-41. (1) Whenever the commission, after hearing had on reasonable notice, finds that the existing rates in effect and collected by any public utility are materially excessive or insufficient or unreasonably discriminatory, or in anywise in violation of any provision of law, the commission shall determine the just and reasonable rates which will yield a fair rate of return to the utility for furnishing service, which rates will thereafter be observed and in force. Said rates shall thereupon become the legal rates to be charged and paid until changed, unless suspended as herein provided.

(2) The commission shall have power, when deemed by it necessary to prevent injury to the business or interest of the people or any public utility of this state in case of any emergency, to permit any public utility to temporarily alter, amend, or suspend any existing rates, schedules and order relating

to or affecting any public utility or part of any public utility in this state except as provided in subsection (3) of this section.

(3) No electric public utility shall increase its rate or rate schedule in addition to its base rate as a result of what is commonly referred to as "fuel adjustment clauses" increase or "fuel adjustment riders" if the application of such clause or rider shall result in ultimate cost recovery exceeding the actual cost of fuel burned or consumed in its electrical generating facilities and the cost of purchased energy.

For the purpose of such fuel adjustment clause or rider, the cost of fuel as used herein shall include only the actual cost of the fuel and its transportation and such other cost items which are as of the date of this act allowed by the Federal Energy Regulatory Commission for inclusion in wholesale fuel adjustment clauses under its jurisdiction. In addition thereto fuel cost may include direct costs associated with burning the fuel at the generating plant such as fuel handling expenses and the cost of fuel sampling and analysis.

The Mississippi Public Service Commission is hereby directed to cause a continuous monitoring of and a complete audit, as necessary, but not less than annually, of all fuel purchases for which fuel adjustment clauses or riders have been placed in effect prior to and after the passage of this act which shall totally verify fuel costs as might be consumed in electrical generating plants and all purchased energy of said public utilities in Mississippi with said audit being based upon generally accepted auditing standards which would accurately provide detailed information as to the actual monthly utility fuel costs. The Public Service Commission is hereby directed to promulgate rules

and regulations, not inconsistent with the laws of the State of Mississippi, defining allowable costs for inclusion in fuel adjustments. Such rules and regulations shall be spread upon the minutes of the commission.

The audits required by this section shall extend to the fuel acquisition activities of any corporation which is owned in whole or in part by an electric public utility under the jurisdiction of the commission or owned in whole or in part by a public utility holding company which is the parent company of any electric public utility under the jurisdiction of the commission. Electric public utilities under the jurisdiction of this commission will not purchase fuel from a company or corporation which is owned in whole or in part by that electric public utility or by the parent company of that electric public utility unless the selling company or corporation assents to audits as provided for under this act.

Upon receipt of each audit report, the Chief Accountant of the Public Service Commission shall review the report and furnish the commissioners with a written summary of, and his comments on, the report. The commission shall meet within one (1) week after receipt of the chief accountant's summary, and shall spread upon the minutes of the commission that it has reviewed said summary and further shall describe any action which it takes regarding the audit report or the fact that no action was required.

The Public Service Commission shall provide a full and complete report of said audits to the Legislature on or before January 15 of each year. The report shall include certification by the commission that the information is true and correct as well as other clarifications of the audit information and any recommendations for correcting imperfections in statutes relative to existing fuel or purchased gas adjustments.

Nothing in this act shall prohibit the Mississippi Public Service Commission from entering an order in a declared emergency allowing public utilities under such emergency circumstances to adjust their rates for a period not to exceed sixty (60) days upon declaration of said emergency. There shall be a full hearing and a complete and total accounting as to total costs of said Public Service Commission order to public utilities customers, with detailed accounting of such emergency fuel adjustment clause order being made available to the public.

SECTION 2. Section 77-3-67, Mississippi Code of 1972, is amended as follows:

77-3-67. (1) In addition to other remedies now available at law or in equity any party aggrieved by any final finding, order or judgment of the commission shall have the right, regardless of the amount involved, of appeal to the Chancery Court, First Judicial District of Hinds County, Mississippi; provided, however, that if the appealing party be a public utility as defined in Section 77-3-3, subsection (3) and subsection (4), Mississippi Code of 1972, then such appeal shall be made to the chancery court of judicial district thereof in which the principal place of business of the appealing utility in the State of Mississippi is located. If the court shall find that the appeal has been to the improper venue then the cause shall not be dismissed for such reason but shall be transferred to such proper venue. If an application for rehearing has been filed, an appeal must be filed within thirty (30) days after the application for rehearing has been refused or deemed refused because of the commission's failure to act thereon within the time specified in Section 77-3-65 or, if the application is granted, within thirty (30) days after the rendition of the decision on rehearing. If an application for

rehearing has not been filed, an appeal must be filed within thirty (30) days after the entry of the commission's order. Every appeal shall state briefly the nature of the proceedings before the commission, and shall specify the order complained of. Any person whose rights may be directly affected by said appeal may appear and become a party, or the court may upon proper notice order any person to be joined as a party.

(2) Upon the filing of an appeal the clerk of the chancery court shall serve notice thereof upon the commission, whereupon the commission shall, within sixty (60) days (or within such additional time as the court may for cause allow) from the service of such notice, certify to the chancery court the record in the case, which record shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case. However, the parties and the commission may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal.

(3) No new or additional evidence shall be introduced in the chancery court but the case shall be determined upon the record and evidence transferred.

(4) The court may hear and dispose of the appeal in term time or vacation and the court may sustain or dismiss the appeal, modify or vacate the order complained of in whole or in part, as the case may be. In case the order is wholly or partly vacated the court may also, in its discretion, remand the matter to the commission for such further proceedings, not inconsistent with the court's order as, in the opinion of the court, justice may require. The order shall not be vacated or set aside either in whole or in part, except for errors of law, unless the court finds

that the order of the commission is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the commission, or violates constitutional rights.

SECTION 3. This act shall take effect and be in force from and after July 1, 1978.

s/lh

***H. B. NO. 581
REQUEST NO. .78HB13.ASG
PAGE NO. 6

CHAPTER 636

An Act to amend the Code of Virginia by adding a section numbered 56-249.6, relating to the recovery of fuel costs of electric utilities.

[H 375]

Approved APR 7 1979

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-249.6 as follows:

§ 56-249.6. Recovery of fuel costs.—The State Corporation Commission shall, on or before November one, nineteen hundred seventy-eight, direct each electric utility which purchases fuel for the generation of electricity to submit to the Commission its estimate of fuel costs, including the fuel component of purchased power, for a one-year period beginning January one, nineteen hundred seventy-nine, along with proposed tariff provisions designed to effect recovery of the estimated amount from customers within the same period. Upon investigation of such proposal and hearings in accordance with law, the Commission shall, prior to the beginning of the one-year period, direct each company to place in effect tariff provisions designed to recover, over that period, the fuel costs determined by the Commission to be appropriate for the period, and the Commission shall provide for quarterly review of the actual recovery by the electric utility under such tariff provisions so that any over-recovery or under-recovery can be corrected in a timely fashion.

At each of the proceedings herein prescribed, the Commission shall consider the appropriateness of all estimated fuel costs, and at each of the review proceedings herein prescribed it shall consider the appropriateness of all experienced fuel costs. The Commission shall disallow recovery of any fuel costs that it finds without just cause to be the result of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of the utility resulting in unreasonable fuel costs, giving due regard to reliability of service, economical generation mix, generating experience of comparable facilities, and minimization of the total cost of providing service.

Prior to the end of the one-year period and each succeeding annual period, the Commission shall conduct appropriate proceedings to determine the estimated fuel costs to be recovered in the next succeeding period.

The Commission is authorized to promulgate, in accordance with the provisions of this section, all rules and regulations necessary to allow the recovery by electric utilities of all of their prudently incurred fuel costs including the fuel component of purchased power, as precisely and promptly as possible, with no over-recovery or under-recovery, in a manner that will tend to assure public confidence and minimize abrupt changes in charges to consumers.

House Bill No. 5153

PUBLIC ACT NO. 78-184

AN ACT CONCERNING EMERGENCY FUEL ASSISTANCE TO LOW INCOME FAMILIES NOT RECEIVING STATE OR LOCAL ASSISTANCE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) The commissioner of community affairs, in consultation with the secretary of the office of policy and management, the commissioner of social services and the commissioner on aging, or their designees, shall adopt regulations, in accordance with chapter 54 of the general statutes, not later than October 1, 1978, covering the distribution of state funds allotted to the department of community affairs for an emergency fuel assistance program on behalf of low income families who are not beneficiaries of the aid to families with dependent children, aid to families with dependent children-unemployed fathers or the general assistance programs. The regulations shall incorporate the following provisions: (1) Only households with incomes no higher than one hundred twenty-five per cent of the federal community services administration poverty guidelines for non-farm recipients shall be eligible for participation in the program; and (2) such assistance to eligible families shall not exceed one hundred dollars per family during the fiscal year ending June 30, 1979, and shall be subject to the availability of funds appropriated for such purposes.

Sec. 2. This act shall take effect July 1, 1978.

Certified as correct by

_____

Legislative Commissioner.

_____

Clerk of the Senate.

_____

Clerk of the House.

Approved _____, 1978

_____

Governor.

SPONSOR Sen. Kearns & Rep. Miller

COMMITTEE _____

DELAWARE STATE SENATE

129TH GENERAL ASSEMBLY

SECOND SESSION-1978

SENATE BILL NO. 715 JUN 28 1978

JUL 12 1978 61 528

AN ACT TO AMEND CHAPTER 86, TITLE 29, SUB CHAPTER III, DELAWARE CODE RELATING TO THE DEPARTMENT OF COMMUNITY AFFAIRS AND ECONOMIC DEVELOPMENT, OFFICE OF THE PUBLIC ADVOCATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 86, Title 29, Sub Chapter III, Section 8642 (e) to read as follows:

"(e) To have the same access to and the same right to inspect any and all books, accounts, records, memoranda, property, plant facilities and equipment of the public utilities as is afforded by law or by rule of the Public Service Commission to any other party in interest."

Section 2. Amend Chapter 86, Title 29, Sub Chapter III, Section 8643 by striking subsection (b) in its entirety and inserting in lieu thereof a new subsection (b) which shall read as follows:

"(b) The Public Advocate shall be entitled to be present and be heard at any public meeting of the Public Service Commission."

SYNOPSIS

This bill would clarify that the access the Public Advocate would have to information from public utilities would be the same access as is afforded to any other party in interest and would clarify that the Public Advocate is entitled to be present and heard at the public hearings and public meetings of the Commission.

Author: Sen. Kearns

AN ACT to amend Section 49a of "An Act concerning public utilities", approved June 29, 1921, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 49a of "An Act concerning public utilities", approved June 29, 1921, as amended, is amended to read as follows:

(Ch. 111 2/3, par. 49a)

Sec. 49a. Except as provided in Section 49b, no public utility shall abandon or discontinue any service without first having secured the approval of the commission, except in case of assignment, transfer, lease or sale of the whole or any part of its franchises, licenses, permits, plant, equipment, business, or other property to any political subdivision or municipal corporation of this State. In granting its approval, the commission may impose such terms, conditions or requirements as in its judgment are necessary to protect the public interest. Provided, however, that any public utility abandoning or discontinuing service in pursuance of authority granted by the commission shall be deemed to have waived any and all objections to the terms, conditions or requirements imposed by the commission in that regard. Provided, further, that nothing in this section shall be construed to limit the right of a public utility to discontinue service to individual patrons in accordance with the effective rules, regulations, and practices of such public utility.

The commission, after a hearing upon its own motion or upon petition of any public utility, shall have power by order to authorize or require any public utility to curtail or discontinue service to individual customers or classes thereof, or for specific purposes or uses, and otherwise to regulate the furnishing of service, provided that preference

for service shall be given to those customers serving essential human needs and governmental agencies performing law enforcement functions, whenever and to the extent such action is required by the convenience and necessity of the public during time of war, invasion, insurrection or martial law, or by reason of a catastrophe, emergency, or shortage of fuel, supplies or equipment employed or service furnished by such public utility; provided, however, that an interim order, effective for a period not exceeding 15 days, may be made without a hearing if the circumstances do not reasonably permit the holding of a hearing. Orders for the curtailment or discontinuance of service pursuant to this paragraph shall not be continued in effect for any period beyond that which is reasonably necessary, shall be vacated by the commission as soon as public convenience and necessity permit, and shall include such arrangements for substitute service in the interim as the commission in its judgment may impose. Every such order, during the period it is in effect and for such further period, if any, as the commission may provide, shall have the effect of suspending the operation of all prior orders or parts of orders of the commission inconsistent therewith. No public utility shall be held liable for any damage resulting from any action taken, or any omission to act, pursuant to or in compliance with any order under this paragraph for the curtailment or discontinuance of service unless such order was procured by the fraud of the public utility.

Section 2. This amendatory Act takes effect upon its becoming a law.

HOUSE BILL No. 2531

AN ACT relating to municipally owned utilities; concerning security deposits for the payment of bills for services rendered; amending K.S.A. 1977 Supp. 12-822, and repealing the existing section.

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

Section 1. K.S.A. 1977 Supp. 12-822 is hereby amended to read as follows: 12-822. It shall be unlawful for any public or municipally owned utility doing business in the state of Kansas to receive or collect a deposit from any customer as security for the payment of bills for service rendered, unless such public utility shall keep a separate account of the date on which such deposit is received, the name of the depositor, and the amount thereof, and shall pay to the customer making the deposit interest at the rate of ~~three~~ *not less than five* percent per annum, such interest to be credited *once a year or credited* on the first day of January succeeding such deposit and on the first day of January thereafter, ~~and shall be payable at the office of the utility, in cash, on demand of the depositor~~ *to the credit of such customer's outstanding account, unless, prior to the first day of January, such customer shall request the payment of such interest in cash, in which event payment of interest shall be made as requested.* Any interest credited shall be subject to call and payment at any time, but shall not draw interest.

The amount of deposit required shall at all times be reasonable, and shall be based upon the value of the maximum service rendered; and such advance deposit, together with the interest due thereon, may be applied to the payment of any accrued bills, or bills due on discontinuance of service. Deposits by customers so held as security for service or for meters at the taking effect of this act shall draw interest from that date and be credited and paid as herein provided. Any municipally owned utility doing business in the state of Kansas may invest; ~~not to exceed eighty percent (80%) of the total deposit~~ money received as customers' deposits as herein provided, in investments authorized by K.S.A. *1977 Supp.* 12-1675, and amendments thereto, in the manner prescribed therein or in bonds of the state of Kansas, or general improvement bonds of cities of the first and second class, or bonds of any county wherein a city of the first or second class is located within the state, or bonds of the boards of education in cities of the first class of this state, or bonds issued or guaranteed by the United States government, *or in savings accounts of commercial banks or trust companies.*

Any amount of security deposit, and the accrued interest thereon remaining in the account of any customer of a municipally owned utility who has discontinued service with such utility shall be placed in the operating fund of such utility, upon the following conditions: (a) Such money has remained on deposit with the municipal utility for a period of more than three (3) years from the date service was discontinued;

(b) no demand for such money has been made at any time during the three-year period;

(c) the whereabouts of the person to whose account the money is credited is unknown and a reasonable effort has been made to determine the same; and

(d) following the expiration of the three-year period, the utility has published, once each week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the utility is located, a notice listing any person whose deposit remains on account, and that a demand for such money must be made within sixty (60) days. Sixty (60) days after the last publication of such notice, any security deposits remaining in the account of any such customer shall be placed in the operating fund of such utility.

Sec. 2. K.S.A. 1977 Supp. 12-822 is hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE and passed that body.

_____

HOUSE adopted
Conference Committee Report_____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report_____

_____
President of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.

CHAPTER 185

(S.B. 279)

AN ACT relating to energy cost assistance.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

(1) There is established within the department for human resources an energy cost assistance program for making money payments to or on behalf of citizens of the Commonwealth for the purpose of purchasing or supplementing the cost of energy for household use.

(2) Citizens of the Commonwealth who incur expenses for providing energy by purchase from suppliers, by their own labors, or through the payment of rent, whether or not included in a charge for other goods and services, which includes the cost of energy supplied to premises occupied as their principal residence shall be eligible to receive the benefit of the payments to themselves or to providers of energy to such household if:

(a) The citizen is sixty-two (62) years of age or older and has or is a member of a family having a gross income equal to or less than one hundred twenty-five percent (125%) of the poverty level of income for an individual or family of that size designated by the Community Services Administration of the United States government; or

(b) The citizen is blind or permanently and totally disabled and receiving supplemental security income benefits under the social security act or is blind or permanently and totally disabled and is currently eligible for medicaid benefits under the medical assistance program.

(3) The department shall establish by regulation a schedule of payments and benefit levels under this program to be based on income, resources and family size. In no event shall payments be made to or on behalf of any person or family whose gross income from all sources exceeds one hundred twenty-five percent (125%) of the poverty level of income as provided for such individuals or family by the Community Services Administration of the United States government.

(4) Payments made under this Act shall be for a period of four (4) months during each twelve (12) month period for which funds are available. At its discretion and to insure the proper application of the funds appropriated for this purpose, the department may elect to make payments to vendors or suppliers or jointly to vendors and eligible recipients.

Section 2. The department for human resources shall report to the interim joint committee for public utilities and transportation on the implementation of this program. The report shall include the number of recipients, the amount expended, and any other relevant data, and shall be made to the committee before July 1, 1979 and again before July 1, 1980.

Section 3. There is appropriated from the general fund to the department for human resources for the energy cost assistance program the sum of five million dollars ($5,000,000) for the fiscal year 1978-79 and the sum of five million dollars ($5,000,000) for the fiscal year 1979-80. Any unexpended balance of the five million

dollars ($5,000,000) appropriated for this purpose in fiscal year 1978-79 shall not lapse and shall be carried forward and added to the five million dollars ($5,000,000) appropriated for this purpose in 1979-80. Upon expenditure of these appropriations, the energy cost assistance program shall terminate.

Approved March 29, 1978

SENATE BILL No. 735
(81r2921)

Introduced by Senators Hoyer, Bozick, McGuirk, Denis, Douglass, Dorman, Conroy, Curran, Mitchell, Miller, and O'Reilly

Read and Examined by Proofreader:

_____
Proofreader.

_____
Proofreader.

Sealed with the Great Seal and presented to the Acting Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

_____
President.

CHAPTER 497

AN ACT concerning

Public Service Commission - Electric Metering and Ignition Devices

FOR the purpose of providing for the installation and regulation of electric metering and submetering in apartment houses ~~and~~ , condominiums, and cooperatives by the Public Service Commission; and requiring the Commission to develop specifications for certification of ignition devices for gas appliances by a certain date; and providing for the handling of certain complaints arising out of this Act.

BY adding to

Article 78 - Public Service Commission Law
Section 54F
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

Article 78 - Public Service Commission Law
Section 75B
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 78 - Public Service Commission Law

54P.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "APARTMENT HOUSE" MEANS A BUILDING OR BUILDINGS CONTAINING MORE THAN TWO DWELLING UNITS ALL OF WHICH ARE RENTED PRIMARILY FOR NONTRANSIENT USE, WITH RENTAL PAID AT INTERVALS OF ONE WEEK OR LONGER. THE TERM INCLUDES RESIDENTIAL CONDOMINIUMS AND COOPERATIVES, WHETHER RENTED OR OWNER OCCUPIED.

(3) "DWELLING UNIT" MEANS A ROOM OR ROOMS SUITABLE FOR OCCUPANCY AS A RESIDENCE CONTAINING KITCHEN AND BATHROOM FACILITIES.

(4) "SUBMETERING" MEANS THE INSTALLATION OF EQUIPMENT FOR THE PURPOSE OF DETERMINING THE ACTUAL USE OF ELECTRICITY PER RESIDENTIAL UNIT IN APARTMENT HOUSES AS DEFINED IN (A)(2) OF THIS SECTION.

(B) NOTWITHSTANDING ANY LAW TO THE CONTRARY, THE PUBLIC SERVICE COMMISSION SHALL PROMULGATE RULES, REGULATIONS, AND STANDARDS UNDER WHICH ANY OWNER, OPERATOR, OR MANAGER OF AN APARTMENT HOUSE WHICH IS NOT INDIVIDUALLY METERED FOR ELECTRICITY FOR EACH DWELLING UNIT MAY INSTALL SUBMETERING EQUIPMENT FOR EACH INDIVIDUAL DWELLING UNIT FOR THE PURPOSE OF FAIRLY ALLOCATING THE COST OF EACH INDIVIDUAL DWELLING UNIT'S ELECTRICAL CONSUMPTION. EXCEPT IN UNITS CONSTRUCTED, MANAGED, OPERATED, DEVELOPED, OR SUBSIDIZED BY A LOCAL HOUSING AUTHORITY AS ESTABLISHED UNDER ARTICLE 44A, IF, DURING THE TERM OF ANY LEASE OR AGREEMENT WHICH INCLUDES THE COST OF ELECTRICITY CONSUMED FOR THE DWELLING UNIT, THE OWNER, OPERATOR, OR MANAGER ELECTS TO INSTALL SUBMETERS, THE OWNER, OPERATOR, OR MANAGER SHALL DETERMINE THE AMOUNT OF ELECTRIC COSTS SAVED AND PASS THIS AMOUNT ON TO THE OCCUPANT OF THE DWELLING UNIT AS A REDUCTION IN RENT OR PAYMENT.

(C) IN ADDITION TO OTHER APPROPRIATE SAFEGUARDS FOR THE ~~TENANT~~ OCCUPANT OF THE DWELLING UNIT, THESE RULES AND REGULATIONS SHALL REQUIRE THAT:

(1) AN APARTMENT HOUSE OWNER, OPERATOR, OR MANAGER MAY NOT IMPOSE ON ~~THE TENANT ANY CHARGES, OVER AND ABOVE THE COST PER KILOWATT HOUR WHICH IS CHARGED BY THE UTILITY COMPANY TO THE OWNER, INCLUDING ANY~~ ANY DWELLING UNIT ANY UTILITY COST EXCEPT CHARGES AUTHORIZED BY THE PUBLIC SERVICE COMMISSION AND ACTUALLY IMPOSED BY THE UTILITY UPON THE OWNER, OPERATOR, OR MANAGER, WHICH CHARGES HAVE BEEN ALLOCATED AMONG THE DWELLING UNITS IN THE APARTMENT BUILDING IN PROPORTION TO THE ACTUAL USAGE OF KILOWATT HOURS BY THE DWELLING UNIT~~, LOCAL UTILITY TAX IF ANY~~. HOWEVER, AN ADDITIONAL SERVICE CHARGE NOT TO EXCEED $1 PER UNIT PER MONTH MAY BE COLLECTED TO COVER ADMINISTRATIVE COSTS AND BILLING; AND

(2) THE APARTMENT HOUSE OWNER, OPERATOR, OR MANAGER MAINTAIN ADEQUATE RECORDS REGARDING SUBMETERING AND MAKE SUCH RECORDS AVAILABLE FOR INSPECTION BY THE ~~TENANT~~ OCCUPANT OF THE DWELLING UNIT DURING REASONABLE BUSINESS HOURS.

(D) ANY RULE, REGULATION, OR STANDARD PROMULGATED BY THE COMMISSION PURSUANT TO THIS SECTION SHALL BE DEEMED TO HAVE BEEN ENTERED OR ADOPTED UNDER ARTICLE 78, AND FOR PURPOSES OF ENFORCEMENT, ~~BOTH UTILITY COMPANIES AND THE OWNERS, OPERATORS, OR MANAGERS OF APARTMENT HOUSES INCLUDED IN THIS SECTION~~ UTILITY COMPANIES ARE SUBJECT TO ENFORCEMENT PURSUANT TO § 62 AND § 101 OF THIS ARTICLE. ALL SUBMETERING EQUIPMENT SHALL BE SUBJECT TO THE SAME RULES, REGULATIONS, AND STANDARDS ESTABLISHED BY THE PUBLIC SERVICE COMMISSION FOR ACCURACY, TESTING, AND RECORD KEEPING OF METERS INSTALLED BY ELECTRIC UTILITIES AND SHALL BE SUBJECT TO THE METER REQUIREMENTS OF § 51 AND § 52 OF THIS ARTICLE.

(E) IN IMPLEMENTING THIS SECTION, AN APARTMENT HOUSE MAY NOT BE CONSIDERED A PUBLIC SERVICE COMPANY ENGAGED IN THE BUSINESS OF DISTRIBUTING OR RESELLING ELECTRICITY, AND THE APARTMENT HOUSE SHALL BE LIMITED IN ALL RESPECTS TO USING METERING EQUIPMENT FOR THE FAIR ALLOCATION OF THE COSTS OF ELECTRIC SERVICE AMONG THE OCCUPANTS USING THE APARTMENT HOUSE IN ACCORDANCE WITH SUBSECTION (C) ABOVE.

(F) ANY COMPLAINT BY AN OCCUPANT OF A DWELLING UNIT AGAINST AN OWNER, OPERATOR, OR MANAGER ARISING OUT OF THIS SECTION MAY BE HANDLED IN THE COUNTY OR MUNICIPAL CORPORATION WHERE THE APARTMENT HOUSE IS LOCATED BY THE COUNTY'S OR MUNICIPAL CORPORATION'S LANDLORD – TENANT COMMISSION, IF ONE EXISTS; IF NOT, THEN BY THE CONSUMER PROTECTION AGENCY OF THE COUNTY OR MUNICIPAL CORPORATION, IF ONE EXISTS; IF NOT, THEN BY THE CONSUMER PROTECTION DIVISION OF THE ATTORNEY GENERAL'S OFFICE.

75B.

(a) (1) In this section the following words have the meanings indicated.

(2) "Gas appliance" means any new residential type furnace, air conditioner, heater, refrigerator, stove, range, dishwasher, dryer, decorative fireplace log, or other similar device, except a water heater which uses a gaseous fuel for operation and is automatically ignited.

(3) "Intermittent ignition device" means an ignition device which is actuated only when the gas appliance is in operation.

(4) "Pilot light" means any gas operated device that remains continually operated or lighted in order to ignite a gas appliance to begin normal operation.

(5) "Person" includes an individual, corporation, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(6) "Commission" means the Public Service Commission.

(b) (1) The Commission, on or before [January] JULY 1, 1979, shall develop in cooperation with affected industry and consumer representatives, the specifications for certification of intermittent ignition devices. The specifications shall:

(i) Result in the conservation of primary energy resources;

(ii) Not significantly affect the price of gas appliances in competition with similar electrical appliances;

(iii) Give due consideration to the initial costs including installation;

(iv) Give due consideration to maintenance costs imposed upon the consumer; and

(v) Include provisions necessary for public health and safety.

(2) The Commission may determine, after demonstration, that there is no feasible alternative means to the use of a pilot light or that the use of a pilot light is necessary for public health and safety.

(c) Within 90 days after an intermittent ignition device has been certified by the Commission, the Commission shall notify all gas appliance manufacturers doing business in this State as to the prohibition of affected pilot lights, and shall direct the manufacturers of the devices available to comply with this section.

(d) (1) A new residential type gas appliance that is equipped with a pilot light may not be sold or installed in this State after an alternative means has been certified by the Commission.

(2) This subsection is operative 24 months after an intermittent ignition device has been demonstrated and certified by the Commission as an alternative means.

(e) (1) The Commission shall create a seal of certification and shall distribute the seal to every manufacturer of gas appliances doing business in this State.

(2) The seal shall be affixed to every new gas appliance equipped with an intermittent ignition device sold in this State.

(f) (1) A person may not distribute, sell, or install in this State any new gas appliance which does not carry the proper seal of certification from the Commission.

(2) This subsection is effective 24 months after an intermittent ignition device has been certified by the Commission.

(g) To carry out the provisions of this section, in addition to powers granted elsewhere in this article, the Commission may:

(1) Designate affected industry and consumer representatives to assist the Commission in developing specifications for certification of intermittent ignition devices;

(2) Issue a seal of certification to be attached to new residential type gas appliances equipped with an intermittent ignition device which meets the specifications of the Commission;

(3) Make periodic inspections of manufacturers and distributors of gas appliances, retail outlets, and contractors or builders at building sites to ensure compliance with this section; and

(4) Bring an action for an injunction pursuant to § 99 of this article to prevent violations of this section.

(h) Any person who knowingly violates any provision of this section is subject to the criminal penalties of § 101 of this article.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

HOUSE BILL No. 2120
(81r3863)

Introduced by Delegates Dyson, Kach, and Bienen

Read and Examined by Proofreader:

_____
Proofreader.

_____
Proofreader.

Sealed with the Great Seal and presented to the Acting Governor, for his approval this_____day of_____ at_____o'clock,_____M.

_____
Speaker.

CHAPTER 788

AN ACT concerning

Public Service Commission – Intervenors

FOR the purpose of prohibiting the Public Service Commission from requiring that ~~an intervenor~~ certain intervenors be represented by an attorney in any proceeding before the Commission.

BY repealing and reenacting, with amendments,

Article 78 – Public Service Commission Law
Section 82B
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 78 – Public Service Commission Law

82B.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

Any person may apply to intervene in any proceeding before the Commission if the application therefor is timely filed. Leave to intervene shall be granted unless the Commission concludes that the interest of the person seeking to intervene is adequately represented by parties to the proceeding or that the issues sought to be raised are irrelevant or immaterial. Intervenors shall have all the rights of a party to the proceeding. THE COMMISSION MAY NOT REQUIRE THAT AN INTERVENOR IN PROPER PERSON BE REPRESENTED BY AN ATTORNEY IN ANY PROCEEDING BEFORE THE COMMISSION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

HOUSE BILL No. 14
(81r0098)

Introduced by Delegates Riley, Bienen, Chamberlain, Dyson, Thomas and Weir

Read and Examined by Proofreader:

_____
Proofreader.

_____
Proofreader.

Sealed with the Great Seal and presented to the Acting Governor, for his approval this_____day of_____ at_____o'clock,_____M.

_____
Speaker.

CHAPTER 860

AN ACT concerning

Public Service Commission - Citizens' Advisory Board

FOR the purpose of creating a Utility Consumer Advisory Panel to advise and assist the Public Service Commission and the people's counsel on certain problems of certain utility consumers; and generally relating to the creation of a Utility Consumer Advisory Panel.

BY adding to

Article 78 - Public Service Commission Law
Section 3A
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 78 - Public Service Commission Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken by amendment.

3A.

(A) ~~(1)~~ IN THIS SECTION THE TERMS "UTILITY" AND "UTILITY COMPANY" MEAN ANY GAS COMPANY, ELECTRIC COMPANY, GAS AND ELECTRIC COMPANY, OR TELEPHONE COMPANY.

~~(2) THE GENERAL ASSEMBLY FINDS THAT A MORE FORMAL MECHANISM SHOULD BE CREATED TO INSURE THAT THE UTILITY CONSUMERS' PROBLEMS, GOALS, AND OBJECTIVES ARE BEING PROPERLY CONSIDERED BY THE PUBLIC SERVICE COMMISSION. THEREFORE, THERE IS A UTILITY CONSUMER ADVISORY PANEL IN THE PUBLIC SERVICE COMMISSION.~~

(B) THE UTILITY CONSUMER ADVISORY PANEL IS CREATED WITHIN THE PUBLIC SERVICE COMMISSION AND SHALL ADVISE THE COMMISSION ON GENERAL GOALS FOR THE DEVELOPMENT OF PROGRAMS, UNDERTAKE STUDIES AND ISSUE REPORTS, AND FOSTER COOPERATION AND UNDERSTANDING REGARDING UTILITY MATTERS AMONG FEDERAL, STATE, AND LOCAL AGENCIES AS WELL AS PRIVATE GROUPS AND CONSUMERS.

(C) THE UTILITY CONSUMER ADVISORY PANEL SHALL ADVISE THE PEOPLE'S COUNSEL ON GENERAL GOALS FOR THE DEVELOPMENT OF PROGRAMS, AND SHALL ALSO RENDER ADVICE ON SPECIFIC CONSUMER GOALS AND OBJECTIVES IN ORDER TO ASSIST THE PEOPLE'S COUNSEL IN FORMULATING POLICY IN RATE CASES, INVESTIGATIONS, AND OTHER MATTERS IN WHICH THE PEOPLE'S COUNSEL MAY FROM TIME TO TIME BE INVOLVED.

(D) THE UTILITY CONSUMER ADVISORY PANEL MAY MEET AT TIMES AS ITS MEMBERS MAY DECIDE. HOWEVER, THE PANEL SHALL MEET AT LEAST ONCE EVERY THREE MONTHS WITH THE COMMISSIONERS OF THE PUBLIC SERVICE COMMISSION AND THE PEOPLE'S COUNSEL TO RENDER ADVICE AND ASSISTANCE TO THEM.

(E) ~~(1)~~ THE UTILITY CONSUMER ADVISORY PANEL SHALL BE COMPOSED OF 13 PUBLIC REPRESENTATIVES WHO SHALL BE GEOGRAPHICALLY REPRESENTATIVE OF THE UTILITY CONSUMING ~~PUBLIC OF THIS STATE, EACH OF WHOM SHALL BE APPOINTED BY THE PRESIDENT OF THE SENATE AND SPEAKER OF THE HOUSE OF DELEGATES. (2) THE MEMBERS APPOINTED SHALL BE DIVIDED INTO THREE CATEGORIES AS FOLLOWS:~~

~~(I) SEVEN MEMBERS REPRESENTING RESIDENTIAL CONSUMER GROUPS OR INTERESTS;~~

~~(II) THREE MEMBERS REPRESENTING BUSINESS GROUPS OR INTERESTS;~~

~~(III) THREE MEMBERS REPRESENTING THE PUBLIC SECTOR.~~ PUBLIC OF THIS STATE, 7 OF WHOM SHALL BE APPOINTED BY THE PRESIDENT OF THE SENATE, WITH THE ADVICE AND CONSENT OF THE SENATE, AND 6 OF WHOM SHALL BE APPOINTED BY THE SPEAKER OF THE HOUSE OF DELEGATES, WITH THE ADVICE AND CONSENT OF THE HOUSE OF DELEGATES.

(F) (1) THE TERM OF MEMBERSHIP IS THREE YEARS, EXCEPT THAT OF THE ORIGINAL APPOINTEES, FOUR SHALL SERVE ONE-YEAR TERMS, FOUR SHALL SERVE TWO-YEAR TERMS AND FIVE SHALL SERVE THREE-YEAR TERMS AS DETERMINED BY LOT WITHIN EACH CATEGORY. (2) EACH MEMBER SHALL SERVE UNTIL HIS SUCCESSOR IS APPOINTED AND QUALIFIED. AN APPOINTMENT TO A VACANCY IN AN UNEXPIRED TERM IS LIMITED TO THE REMAINDER OF THAT TERM. (3) THE MEMBERS OF THE PANEL SHALL SERVE WITHOUT COMPENSATION, BUT SHALL BE REIMBURSED FOR ALL EXPENSES REASONABLY INCURRED IN THE PERFORMANCE OF THEIR DUTIES. (4) THE PANEL SHALL ANNUALLY ELECT A CHAIRMAN FROM ITS MEMBERS AND APPOINT A SECRETARY. (5) EACH MEMBER OF THE PANEL SHALL FILE A FINANCIAL DISCLOSURE STATEMENT IN ACCORDANCE WITH ARTICLE 33 § 29-11.

(G) (1) THE CHAIRMAN OF THE PUBLIC SERVICE COMMISSION (OR HIS DESIGNEE) AND THE PEOPLE'S COUNSEL SHALL SERVE AS EX-OFFICIO MEMBERS OF THE UTILITY CONSUMER ADVISORY PANEL. THEY MAY NOT VOTE IN THE PANEL'S DELIBERATIONS. (2) AN EMPLOYEE OR LEGAL REPRESENTATIVE OF A UTILITY COMPANY MAY NOT BE APPOINTED AS A MEMBER OF THE PANEL.

(H) THIS SECTION MAY NOT BE CONSTRUED TO AUTHORIZE ANY EX PARTE COMMUNICATION BY THE PANEL OR ANY OF ITS MEMBERS WITH ANY COMMISSIONER OF THE PUBLIC SERVICE COMMISSION REGARDING ANY MATTER THEN PENDING BEFORE THE COMMISSION.

(I) THE UTILITY CONSUMER ADVISORY PANEL SHALL REPORT ON ITS ACTIVITIES TO THE GENERAL ASSEMBLY BY JANUARY 1 OF EACH YEAR.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

CHAPTER 746-H.F.No.1131

[Coded in Part]

An act relating to public utilities; providing for representation of consumer interests in public utility matters by the consumer services section; creating a board of residential utility consumers; appropriating money; amending Minnesota Statutes 1976, Section 45.16, Subdivision 1; and Chapter 45, by adding a section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1976, Section 45.16, Subdivision 1, is amended to read:

45.16 CONSUMER SERVICES SECTION, RESPONSIBILITIES AND DUTIES. Subdivision 1. The section of consumer services shall have the responsibilities and duties prescribed by this section and section 2 of this act and such other authority as may be conferred by the commissioner of commerce.

Sec. 2. Minnesota Statutes 1976, Chapter 45, is amended by adding a section to read:

[45.17] REPRESENTATION OF CONSUMER INTEREST IN PUBLIC UTILITY MATTERS. Subdivision 1. **DEFINITIONS.** For the purposes of this section, the terms defined in this subdivision shall apply:

(1) "Public utility" means a publicly or privately owned entity engaged in supplying utility services to residential utility consumers in this state or to another public utility for

ultimate distribution to residential utility consumers in this state and whose rates or charges are subject to approval by the public service commission or any agency of the federal government provided that no municipal or cooperative utility shall be considered a "public utility" for the purposes of this clause.

(2) "Consumer services section" means the consumer services section of the department of commerce.

(3) "Residential utility consumer" or "consumer" means a person who uses utility services at his residence in this state and who is billed by or pays a public utility for these services.

(4) "Utility services" means electricity, natural gas, or telephone services distributed to residential utility consumers by a public utility.

Subd. 2. The consumer services section shall be responsible for representing and furthering the interests of residential utility consumers through participation in matters before the public service commission involving utility rates and adequacy of utility services to residential utility consumers. The consumer services section shall expend a reasonable portion of its efforts among all three kinds of utility services and shall identify and promote the needs of each class of residential consumers with respect to each of the utility services.

Subd. 3. Subject to the limitations of subdivision 2, the consumer services section may intervene as of right or participate as an interested party in matters pending before the public service commission which affect the distribution by a public utility of utility services to residential utility consumers. The right of the consumer services section to participate or intervene shall in no way affect the obligation of the public service commission to protect the public interest.

Subd. 4. The public service commission shall give reasonable notice to the consumer services section of any matter scheduled to come before the commission affecting a public utility's rates or adequacy of services to residential utility consumers. Rules of the commission governing procedures before the commission shall apply to the consumer services section and its employees or representatives. The consumer services section shall have the same rights and privileges accorded other intervenors or participants in matters pending before the commission.

Subd. 5. The consumer services section shall be deemed to have an interest sufficient to maintain, intervene as of right in, or otherwise participate in any civil action in the trial courts or supreme court of this state for the review or enforcement of any public service commission action which affects a public utility's rates or adequacy of service to residential utility consumers.

Subd. 6. **BOARD OF RESIDENTIAL UTILITY CONSUMERS.** There is hereby created the board of residential utility consumers whose duties shall include:

(1) Establishing policy guidelines concerning the utility related activities of the

commerce department's consumer services section;

(2) Reviewing and commenting upon the section's staff employment decisions related to performing the responsibilities conferred in this section; and

(3) Annually reviewing and commenting upon the consumer services section's budget of estimated expenses for utility related activities.

The board shall consist of nine voting members to be appointed by the governor. At least one member shall represent each congressional district, and at least two members shall represent farm consumers. No more than six members shall be members of the same political party. In making appointments, the governor shall give consideration to individuals having a special interest in the provision of utility services to residential consumers.

The board members shall elect from among their number a chairman and any other officers as it may deem necessary. The board shall meet at the call of the chairman or the director. The terms of office, compensation, and provisions for removal and filling vacancies of members shall be as provided in section 15.0575.

The director of the consumer services section shall submit an annual budget of estimated expenses to the board for review and comment. The director shall also periodically seek the advice of the board concerning its operations related to the responsibilities conferred by this section. The director shall also file an annual report of the section's utility related activities with the board and the legislature on or before December 31 of each year.

Sec. 3. **APPROPRIATION.** The sum of $300,000 is appropriated from the general fund to the section of consumer services for the purpose of this act, to be available until June 30, 1979. The approved complement of the consumer services section is increased by seven persons.

Sec. 4. **EFFECTIVE DATE.** This act shall be effective the day after final enactment.

Approved April 5, 1978.

(Amended Substitute House Bill No. 1073)

AN ACT

To amend Sections 3, 4, 5, 6, 7, 8, and 11 of Amended Substitute House Bill 230 of the 112th General Assembly (Sections 5, 8, and 11 as amended by Section 1 of Amended House Bill 937 of the 112th General Assembly, effective on October 24, 1977), to change certain deadline, reimbursement, and eligibility provisions, to impose certain duties on the tax commissioner, to provide certain penalties, to make other changes relative to the temporary heating credit or discount program, and to make appropriations in connection therewith.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That Sections 3, 4, 5, 6, 7, 8, and 11 of Amended Substitute House Bill 230 (Sections 5, 8, and 11 as amended by Section 1 of Amended House Bill 937 of the 112th General Assembly) be amended to read as follows:

"Sec. 3. **(A)** As used in Sections 3, 4, 5, 6, and 7 of this act:

~~(A)~~ **(1)** "Household" means a dwelling, or A unit in a multiple unit dwelling, as shown on the list prepared under Section ~~5 or~~ 7 of this act and to which utility services or energy or commodities are separately provided.

~~(B)~~ **(2)** "Head of household" means a person who occupies a household as his homestead and who is financially responsible for its other occupants, if any, or the spouse of such a person if both occupy the same household. No person is a head of household if

he occupies a household and for the taxable year prior to the year in which an application is filed under Section 6 of this act was claimed as a dependent on the federal income tax return of another occupant of the same household and was not the taxpayer's spouse or if he could have been claimed if such a return had been filed for such year and was not the other occupant's spouse.

~~(C)~~ (3) "Sixty-five years of age ~~and~~ OR older" refers to a person who has attained age sixty-four prior to the first day of January of the year of application for reduction in utility charges.

~~(D)~~ (4) "Total income" means the adjusted gross income of the head of household and his spouse for the year preceding the year in which application for a reduction in utility charges is made, as determined under the "Internal Revenue Code of 1954," 68A Stat. 3, 26 U.S.C.~~A.~~ 1, as amended, plus old age and survivors benefits received pursuant to the "Social Security Act," ~~,~~ retirement, pension, annuity, or other retirement payments or benefits not included in federal adjusted gross income; payments received pursuant to the "Railroad Retirement Act," 50 Stat. 307, 45 U.S.C.~~A.~~ 228; and interest on federal, state, and local government obligations. Disability benefits paid by the veteran's administration or a branch of the armed forces of the United States on account of an injury or disability shall not be included in total income.

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~~(E)~~ (5) "Permanently and totally disabled" refers to a person who has, on the first day of January of the year of application for reduction in utility charges, some impairment in body or mind that makes him unfit to work at any substantially remunerative employment which he is reasonably able to perform and which will, with reasonable probability, continue for an indefinite period of at least twelve months without any present indication of recovery therefrom or has been certified as permanently and totally disabled by a state or federal agency having the function of so classifying persons.

(B) THE TAX COMMISSIONER SHALL, IN ACCORDANCE WITH SECTION 5703.14 OF THE REVISED CODE, PROMULGATE A RULE, CONSISTENT WITH THIS ACT, THAT SHALL, EXCEPT WHERE OTHERWISE PROVIDED, ESTABLISH THE MANNER IN WHICH:

(1) HIS DUTIES, THOSE OF THE COUNTY AUDITOR, AND THOSE OF ENERGY DEALERS, ELECTRIC LIGHT, RURAL ELECTRIC, GAS, AND NATURAL GAS COMPANIES, AND RETAIL PROPANE DEALERS THAT DISTRIBUTE PROPANE BY PIPELINE SHALL BE PERFORMED UNDER THIS ACT;

(2) ELIGIBILITY FOR THE CREDIT STATED IN SECTION 4 OF THIS ACT SHALL BE DETERMINED;

(3) APPEALS UNDER SECTION 7 OF THIS ACT SHALL BE PROSECUTED.

(4) ALL NOTICES REQUIRED TO BE GIVEN, AND ALL FORMS REQUIRED TO BE PROVIDED, UNDER SECTION 8 OF THIS ACT SHALL BE STATED AND STRUCTURED.

(5) SUCH MATTERS RELATED TO THE ADMINISTRATION AND IMPLEMENTATION OF THIS ACT AS ARE NOT SPECIFICALLY PROVIDED IN DIVISIONS (B) (1) TO (4) OF THIS SECTION SHALL BE GOVERNED.

(C) (1) AS A MEANS OF EFFICIENTLY ADMINISTERING THE PROGRAM ESTABLISHED BY THIS ACT, THE TAX COMMISSIONER MAY EXTEND, BY AS MUCH AS A TOTAL OF THIRTY DAYS, ANY DATE SPECIFIED IN THIS ACT FOR THE PERFORMANCE OF A PARTICULAR ACTION BY AN INDIVIDUAL OR AN OFFICER.

(2) THE TAX COMMISSIONER MAY, UPON A DECLARATION BY HIM OF AN EMERGENCY, PROMULGATE ANY RULE REQUIRED OR AUTHORIZED UNDER THIS ACT WITHOUT ADHERENCE TO SECTION 5703.14 OF THE REVISED CODE.

(D) EXCEPT WHERE OTHERWISE PROVIDED, EACH FORM, APPLICATION, QUESTIONNAIRE, NOTICE, AND THE LIKE USED IN FULFILLING THE REQUIREMENTS OF THIS ACT SHALL BE APPROVED BY THE TAX COMMISSIONER AFTER CONSULTATION WITH THE ENERGY CREDITS ADVISORY COMMITTEE.

Sec. 4. (A) (1) As used in this section and Sections 5, 6, 7, and 8 of this act, "energy dealer" means every retail dealer in fuel oil, propane, coal, wood, and kerosene.

(2) As used in this section AND SECTION 8 OF THIS ACT, "current monthly bill" means the amount charged for energy consumed in the most recent MONTHLY billing period ~~of thirty days~~ and does not include any past due balance.

(B) With respect to each of its residential customers, every retail propane dealer that distributes propane by pipeline, and every electric light, rural electric, gas, and natural gas company shall, within thirty days of its receipt of ~~the lists~~ A LIST provided under ~~Sections 5 and~~ SECTION 7 of this act, cause the granting of a credit in accordance with this section against the monthly billing of each household appearing on the list submitted under Section ~~5 or~~ 7 of this act ~~,~~ that receives energy from it that is the source of the heat produced by the primary heating system of such household AND OF EACH HOUSEHOLD FOR WHICH THE REQUIREMENTS STATED IN DIVISION (A) (3) OF SECTION 8 OF THIS ACT HAVE BEEN MET. In the case of such a dealer or company, the credit shall amount to twenty-five per cent of the current monthly bill rendered to such household for propane, electricity, gas, or natural gas by the company ~~in~~ FOR the BILLING

months of December, January, February, March, and April immediately following the receipt of a list, under Section 5 ~~or~~ 7 of this act, on which the household appears. In the case of residential customers who purchase energy or commodities from an energy dealer, ~~other than a propane dealer that distributes propane by pipeline~~, the total credit shall amount to eighty-seven dollars and fifty cents.

(C) On or before the ~~tenth~~ FIFTEENTH day of each month following one in which credits were provided under division (B) of this section, each retail propane dealer that distributes propane by pipeline and each electric light, rural electric, gas, and natural gas company shall, ON A FORM PRESCRIBED BY THE AUDITOR OF STATE AND SEEKING SUCH INFORMATION AS HE DETERMINES IS NECESSARY FOR THE PURPOSE OF VERIFYING THE PROPRIETY OF THE PAYMENT OF CREDITS, certify to the auditor of state the total amount of all credits it has granted pursuant to division (B) of this section during the preceding month. NOT LATER THAN THIRTY DAYS AFTER HIS RECEIPT OF SUCH CERTIFICATION, THE AUDITOR OF STATE SHALL DRAW A VOUCHER AND WARRANT ON THE GENERAL REVENUE FUND PAYABLE TO THE DEALER OR COMPANY IN AN AMOUNT THAT IS NINETY PER CENT OF THE AMOUNT CERTIFIED. BEFORE JUNE 30, 1979, THE AUDITOR OF STATE SHALL DRAW A VOUCHER AND WARRANT ON THE GENERAL REVENUE FUND PAYABLE TO THE DEALER OR COMPANY IN AN AMOUNT THAT HE DETERMINES IS, AFTER HAVING COMPLETED ANY NECESSARY VERIFICATION PROCEDURES, REQUIRED TO REIMBURSE THE DEALER OR COMPANY FOR SUCH PORTIONS OF AMOUNTS PREVIOUSLY CERTIFIED BUT NOT PAID. IF WITHIN NINETY DAYS AFTER ANY SUCH PAYMENT IS MADE UNDER THIS SECTION, THE AUDITOR OF STATE DETERMINES, AFTER HAVING COMPLETED ANY SUCH PROCEDURES, THAT A DEALER OR COMPANY HAS PREVIOUSLY RECEIVED AMOUNTS GREATER THAN THE AMOUNTS OF CREDITS PROPERLY GRANTED, SUCH DEALER OR COMPANY, ON NOTICE FROM THE AUDITOR OF STATE, SHALL REIMBURSE THE AUDITOR OF STATE IN THE AMOUNT OF THE OVERPAYMENTS. SUCH REIMBURSEMENTS SHALL BE DEPOSITED IN THE GENERAL REVENUE FUND.

(D) On or before the ~~first~~ FIFTEENTH day of ~~February~~ JANUARY, the tax commissioner shall certify to the auditor of state the name and address of each person who is entitled to a credit for eighty-seven dollars and fifty cents under division (B) of this section and who has established, under a procedure established by the commissioner by rule, that he has paid, prior to such day, BUT NO EARLIER THAN THE PREVIOUS FIRST DAY OF JULY, at least that sum for energy or commodities that are the

source of the heat produced by the primary heating system in the residence of such person. On or before the ~~first~~ FIFTEENTH day of ~~March~~ FEBRUARY, the auditor of state shall draw a voucher and warrant on the general revenue fund payable to each such person in the amount of eighty-seven dollars and fifty cents.

UPON A REQUEST FROM THE AUDITOR OF STATE, THE TAX COMMISSIONER SHALL REVERIFY THE ELIGIBILITY OF ANY PERSON WHOSE NAME HAS BEEN CERTIFIED TO THE AUDITOR BEFORE PAYMENT TO THAT PERSON IS MADE UNDER THIS DIVISION. IF THE AUDITOR OF STATE DETERMINES THAT A PERSON RECEIVED A PAYMENT UNDER THIS DIVISION TO WHICH HE WAS NOT ENTITLED, THE AUDITOR SHALL OBTAIN REIMBURSEMENT FROM THAT PERSON AND DEPOSIT ANY AMOUNT COLLECTED IN THE GENERAL REVENUE FUND.

(E) On or before April 1, 1978 ~~and 1979~~, the auditor of state shall draw a voucher and warrant on the general revenue fund payable to each company or dealer in the amounts certified by such company or dealer under division (C) of this section for the months of December, January, and February. On or before June ~~1~~ 30, 1978 ~~and 1979~~, the auditor of state shall draw a voucher and warrant on the general revenue fund payable to each company or dealer in the amounts certified by such company or dealer under division (C) of this section for the months of March and April. Before making any payment under this section OR WITHIN NINETY DAYS AFTER PAYMENT IS MADE, the auditor of state may verify any amount certified by a company or dealer under division (C) of this section.

(F) (1) WHOEVER PURPOSELY FAILS TO GRANT THE CREDIT PROVIDED UNDER DIVISION (B) OF THIS SECTION IS GUILTY OF A MINOR MISDEMEANOR. EACH DAY THAT EACH PERSON ENTITLED TO THE CREDIT IS NOT AFFORDED THE CREDIT CONSTITUTES A SEPARATE OFFENSE. CLERICAL ERRORS SHALL NOT BE CONSIDERED AN OFFENSE UNDER THIS DIVISION.

(2) ANY RETAIL PROPANE DEALER THAT DISTRIBUTES PROPANE BY PIPELINE, OR ELECTRIC LIGHT, RURAL ELECTRIC, GAS, OR NATURAL GAS COMPANY THAT PURPOSELY FAILS TO GRANT THE CREDIT PROVIDED UNDER DIVISION (B) OF THIS SECTION IS LIABLE TO EACH PERSON ENTITLED TO THE CREDIT AND CERTIFIED TO THE COMPANY OR DEALER BY THE TAX COMMISSIONER PURSUANT TO SECTION 7 OF THIS ACT IN TREBLE THE AMOUNT OF THE TOTAL CREDIT NOT GRANTED. THE CONSUMERS' COUNSEL MAY, ON BEHALF OF ANY PERSON OR PERSONS NOT GRANTED THE CREDIT, BRING AN ACTION OR CLASS ACTION TO RECOVER SUCH TREBLE DAMAGES IN THE COURT OF COMMON PLEAS OF ANY COUNTY IN WHICH IS LOCATED AN OFFICE OF THE COMPANY OR

DEALER. ANY TREBLE DAMAGE RECOVERY UNDER THIS DIVISION DOES NOT, IN ANY MANNER, DIMINISH ANY OTHER LIABILITY PROVIDED UNDER THIS ACT. CLERICAL ERRORS SHALL NOT BE CONSIDERED AN OFFENSE OR INCUR LIABILITY UNDER THIS DIVISION.

Sec. 5. (A) On or before the last day of October, 1977, and ~~the first Monday in September~~ JUNE 15, 1978, the county auditor shall mail, OR OTHERWISE PROVIDE, A QUESTIONNAIRE to each person who receives total income of no more than seven thousand FOUR HUNDRED TWENTY dollars for whom an application or continuing application for the tax reduction provided under section 323.152 of the Revised Code has been approved for the current tax year ~~;~~ #. THE COUNTY AUDITOR SHALL ALSO MAIL OR OTHERWISE PROVIDE A QUESTIONNAIRE TO EACH PERSON SO REQUESTING, IRRESPECTIVE OF ANY PRELIMINARY DETERMINATION OF INELIGIBILITY.

THE questionnaire ~~seeking~~ SHALL SEEK:

(1) The name and address of the customer ~~;~~ AND HIS UTILITY ACCOUNT NUMBER or a marking or coding sufficient to identify the customer to the auditor;

(2) The type of energy or commodity that is the source of the heat produced by the primary heating system in the residence of such person;

(3) The name of the retail propane dealer that distributes propane by pipeline, gas, natural gas, rural electric, or electric light company, OR ENERGY DEALER that supplies the energy that is the source of the heat produced by the primary heating system in the residence of such person.

THE RECIPIENTS OF SUCH QUESTIONNAIRES SHALL COMPLETE THEM AND MAIL, OR OTHERWISE RETURN, THEM TO THE COUNTY AUDITOR ON OR BEFORE THE FIRST DAY OF SEPTEMBER. THE COUNTY AUDITOR, AFTER VERIFYING THE INFORMATION REPORTED IN EACH QUESTIONNAIRE, SHALL CAUSE THE QUESTIONNAIRES TO BE DELIVERED TO THE TAX COMMISSIONER NO LATER THAN THE TWENTIETH DAY OF SEPTEMBER.

IN ADDITION TO PROVIDING THE QUESTIONNAIRE STATED IN THIS DIVISION, THE COUNTY AUDITOR SHALL, IRRESPECTIVE OF ANY PRELIMINARY DETERMINATION OF INELIGIBILITY, PROVIDE AN APPLICATION TO ANY INDIVIDUAL WHO ASSERTS THAT HE MEETS THE ELIGIBILITY REQUIREMENTS STATED IN THIS SECTION.

(B) On or before ~~the last day of~~ November 30, 1977 and ~~on or before the fifteenth day of August~~ BETWEEN JUNE 15 AND SEPTEMBER 1, 1978, a head of household who owns and occupies or rents and occupies a house trailer as his household, who is sixty-five years of age or older or totally and permanently disabled,

and who receives total income of no more than seven thousand FOUR HUNDRED TWENTY dollars may apply for the credit provided under Section 4 of this act for the 1977-78 and 1978-79 heating seasons. THE TAX COMMISSIONER SHALL, IRRESPECTIVE OF ANY PRELIMINARY DETERMINATION OF INELIGIBILITY, FURNISH TO EVERY INDIVIDUAL SO REQUESTING AN ELIGIBILITY APPLICATION. The head of household shall file ~~an eligibility~~ SUCH application with the tax commissioner. The application shall be in the form prescribed by the tax commissioner under division (A) of Section 6 of this act. If appropriate, the application shall be accompanied by the disability certificate required under that section. In filing an application under this division, whoever violates division (B) or (C) of Section 6 of this act is guilty of a misdemeanor of the fourth degree. ~~The tax commissioner shall review the applications filed under this division and on or before the fifteenth day of December, 1977 and on or before the tenth day of October, 1978, he shall notify each applicant of the disposition of his application. If an application is disapproved, the applicant may appeal to the tax commissioner for a hearing on the matter. Any such appeal shall be on the form for such purposes prescribed under Section 7 of this act and shall be filed with the tax commissioner within ten days after receipt of the notice of disapproval. Such appeals shall be decided according to the same procedures for deciding appeals to the tax commissioner under Section 7 of this act.~~

(C) On or before ~~the last day of~~ November 30, 1977 ~~and the first Monday in October, 1978~~, the county auditor shall certify to the tax commissioner ~~and to each gas, natural gas, rural electric, and electric light company providing service in the county, and to each retail propane dealer that distributes propane by pipeline that serves the county a list~~, AND NOT LATER THAN SEPTEMBER 20, 1978, THE COUNTY AUDITOR SHALL HAVE DELIVERED TO THE TAX COMMISSIONER CERTIFICATION OF, THE NAME of each ~~person~~ HEAD OF HOUSEHOLD who receives total income of no more than seven thousand FOUR HUNDRED TWENTY dollars for whom an application or continuing application for the tax reduction provided under section 323.152 of the Revised Code has been approved for the current tax year WHO HAS COMPLETED AND TRANSMITTED TO THE COUNTY AUDITOR ON OR BEFORE THE FIRST DAY OF SEPTEMBER THE QUESTIONNAIRE STATED IN DIVISION (A) OF THIS SECTION ~~and~~ . THE COUNTY AUDITOR SHALL ALSO SEND TO THE TAX COMMISSIONER A LIST of each person who ~~submits~~ HAS COMPLETED AND TRANSMITTED TO THE COUNTY AUDITOR ON OR BEFORE THE FIRST DAY OF SEPTEMBER THE QUESTIONNAIRE STATED IN DIVISION (A) OF THIS SECTION AND WHO HAS SUBMITTED ON OR BEFORE THE FIRST DAY OF SEPTEMBER proof, satisfactory to the county auditor, that his application would have been so approved were he to have complied with the deadline or other procedural requirements stated in division (A) of section 323.153 of the Revised Code and were

his homestead owned at the time required in Chapter 323. of the Revised Code for such approval ; ~~his address as shown on the application, and the source of the heat produced by the primary heating system in the residence of such person. Within thirty days of the receipt of such list and in any month for which a credit is required to be given under this act, the company or dealer may verify whether each such person is receiving energy for home heating at the address appearing on such list or the nature of the primary heating system in the residence of such person. If the company or dealer determines that a person listed by the auditor does not receive energy for home heating at such address or that the source of the heat produced by the primary heating system in the residence of such person is not energy or a commodity supplied by the company or dealer, it shall notify the auditor of such fact and may terminate the credit provided under Section 4 of this act to the occupants of that household unless ordered otherwise by the county auditor. Upon receipt of such notice, the auditor shall ascertain the accuracy of the determination of the company or dealer and, should he conclude that the person is eligible for the credit, he shall order the company or dealer to provide such credit.~~ A COUNTY AUDITOR MAY CERTIFY TO THE TAX COMMISSIONER AFTER SEPTEMBER 20, 1978, THE NAME OF ANY HEAD OF HOUSEHOLD WHOSE NAME WAS NOT CERTIFIED TO THE TAX COMMISSIONER ON SEPTEMBER 20, 1978 BUT WHO, EXCEPT FOR FAILURE TO MEET THE DEADLINE REQUIREMENTS OF THIS ACT, QUALIFIES FOR A CREDIT PROVIDED UNDER SECTION 4 OF THIS ACT.

(D) THE TAX COMMISSIONER SHALL APPROVE OR DISAPPROVE THE ELIGIBILITY OF, BY OCTOBER 1, 1978, EACH HEAD OF HOUSEHOLD WHOSE NAME WAS SUBMITTED TO HIM BY THE COUNTY AUDITOR UNDER DIVISION (C) OF THIS SECTION.

Sec. 6. A head of household who is sixty-five years of age or older or totally and permanently disabled, who receives total income of no more than seven thousand FOUR HUNDRED TWENTY dollars and who does not own the household which he occupies as his homestead, may apply for the credit provided under Section 4 of this act for the 1977-78 and 1978-79 heating seasons.

(A) THE TAX COMMISSIONER SHALL, IRRESPECTIVE OF ANY PRELIMINARY DETERMINATION OF INELIGIBILITY, FURNISH TO EVERY INDIVIDUAL SO REQUESTING AN ELIGIBILITY APPLICATION. The head of household shall file ~~an eligibility~~ SUCH application with the tax commissioner. An application based upon a physical disability shall be accompanied by a certificate, signed by a physician, and an application based upon a mental disability shall be accompanied by a certificate signed by a physician psychologist licensed to practice in this state, attesting to the that the applicant is permanently and totally disabled. The certificate shall be in a form that the tax commissioner

requires and shall include the definition of permanently and totally disabled as set forth in Section 3 of this act. An application based upon a disability certified as permanent and total by a state or federal agency having the function of so classifying persons shall be accompanied by a certificate from that agency. Each application shall be in the form of a signed statement and shall be filed on or before November 15, 1977 and ~~on or before August~~ BETWEEN JUNE 15, 1978 AND SEPTEMBER 1, 1978. ~~The tax commissioner may extend the time for filing such applications.~~ The statement shall be on a form, devised and supplied by the commissioner, which shall require no more information than is necessary to establish the applicant's eligibility and shall include the ~~names~~ NAME of the RETAIL PROPANE DEALER THAT DISTRIBUTES PROPANE BY PIPELINE, gas, natural gas, rural electric, OR electric light ~~companies~~ COMPANY, or energy ~~dealers from which~~ DEALER THAT SUPPLIES the ~~applicant's household purchases either energy or commodities for home heating. The form shall elicit information as to the type of~~ energy or commodity that is the source of the heat produced by the primary heating system in the residence of the applicant. AN APPLICANT WHOSE PRIMARY HEATING SYSTEM IS SUPPLIED ENERGY BY A RETAIL PROPANE DEALER THAT DISTRIBUTES PROPANE BY PIPELINE OR A GAS, NATURAL GAS, RURAL ELECTRIC, OR ELECTRIC LIGHT COMPANY SHALL ALSO BE REQUIRED TO INCLUDE HIS UTILITY ACCOUNT NUMBER. The form shall contain a statement that signing such application constitutes a delegation of authority by the applicant to the commissioner to examine any financial records that relate to income earned by the applicant as stated on the application, for the purpose of determining eligibility under, or possible violation of, division (B) or (C) of this section.

(B) No person shall knowingly make a false statement for the purpose of obtaining a ~~discount in~~ CREDIT FOR his energy or commodities charges under Section 4 of this act.

(C) No person shall knowingly make a false statement or certification attesting to any person's physical or mental condition for purposes of qualifying such person for the energy and commodities reduction provided under this act.

(D) Whoever violates division (B) or (C) of this section is guilty of a misdemeanor of the fourth degree.

Sec. 7. (A) (1) The tax commissioner shall review the applications filed under OR SUBMITTED UNDER SECTION 5 OF THIS ACT AND THOSE FILED UNDER Section 6 of this act, AND APPLICATION RENEWAL FORMS FILED UNDER DIVISION (A) (3) OF SECTION 8 OF THIS ACT and on or before ~~the fifteenth day of~~ December ~~in~~ 15, 1977 and ~~the tenth d~~ ~~f~~ ON OR BEFORE October ~~in~~ 10, 1978, he shall notify each icant of the disposition of his application. ~~The tax commissioner shall disapprove the application of any person whose name appears on the~~

~~list certified to him under Section 5 of this act.~~ If an application is disapproved, the applicant may appeal to the tax commissioner for a hearing on the matter. A NOTICE OF DISAPPROVAL SHALL INCLUDE A DETAILED EXPLANATION OF THE APPLICANT'S RIGHT OF APPEAL UNDER THIS ACT. Any such appeal shall be on the form for such purpose prescribed by the tax commissioner and shall be filed with the tax commissioner within ten days of the receipt of the notice of disapproval. ~~If an application is approved~~ ON OR BEFORE OCTOBER 10, 1978, the tax commissioner, FROM ALL PERTINENT INFORMATION SUBMITTED TO HIM UNDER THE ACT, shall ~~provide~~ BEGIN TO PREPARE AND CERTIFY to each retail propane dealer that distributes propane by pipeline, and each gas, natural gas, rural electric, or electric light company that provides energy for home heating ~~to the household, which energy for home heating is~~ A LIST CONTAINING THE NAME AND ACCOUNT NUMBER OF EACH HEAD OF HOUSEHOLD ELIGIBLE FOR THE TWENTY-FIVE PER CENT CREDIT PROVIDED UNDER SECTION 4 OF THIS ACT AND SERVED BY THAT COMPANY OR DEALER, THE ADDRESS, OF THE HOUSEHOLD, AND the source of the heat produced by the primary heating system in the residence of the applicant ~~, the address of the household and the name of its head of household. Notification~~. THE TAX COMMISSIONER shall ~~be by~~ ALSO CERTIFY A COPY OF EACH SUCH list TO THE AUDITOR OF STATE. THE TAX COMMISSIONER MAY FOR GOOD CAUSE CERTIFY ADDENDA TO SUCH LISTS, CONTAINING THE NAMES OF ANY HEADS OF HOUSEHOLD WHOSE NAMES WERE NOT INCLUDED IN THE EARLIER LISTS BUT WHO, EXCEPT FOR FAILURE TO MEET THE DEADLINE REQUIREMENTS OF THIS ACT, WOULD HAVE BEEN CERTIFIED IN THE ORIGINAL LISTS. Within thirty days of receipt of such list AND IN ANY MONTH FOR WHICH A CREDIT IS REQUIRED UNDER THIS ACT, the company or dealer may verify that each head of household on the commissioner's list receives ~~either~~ energy ~~or commodities~~ for home heating at the household address appearing on such list or that the source of heat produced by the primary heating system in the residence of the applicant is energy supplied by the company or dealer. If the company or dealer determines that a person listed ~~as a head of household by the commissioner is not eligible~~ DOES NOT RECEIVE ENERGY FOR HOME HEATING AT SUCH ADDRESS OR THAT THE SOURCE OF THE HEAT PRODUCED BY THE PRIMARY HEATING SYSTEM IN THE RESIDENCE OF SUCH PERSON IS NOT SUPPLIED BY THE COMPANY OR DEALER, it shall notify the commissioner AND THE AUDITOR OF STATE of such fact and may refuse to grant the credit ~~required~~ PROVIDED under Section 4 of this act. Upon receipt of such notice, the commissioner shall determine the accuracy of the determination of the company or dealer, and, should he not concur with the company or dealer, he shall order the company or dealer to provide the

credit provided under Section 4 of this act AND NOTIFY THE AUDITOR OF STATE OF SUCH ORDER.

(2) THE GOOD FAITH EXERCISE BY ANY COMPANY OR DEALER OF ANY POWER OF REFUSAL GRANTED UNDER DIVISION (A) (1) OF THIS SECTION DOES NOT SUBJECT SUCH COMPANY OR DEALER TO ANY PENALTY OR LIABILITY PROVIDED UNDER DIVISION (F) OF SECTION 4 OF THIS ACT.

(B) (1) NOTHING IN THIS ACT SHALL BE CONSTRUED TO ABRIDGE THE RIGHT OF AN OTHERWISE QUALIFIED RESIDENTIAL CUSTOMER TO RECEIVE THE CREDIT PROVIDED UNDER SECTION 4 OF THIS ACT BECAUSE HE HAS EITHER CHANGED THE LOCATION OF HIS RESIDENCE OR THE NATURE OF THE OCCUPANCY OF HIS RESIDENCE, AS BETWEEN A TENANT OR AN OWNER, AT A TIME THAT COULD, AS A RESULT OF THE OPERATION OF THIS ACT, CAUSE HIM TO BE DISQUALIFIED FROM RECEIVING, OR CONTINUING TO RECEIVE, THE CREDIT PROVIDED UNDER SECTION 4 OF THIS ACT.

(2) WHERE A PERSON WHO SUBMITS A FORM OR INFORMATION REQUIRED UNDER THIS ACT DOES SO IN A TIMELY FASHION BUT, BECAUSE OF THE OCCURRENCE OF AN ERROR OR OMISSION WITH RESPECT TO SUCH FORM OR INFORMATION, EITHER ON HIS PART OR ON THE PART OF THOSE PERSONS REQUIRED BY THIS ACT TO TAKE ADMINISTRATIVE, EXECUTIVE, OR MINISTERIAL ACTION REGARDING SUCH FORM OR INFORMATION, THE CERTIFICATION OF ELIGIBILITY BY THE TAX COMMISSIONER TO A RETAIL PROPANE DEALER THAT DISTRIBUTES PROPANE BY PIPELINE, AN ELECTRIC LIGHT, RURAL ELECTRIC, GAS, OR NATURAL GAS COMPANY, OR AN ENERGY DEALER TAKES PLACE AFTER THE EXPIRATION OF A DEADLINE IMPOSED UNDER THIS ACT, THE COMPANY OR DEALER SHALL GRANT THE CREDIT AND, WHENEVER APPROPRIATE, GRANT THE CREDIT ON A RETROACTIVE BASIS.

(3) THE TAX COMMISSIONER SHALL PROMULGATE A RULE ENSURING THAT THE REQUIREMENTS OF THIS DIVISION ARE EFFECTUATED.

Sec. 8. (A) (1) Every RETAIL PROPANE DEALER THAT DISTRIBUTES PROPANE BY PIPELINE, electric light company, rural electric company, gas company, natural gas company, and energy dealer shall, at least once ~~every four months~~ DURING MAY, 1978, AND ONCE DURING AUGUST, 1978, distribute to each of its residential heating customers a plain and clear notice PRINTED in ten-point type ~~stating~~ ON A SHEET OR CARD ON WHICH NO OTHER WORDS APPEAR EITHER ON THE FRONT

OR BACK THEREOF THAT STATES the right of qualified residential customers to receive the credit ~~stated in~~ PROVIDED UNDER Section 4 of this act and ~~explaining~~ THAT EXPLAINS in detail, in a fashion reasonably calculated to inform, the mechanism established under Sections 3, 4, 5, 6, and 7 of this act to effectuate that right. The notice shall also contain, in ten-point boldface type, WHICHEVER OF the following ~~statement~~ TWO STATEMENTS IS APPROPRIATE:

(a) "The right of eligible customers to receive the 25% credit against utility ~~or energy~~ bills is provided in legislation (House Bill 230) passed by the General Assembly and signed by the Governor."

(b) "THE RIGHT OF ELIGIBLE CUSTOMERS TO RECEIVE THE $87.50 CREDIT ON ENERGY BILLS IS PROVIDED IN LEGISLATION (HOUSE BILL 230) PASSED BY THE GENERAL ASSEMBLY AND SIGNED BY THE GOVERNOR."

(2) THE TAX COMMISSIONER SHALL CAUSE TO BE PRINTED NOTICES OF THE TYPE SPECIFIED IN DIVISION (A) (1) OF THIS SECTION AND FORMS THAT MAY BE USED AS AN APPLICATION FOR THE CREDIT STATED IN SECTION 4 OF THIS ACT IN SUFFICIENT QUANTITY FOR DISTRIBUTION. THE TAX COMMISSIONER, IN CONSULTATION WITH THE DIRECTOR OF THE ENERGY CREDITS ADVISORY COMMITTEE AND THE DIRECTOR OF THE COMMISSION ON AGING, SHALL ESTABLISH A SYSTEM FOR DISTRIBUTING APPLICATION FORMS TO APPROPRIATE PUBLIC LOCATIONS. THE DISTRIBUTION SYSTEM SHALL BE DESIGNED TO MAKE APPLICATION FORMS AVAILABLE TO AS MANY QUALIFIED PERSONS AS POSSIBLE.

(3) THE TAX COMMISSIONER SHALL ARRANGE FOR THE ESTABLISHMENT OF A TOLL-FREE TELEPHONE NUMBER TO ENABLE ALL PERSONS IN THIS STATE TO MAKE INQUIRIES AND OBTAIN INFORMATION CONCERNING THE ENERGY CREDIT STATED IN SECTION 4 OF THIS ACT.

(4) THE TAX COMMISSIONER SHALL, BETWEEN JUNE 15 AND JUNE 26, 1978, DISTRIBUTE AN APPLICATION RENEWAL FORM TO EVERY HEAD OF HOUSEHOLD WHO IN THE 1977-78 HEATING SEASON RECEIVED THE CREDIT PROVIDED UNDER SECTION 4 OF THIS ACT AS A RESULT OF THE APPROVAL OF THE TAX COMMISSIONER. THE APPLICATION RENEWAL FORM SHALL BE A FORM ON WHICH THE HEAD OF HOUSEHOLD MAY INDICATE BY CHECK MARK THAT HE RECEIVED BENEFITS UNDER THE PROGRAM ESTABLISHED UNDER THIS ACT FOR THE 1977-78 HEATING SEASON. SUCH APPLICATION RENEWAL FORMS SHALL INCLUDE SUCH OTHER INFORMATION AS THE TAX COMMISSIONER REQUIRES AND SHALL BE REVIEWED AND DISPOSED OF AS PROVIDED UNDER SECTION 7 OF THIS ACT.

(B) Every retail propane dealer that distributes propane by pipeline, and every electric light company, rural electric company, gas company, and natural gas company shall read the meter of each of its qualified residential customers who may receive a credit under Section 4 of this act at least one time in FOR the SERVICE period ~~from the fifteenth day of October to the fifteenth day~~ of November and at least one time in the service period for the current MONTHLY bill rendered ~~in the months~~ FOR THE BILLING MONTH of ~~December and~~ April. In the event a company is unable to read a meter because of failure to gain access after a good faith effort, the company may render a calculated bill. In such instances the company shall make an adjustment to the amount of the credit granted to the customer based upon the next actual reading of the meter IF THE READING SHOWS THE PREVIOUS CALCULATION TO BE IN ERROR and set forth the amount of such adjustments on the report required to be filed with the auditor of state under division (C) of Section 4 of ~~Amended Substitute House Bill 230 of the 112th General Assembly~~ THIS ACT showing the amount of credits granted during the preceding month.

(C) On each billing that is subject to a credit under Section 4 of this act by an electric light, rural electric, gas, ~~and~~ OR natural gas company, ~~and~~ OR by ~~each~~ A retail propane dealer that distributes propane by pipeline, there shall appear in ten-point type both the amount of the credit and to the left of such amount "Temporary Heating ~~Discount~~ CREDIT."

(D) WHOEVER PURPOSELY FAILS TO PERFORM HIS OBLIGATIONS UNDER DIVISION (A) (1), (B), OR (C) OF THIS SECTION IS GUILTY OF A MISDEMEANOR OF THE FIRST DEGREE.

Sec. 11. There is hereby appropriated out of any moneys in the state treasury to the credit of the General Revenue Fund, not otherwise appropriated, the following sums:

187 ENERGY CREDITS ADVISORY COMMITTEE

Operating Expenses	1977-78	1978-79	Biennium
321 Operating Expenses	$ 140,000	$ 140,000	$ 280,000
Total Operating Expenses	$ 140,000	$ 140,000	$ 280,000
Total General Revenue Fund	$ 140,000	$ 140,000	$ 280,000
Total Energy Credits Advisory Committee	$ 140,000	$ 140,000	$ 280,000

The foregoing appropriation item 187-321 Operating Expenses shall be used to implement ~~section~~ SECTION 10 of this act.

070 AUDITOR OF STATE

	1977-78	1978-79	Biennium
SPECIAL PURPOSE			
404 ADMINISTRATIVE COSTS	$ —0—	$ 202,215	$ 202,215
TOTAL SPECIAL PURPOSE	$ —0—	$ 202,215	$ 202,215
Subsidy			
506 Utility Bill Credits	$40,000,000	$ —0—	$ ~~40,000,000~~
		26,700,000	66,700,000
507 ADMINISTRATIVE COSTS REIMBURSEMENT	$ —0—	$ 325,500	$ 325,500
Total Subsidies	$40,000,000	$ —0—	$ ~~40,000,000~~
		27,227,715	67,227,715
Total General Revenue Fund	$40,000,000	$ —0—	$ ~~40,000,000~~
		27,227,715	67,227,715
Total Auditor of State	$40,000,000	$ —0—	$ ~~40,000,000~~
		27,227,715	67,227,715

THE FOREGOING APPROPRIATION 070-404 ADMINISTRATIVE COSTS SHALL BE USED BY THE AUDITOR OF STATE TO PERFORM HIS RESPONSIBILITIES AS PROVIDED IN THIS ACT.

The foregoing appropriation ITEM 070-506 UTILITY BILL CREDITS shall be used by the Auditor of State to provide utility bill credits to qualified persons as provided in Sections 3 ~~through~~ TO 8 of this act.

THE FOREGOING APPROPRIATION ITEM 070-507 ADMINISTRATIVE COST REIMBURSEMENT SHALL BE EXPENDED BY THE AUDITOR OF STATE TO REIMBURSE COUNTIES FOR THE ADMINISTRATIVE COSTS OF IMPLEMENTING THE PROVISIONS OF THIS ACT. EACH COUNTY AUDITOR SHALL CERTIFY TO THE AUDITOR OF STATE THE NUMBER OF APPLICATIONS FOR UTILITY BILL CREDITS PROCESSED BY THE COUNTY AUDITOR, AND THE AUDITOR OF STATE SHALL REIMBURSE THE COUNTY ON THE BASIS OF ONE DOLLAR AND TWENTY-FIVE CENTS FOR EACH APPLICATION PROCESSED.

ANY COUNTY AUDITOR INCURRING EXPENSES OF LESS THAN ONE DOLLAR AND TWENTY-FIVE CENTS PER APPLICATION FOR UTILITY BILL CREDIT PROCESSED SHALL NOT RECEIVE THE TOTAL ONE DOLLAR AND TWENTY-FIVE CENTS REIMBURSEMENT PER APPLICATION, BUT SHALL ONLY RECEIVE REIMBURSEMENT FOR ACTUAL EXPENSES INCURRED PER APPLICATION PROCESSED.

110 DEPARTMENT OF TAXATION

	1977-78	1978-79	Biennium
Special ~~Purposes~~ PURPOSE			
410 Administration of Energy Credits	$ 382,107	$ —0—	$ ~~382,107~~
		325,557	707,664
Total Special Purposes	$ 382,107	$ —0—	$ ~~382,107~~
		325,557	707,664
Total General Revenue Fund	$ 382,107	$ —0—	$ ~~382,107~~
		325,557	707,664
Total Department of Taxation	$ 382,107	$ —0—	$ ~~382,107~~
		325,557	707,664

The foregoing appropriation item 110-410 Administration of Energy Credits, shall be used by the Department of Taxation to perform its responsibilities in administering the energy credits program pursuant to ~~Section~~ SECTIONS 3 ~~through~~ TO 8 of this Act.

490 OHIO COMMISSION ON AGING

	1977-78	1978-79	Biennium
SPECIAL PURPOSE			
401 ENERGY CREDITS OUTREACH PROGRAM	$ —0—	$ 52,500	$ 52,500
TOTAL SPECIAL PURPOSES	$ —0—	$ 52,500	$ 52,500
TOTAL GENERAL REVENUE FUND	$ —0—	$ 52,500	$ 52,500
TOTAL OHIO COMMISSION ON AGING	$ —0—	$ 52,500	$ 52,500

THE FOREGOING APPROPRIATION ITEM, 490-401 ENERGY CREDITS OUTREACH PROGRAM, SHALL BE USED BY THE OHIO COMMISSION ON AGING TO ESTABLISH, IN CONSULTATION WITH THE DIRECTOR OF THE ENERGY CREDITS ADVISORY COMMITTEE, AN OUTREACH PROGRAM WHEREBY THE OHIO COMMISSION ON AGING SHALL INFORM PERSONS SIXTY-FIVE YEARS OF AGE OR OLDER ABOUT THE ENERGY CREDITS AVAILABLE UNDER THIS ACT AND ASSIST THEM TO APPLY FOR THE CREDITS.

Except insofar as transfers are authorized by the Controlling Board, the sum appropriated to 1977-1978 shall not be expended to pay liabilities or deficiencies existing prior to July 1, 1977, nor incurred subsequent to June 30, 1978; the sum appropriated to 1978-1979 shall not be expended to pay liabilities or deficiencies

existing prior to July 1, 1978, nor incurred subsequent to June 30, 1979.

Appropriations made in this ~~Act~~ ACT are subject to all provisions generally applicable to General Revenue Fund appropriations made in Am. Sub. H. B. No. 191 of the 112th General Assembly. The Department of Administrative Services may account for appropriations made in this ~~Act~~ ACT as if they were made in Am. Sub. H. B. No. 191 of the 112th General Assembly."

SECTION 2. That existing sections 3, 4, 5, 6, 7, 8, and 11 of Amended Substitute House Bill 230 (sections 5, 8, and 11 as amended by section 1 of Amended House Bill 937 of the 112th General Assembly) are hereby repealed.

SECTION 3. (A) As used in this section, "purchased power" means electric power or energy purchased by an electric light company subject to all provisions of Chapter 4905. of the Revised Code from another entity. An exchange of electric power or energy is included in this definition. Any change in the rate or charge paid by a consumer that results from purchased power costs shall be based upon the consumer's actual consumption of power during the period for which the purchased power was obtained.

(B) If purchased power is obtained during the months of December, January, February, March, or April, the credit provided under Section 4 of Amended Substitute House Bill 230 of the 112th General Assembly as amended shall apply to any charge that results from the purchased power cost, regardless of whether such charge is included in the bill rendered to consumers for those months. Any person who receives the energy credit for the month in which purchased power is obtained shall receive a twenty-five per cent reduction in the total charge resulting from purchased power cost. Any electric light company that grants a credit under this section may receive reimbursement from the state by certifying to the State Auditor on a form prescribed by him the total amount of the reductions in purchased power cost charges granted or to be granted and such other information as the Auditor determines necessary for the purpose of verifying the propriety of reimbursing the reductions. Within thirty days of receipt of such certification, the Auditor shall draw a warrant on the general revenue fund payable to the utility for that amount.

SECTION 4. The Public Utilities Commission of Ohio and the Consumers' Counsel shall investigate the practices of the electric light companies that distribute electric power in this state with regard to their purchases of emergency power and alternative fuels during the coal miners' strike that occurred in the winter of 1977-19 They shall also investigate the practices of such companies regard to their stockpiling of coal and their state of preparedness prior to the strike. The objective of the investi-

gation shall be to determine if such companies exercised prudent management with regard to such practices. The Commission and the Consumers' Counsel shall report their findings to the General Assembly no later than August 1, 1978.

SECTION 5. The Legislative Budget Committee, together with the staff of the Energy Credits Advisory Committee, shall examine various possibilities, and the feasibility, problems, and costs associated with each, of making heating energy credits available to heads of household who (1) own or rent their dwelling units, (2) who are sixty-five years of age or older or permanently and totally disabled, (3) who have total income of no more than seven thousand four hundred twenty dollars, and (4) who occupy separate households in multiple unit dwellings to which utility services, energy, or commodities are provided for the common benefit of each of the separate households, and shall report its findings to the General Assembly no later than June 1, 1978.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed April 27, 1978

Approved May 19, 1978
11:45 a.m.

Governor.

This act is not of a general and permanent nature and does not require a code section number.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 19th day of May, A. D. 1978,

Secretary of State.

File No. 314. Effective Date May 19, 1978.

CHAPTER NO. 871

HOUSE BILL NO. 1951

By Chiles, Richards, Steinhauer, Ford (Cocke), Ozment, Cobb

Substituted for: Senate Bill No. 1929

By Person

AN ACT entitled the "Utilities' Cut-Off Procedures Act"; to establish minimum procedures for discontinuing certain utility services; and to provide certain procedures for resumption of such services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This Act shall be cited as the "Utilities' Cut-Off Procedures Act."

SECTION 2. As used in this Act, unless the context requires otherwise, "utility" means any utility which furnishes electricity, gas or water, or converts solid waste into heat, fuel or energy.

SECTION 3. A utility shall not discontinue service to a user for nonpayment of services until:

(a) A notice has been mailed to the user stating that service shall be discontinued unless payment is made within a specified time; and

(b) A reasonable, good faith effort is made to notify the user by a utility representative in person that service shall be discontinued on a date certain. Knocking on the door or ringing the doorbell by the utility representative shall constitute a reasonable good faith effort; provided, however, that the utility representative need not knock or ring at any residence where service has been discontinued within the previous four years.

After such notification procedures have been taken and a user does not make payment of his arrearage or make payment arrangements acceptable to the utility, then service to such user may be discontinued.

SECTION 4. When service has been discontinued and the user pays his arrearage or makes acceptable payment arrangements, service shall be resumed or reconnected. All utilities shall have procedures for services to be resumed or reconnected, not only during normal business hours on regular business days, but also for resuming or reconnecting services on weekends and holidays at hours considered normal business hours for retail businesses on such days.

SECTION 5. The provisions of this Act shall only apply to those counties having a metropolitan form of government.

SECTION 6. This Act shall take effect July 1, 1978, the public welfare requiring it.

PASSED: March 30, 1978

Ned R. McWherter,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

John S. Wilder,
SPEAKER OF THE SENATE

APPROVED: April 13, 1978

Ray Blant
GOVERN

CHAPTER

An Act to amend and reenact § 56-247.1 of the Code of Virginia, relating to procedures which public utilities must follow in dealing with customers.

[H 294]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 56-247.1 of the Code of Virginia is amended and reenacted as follows:

§ 56-247.1. Commission to require public utilities to follow certain procedures.—The Commission shall require that public utilities adhere to the following procedures:

A. Every ~~public~~ *electric* utility shall provide its residential customers one full billing period to pay for one month's local or basic services, before initiating any proceeding against a residential customer for nonpayment of local service. *Customers shall be advised on their bills of the date on which the bill is prepared and the date by which payment must be received by the utility to avoid a late payment charge. In no event shall the time between the date of bill preparation and the date for receipt of payment be less than twenty-eight days.*

B. Pay the residential customer a fair rate of interest as determined by the Commission on money deposited and return the deposit with the interest after not more than one year of satisfactory credit has been established.

C. Every public utility shall establish customer complaint procedures which will insure prompt and effective handling of all customer inquiries, service requests and complaints. Such procedure shall be approved by the Commission before its implementation and it shall be distributed to its residential customers.

D. No electric or gas utility shall terminate a customer's service without ten days' notice by mail to the customer.

CHAPTER 124

An Act to amend the Code of Virginia by adding in Chapter 10 of Title 56 an article numbered 2.1, containing sections numbered 56-245.2 and 56-245.3, relating to the regulation of electric metering and submetering in apartments and condominiums by the State Corporation Commission.

[S 150]

Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 10 of Title 56 an article numbered 2.1, containing sections numbered 56-245.2 and 56-245.3 as follows:

Article 2.1.

Regulation of Electric Metering and Submetering.

§ 56-245.2. Definitions.—When used in this article, unless expressly stated otherwise:

1. "Apartment house" shall mean a building or buildings containing more than two dwelling units all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer. Apartment house shall include residential condominiums, whether rented or owner occupied.

2. "Dwelling unit" shall mean a room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities.

§ 56-245.3. Commission to promulgate rules, regulations and standards.—Notwithstanding any law to the contrary, the State Corporation Commission of Virginia shall promulgate rules, regulations, and standards under which any owner, operator, or manager of an apartment house which is not individually metered for electricity for each dwelling unit may install submetering equipment for each individual dwelling unit for the purpose of fairly allocating the cost of each individual dwelling unit's electrical consumption. In addition to other appropriate safeguards for the tenant, such rules and regulations shall require (i) that an apartment house owner shall not impose on the tenant any charges, over and above the cost per kilowatt hour which is charged by the utility company to the owner, including any local utility tax if any, except that an additional service charge not to exceed one dollar per unit per month may be collected to cover administrative costs and billing, and (ii) that the apartment house owner shall maintain adequate records regarding submetering and shall make such records available for inspection by the tenant during reasonable business hours. Any rule, regulation, or standard promulgated by the Commission pursuant to this section shall be deemed to have been entered or adopted under Title 56 of the Code of Virginia, and for purposes of enforcement, both utility companies and the owners, operators, or managers of apartment houses included within the purview of this article are subject to enforcement pursuant to §§ 56-5, 56-6, and 56-7 of the Code of Virginia. All submetering equipment shall be subject to the same rules, regulations, and standards established by the Commission for accuracy, testing, and

record keeping of meters installed by electric utilities and shall be subject to the meter requirements of § 56-245.1 of the Code of Virginia.

In implementing this section, no apartment house shall be considered a public utility engaged in the business of distributing or reselling electricity, and said apartment house shall be limited in all respects to using metering equipment for the fair allocation of the costs of electric service among the tenants using the apartment house.

_____

President of the Senate

_____

Speaker of the House of Delegates

Approved:

_____

Governor

STATE OF WISCONSIN

1977 Assembly Bill 878 Date published*: May 23, 1978

CHAPTER 393 , LAWS OF 1977

AN ACT to renumber 98.245 (4); and to create 98.245 (4) (b) of the statutes; relating to the sale of liquefied petroleum gas in vapor form.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 98.245 (4) of the statutes is renumbered 98.245 (4) (a).

SECTION 2. 98.245 (4) (b) of the statutes is created to read:

98.245 (4) (b) When liquefied petroleum gas is sold or delivered to a consumer in vapor form by vapor measurement, the volume of vapor so sold and delivered shall be corrected to a temperature of 60 degrees Fahrenheit through the use of an approved meter equipped with a sealed automatic temperature compensating mechanism. This paragraph shall apply to all meters installed for use in the vapor measurement of liquefied petroleum gas in vapor form after the effective date of this act (1977). This paragraph does not prohibit the continued use of meters previously installed without a self-sealing automatic temperature compensating mechanism, but no such meter may be continued in use after January 1, 1986, unless brought into compliance with this paragraph.

* Section 990.05, *1975 Wisconsin Statutes*: **Laws and acts; time of going into force.** "Every law or act which does not expressly prescribe the time it takes effect shall take effect on the day after its publication."

Wisconsin - CH 418

1977 Assembly Bill 1220

SECTION 621m. 134.80 of the statutes is created to read:

134.80 Home heating fuel dealers. Any dealer selling fuel of any kind for the purpose of heating a private residence shall notify each private residential customer whose account is subject to disconnection of the existence of the emergency fuel and utilities assistance program under s. 49.055.

A bill to be entitled

An act relating to the tax on sales, use and other transactions; amending s. 212.08(5) and (7)(a), (c), Florida Statutes, and adding paragraphs (l) and (m) to subsection (7) and adding subsection (12) to said section; relating to sales and use tax; providing that machinery and equipment for use in new manufacturing plants or operations shall be exempt from such tax; providing that machinery or equipment purchased for use in expanding plants or operations shall be exempt from any amount of such tax in excess of $100,000; providing for refunds of tax 30 days after acceptance by the Department of Revenue; providing that certain industries shall not be eligible for exemption; providing definitions; providing that personal property sold or leased to state headquarters of veteran organizations shall be exempt from such tax; providing that sales of flyable aircraft by manufacturers to certain purchasers shall be taxable at the rate equal to the sales tax rate of the state in which such aircraft will be domiciled subsequent to its purchase; providing exemptions; providing a penalty; providing that the dealer collection allowance concerning such sales shall be 10 percent; providing that the sale or lease of aircraft to an air carrier regulated by the Public Service Commission shall be exempt from such tax; providing that

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boiler fuels including wood products used in the manufacturing process shall be exempt from such tax; adding s. 206.87(4)(g), Florida Statutes; providing an exemption for the sale or use of certain fuels; amending s. 166.231, Florida Statutes, relating to levy of public service tax by muncipalities; exempting the value of the first 50 kilowatt hours of electricity per month for residential use from such tax beginning October 1, 1978; requiring the passing of the exemption to each individual tenant; providing for replacement of municipality tax loss to cities; creating s. 166.232, Florida Statutes, allowing the levy of public service tax by muncipalities on certain services at a uniform rate rather than on a percentage basis; providing, under the uniform rate option, a procedure to be used by muncipalities in shifting their tax rate structures; amending s. 220.62(1), Florida Statutes; redefining the term "bank" for the purposes of part VII of the Code to include certain international banking associations, corporations, or other similar organizations; requiring a final report; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 212.08, Florida Statutes, is amended, paragraphs (a) and (c) of subsection

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(7), are amended, and new paragraphs (l) and (m) are added to said subsections, and a new subsection (12) is added, to read:

212.08 Sales, rental, storage, use tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution and the storage to be used or consumed in this state, of the following tangible personal property, are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(a) Items in agricultural use and certain nets. There shall be exempt from the tax imposed by this chapter nets designed and used exclusively by commercial fisheries; feeds for raising poultry and livestock on farms and for feeding dairy cows; fertilizers, insecticides, herbicides and fungicides used for application on crops or groves; portable containers used for processing farm products; field and garden seeds; nursery stock, seedlings, cuttings or other propagative material purchased for growing stock; cloth, plastic, and other similar materials used for shade, mulch, protection from frost or insects on a farm; provided that such exemption shall not be allowed unless the purchaser or lessee signs a certificate stating tht the item to be exempted is for the exclusive use designated herein.

(b) Machinery and equipment used to increase productive output.--

1. Industrial machinery and equipment purchased for use in new businesses which manufacture, process, compound or produce for sale items of tangible personal property at fixed locations shall be considered exempt from the tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that said items will be

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used in a new business in this state. Said purchases must be made prior to the date said business first begins its productive operations, and delivery of the purchased item must be made within 12 months of said date.

2. Industrial machinery and equipment purchased for use in expanding manufacturing facilities or plant units which manufacture, process, compound or produce for sale items of tangible personal property at fixed locations in this state shall be considered exempt from any amount of tax imposed by this chapter in excess of $100,000 per calendar year upon an affirmative showing by the taxpayer to the satisfaction of the department that said items will be used to increase the productive output of said expanded business by not less than 10 percent.

3. The exemptions provided by subparagraph 1. and 2. shall inure to the taxpayer only through refund of previously paid taxes. Said refund shall be made within 30 days of formal approval by the department of the taxpayer's application.

4. The department shall promulgate regulations governing the manner and form in which said refund applications shall be made, and may establish guidelines as to the requisites for an affirmative showing of increased productive output.

5. The exemptions provided in subparagraphs 1. and 2. shall not apply to machinery or equipment purchased or used by electric utility companies, communications companies, phosphate or other solid minerals severance, mining or processing operations, oil or gas exploration, or production operations, printing or publishing firms, any firm subject to regulation by the Division of Hotels and Restaurants of the

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Department of Business Regulation, or any firm which does not manufacture, process, compound, or produce for sale items of tangible personal property.

6. For the purposes of the exemptions provided in subparagraphs 1. and 2., these terms shall have the following meanings:

a. "Machinery and equipment" shall include parts and accessories only to the extent that the exemption thereof is consistent with the provisions of this paragraph.

b. "Productive output" means the number of units actually produced by a single plant or operations in a single continuous 12-month period, irrespective of sales. Increases in productive output shall be measured by the output for 1 year immediately following the completion of installation of such machinery or equipment over the output for 1 year immediately preceding said installation. The units used to measure productive output shall be physically comparable between the two periods.

(7) MISCELLANEOUS EXEMPTIONS.--

(a) Religious, charitable, and educational and veteran.--There shall be exempt from the tax imposed by this chapter articles of tangible personal property sold or leased direct to or by churches or sold or leased to, nonprofit religious, nonprofit educational, or nonprofit charitable institutions and state headquarters for veteran organizations when used ~~by such institutions~~ in carrying on their customary ~~nonprofit religious, nonprofit educational,~~ or nonprofit charitable, or veteran organization activities, including church cemeteries.

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(c) Restrictive definitions.--The provisions of this section authorizing exemptions from tax shall be strictly defined, limited and applied in each category as follows:

1. "Religious institutions" shall mean churches and established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on.

2. "Educational institutions" shall mean state tax supported or parochial, church and nonprofit private schools, colleges or universities conducting regular classes and courses of study required for accrediation by or membership in the Southern Association of Colleges and Secondary Schools, Department of Education or the Florida Council of Independent Schools. Nonprofit libraries, art galleries and museums open to the public are defined as educational institutions and eligible for exemption.

3. "Charitable institutions" shall mean only nonprofit corporations operating physical facilities in Florida at which are provided charitable services, a reasonable percentage of which shall be without cost to those unable to pay.

4. "Veteran organizations" shall mean nationally chartered veteran organizations holding a current exemption from federal income tax under section 501(c) (19) of the Internal Revenue Code, or, in the case of the Disabled American Veterans, Department of Florida, Inc., and its auxiliaries, under section 501(c) (4) of said code.

(l) Aircraft.--Also exempt is any sale, including an occasional or isolated sale, of an aircraft to an air carrier which is based in the state and which is subject to regulation by the Florida Public Service Commission.

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(m) "Boiler" fuels.--Purchases of natural gas, residual oil, coal or wood, wood residues or wood bark used in an industrial manufacturing, processing, compounding, or production process at a fixed location in this state shall be exempt from the taxes imposed by this chapter.

(n) This exemption shall not apply to the use of "Boiler" fuels used by any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business Regulation.

(12) PARTIAL EXEMPTION; FLYABLE AIRCRAFT.--

(a) The tax imposed on the sale by a manufacturer of flyable aircraft, who designs such aircraft, which sale may include necessary equipment and modifications placed on such flyable aircraft prior to delivery by the manufacturer, shall be an amount equal to the sales tax which would be imposed on such sale under the laws of the state in which the aircraft will be domiciled.

(b) This partial exemption shall only apply if the purchaser is a resident of another state who will not use the aircraft in this state, or if the purchaser is a resident of another state and used the aircraft in interstate or foreign commerce, or if the purchaser is a resident of a foreign country.

(c) The maximum tax collectible under this subsection shall not exceed 4 percent of the sales price of such aircraft. No Florida tax shall be imposed on the sale of such aircraft if the state in which the aircraft will be domiciled does not allow Florida sales or use tax to be credited against its sales or use tax. Furthermore, no tax shall be imposed on the sale of such aircraft if the state in which the aircraft will be domiciled has enacted a sales and use tax exemption

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for flyable aircraft, or if the aircraft will be domiciled outside the United States.

(d) The purchaser shall execute a sworn affidavit attesting that he is not a resident of Florida, and stating where the aircraft will be domiciled. If the aircraft is subsequently used in this state within 6 months of the time of purchase, in violation of the intent of this subsection, the purchaser shall be liable for payment of the full use tax imposed by this chapter, and shall be subject to the penalty imposed by s. 212.12(2), which penalty shall be mandatory.

(e) The provisions of s. 212.12(1) notwithstanding, manufacturers of flyable aircraft granted the partial sales tax exemption under this subsection shall be allowed to retain a 10 percent deduction of the amount of sales tax due on sales of flyable aircraft manufactured by them if such manufacturers conform to the provisions of this chapter.

Section 2. In editing manuscript for the next official edition of the Florida Statutes, the Division of Statutory Revision of the Joint Legislative Management Committee shall revise any references to s. 212.08, Florida Statutes, made incorrect as a result of the renumbering accomplished by this act.

Section 3. Paragraph (g) is added to subsection (4) of section 206.87, Florida Statutes, to read:

206.87 Levy of tax.--

(4) The following sales shall not be subject to the tax herein imposed:

(g) Sales or use by a dealer of special fuel consumed by a power take-off for the purpose of turning a concrete mixer drum used in the manufacturing process which is mounted

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on a motor vehicle and which has no separate fuel tank or power unit.

Section 4. Section 166.231, Florida Statutes, is amended to read:

166.231 Municipalities; public service tax.--

(1)(a) A municipality may levy a tax on the purchase of electricity, metered or bottled gas (natural liquefied petroleum gas or manufactured), water service, telephone service, and ~~fee~~ telegraph service. The tax shall be levied only upon purchases within the municipality and shall not exceed 10 percent of the payments received by the seller of the taxable item from the purchaser for the purchase of such service. Municipalities imposing a tax on the purchase of cable television service as of May 4, 1977, may continue to levy such tax to the extent necessary to meet all obligations to or for the benefit of holders of bonds or certificates, which were issued prior to May 4, 1977.

(b) The tax imposed by paragraph (a) shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. "Fuel adjustment charge" shall mean all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.

(2) Services competitive with those enumerated in subsection (1), as defined by ordinance, shall be taxed on a comparable base at the same rates.

(3) The tax on electricity authorized under subsection (1) shall not be levied and collected on the first 50 kilowatt hours per month purchased for residential use beginning October 1, 1978. Such exemption shall apply to each separate

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residential unit, regardless of whether such unit is on a separate or central meter, and shall be passed on to each individual tenant. The electric utility shall compute the amount of the tax loss resulting from such exemption for each month and:

(a) Deduct this amount from the tax due the state for sales and use tax under chapter 212; and

(b) Remit this amount to the municipality in accordance with subsection (6).

(4)~~(3)~~ The purchase of natural gas or fuel oil by a public or private utility, either for resale or for use as fuel in the generation of electricity, or the purchase of fuel oil or kerosene for use as an aircraft engine fuel or propellant or for use in internal combustion engines shall be exempt from taxation hereunder.

(5)~~(4)~~ A municipality may exempt from taxation hereunder the purchase of the taxable items by the United States Government, the State of Florida, or any other public body as defined in s. 1.01, and shall exempt purchases by any recognized church in this state for use exclusively for church purposes.

(6)~~(5)~~ The tax authorized hereunder shall be collected by the seller of the taxable item from the purchaser at the time of the payment for such service. The seller shall remit the taxes collected to the municipality in the manner prescribed by ordinance.

(7)~~(6)~~ A municipality shall notify in writing any known seller of items taxable hereunder of any change in the boundaries of the municipality or in the rate of taxation.

Section 5. Section 166.232, Florida Statutes, is created to read:

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166.232 Municipalities; public service tax; physical unit base option.--

(1) At the discretion and option of the local tax authority, the tax authorized under s. 166.231 may be levied on a physical unit basis. The tax on the purchase of electricity may be based upon the number of kilowatt hours purchased; the tax on the purchase of metered or bottled gas (natural liquefied petroleum gas or manufactured) may be based on the number of cubic feet purchased; the tax on the purchase of fuel oil and kerosene may be based on the number of gallons purchased; and the tax on the purchase of water service may be based on the number of gallons purchased.

(2) In the event that a municipality shall choose the option provided for in this section to tax on a physical unit basis, the tax on electricity authorized under s. 166.231 shall not be levied and collected on the first 50 kilowatt hours per month purchased for residential use. Such exemption shall apply to each separate residential unit, regardless of whether such unit is on a separate or central meter, and shall be passed on to each individual tenant.

(3) In exercising its option pursuant to this section, each municipality levying a tax pursuant to this section shall implement a new tax rate structure and tax base in accordance with this act. The new tax rates shall apply to prior purchases of service if the purchases were billed during the month of implementation and thereafter. The shift in the tax rate and tax base for electricity, metered or bottled gas, fuel oil, kerosene, and water shall be accomplished in the following manner:

(a) Each municipality levying the tax shall, prior to converting to unit based rates, compute the amount of tax it

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received from each source for the most recent 12 months for which such data is available.

(b) The amount determined under paragraph (a) shall be divided by the number of units purchased and taxed for the same period of time used in paragraph (a).

(c) One hundred five percent of the resulting figure rounded to no more than four decimal places shall be the maximum amount per unit which the municipality may levy upon converting to unit based rates. However, during the year of conversion to a physical unit tax, the municipality may adjust its rates to ensure that revenues derived from the tax shall equal 105 percent of the revenues derived in the immediately preceding year. In those years subsequent to the year of conversion to a physical unit tax, the municipality may amend its tax rate by ordinance.

Section 6. Subsection (1) of section 220.62, Florida Statutes, is amended to read:

220.62 Definitions.--For purposes of this part:

(1) The term "bank" shall mean a bank holding company registered under the Bank Holding Company Act of 1956 of the United States, 12 U.S. Code, ss. 1841-1849, as amended, or a bank or trust company incorporated and doing business under the laws of the United States (including laws relating to the District of Columbia), of any state, or of any territory, a substantial part of the business of which consists of receiving deposits and making loans and discounts or of exercising fiduciary powers similar to those permitted to national banks under authority of the Comptroller of the Currency and which is subject by law to supervision and examination by state, territorial, or federal authority having supervision over banking institutions. <u>The term "bank" shall</u>

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also include any banking association, corporation, or any other similar organization organized and operated under the laws of any foreign country, which banking association, corporation, or other organization is also operating in this state pursuant to s. 659.67, Florida Statutes.

Section 7. The Department of Administration, in cooperation with the Departments of Revenue and Commerce shall submit to the legislature a preliminary report on or before April 1, 1979, and a final report on or before January 1, 1981. Such report shall include:

(1) The number of new employment positions created in the state subsequent to the effective date of this act;

(2) The degree to which the credits made available by this act may have contributed to the creation of such employment positions;

(3) Additional value of capital outlay; and

(4) Projections of expected growth in employment positions and capital investment in the state.

Section 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 9. The provisions of this act, shall be in addition to, and shall not supersede, the provisions of any other act passed during the 1978 regular session.

Section 10. This act shall take effect July 1, 1978, except that paragraph (m) of subsection (7) of section 212.08, Florida Statutes, shall take effect January 1, 1979; and

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except that sections 4 and 5 of this act shall take effect October 1, 1978.

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Regular Session, 1978

HOUSE BILL NO. 1129

ACT NO. 599

BY MESSRS. BAGERT, BEL AND J. JACKSON

AN ACT

To amend Title 47 of the Louisiana Revised Statutes of 1950 by adding a new Section designated as Section 11, relative to tax credits and tax warrants to operators of electric generating plants and natural gas distribution services municipally owned or regulated, or regulated by the Louisiana Public Service Commission and other affected consumers; to provide the basis for such credit or warrant and the amount; to provide for rules and regulations; and to provide otherwise with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 11 of Title 47 of the Louisiana Revised Statutes of 1950 is hereby enacted to read as follows:

§11. Tax credit for electric and natural gas service

A. Recognizing that the state of Louisiana must depend upon natural gas produced in the federal domain of the outer continental shelf as a supplement to its declining domestic supply, and recognizing that this natural gas is regulated exclusively by agencies of the federal government and is therefore outside of the regulatory jurisdiction of the state of Louisiana, and that the necessarily higher transportation and marketing costs for such natural gas results in higher fuel costs for utilities and industries within the state dependent thereon, the following tax credits, being deemed fair and in the best interest of the state, are hereby authorized.

B. Every electric generating plant and natural gas distribution service municipally owned or regulated, or regulated by the Louisiana Public Service Commission and every direct purchaser of natural gas from the owner of the natural gas, other than an owner of natural gas regulated by a municipality or the state, for consumption only by such purchaser, shall be allowed a direct tax credit against any tax or combination of taxes, other than severance taxes, owed to the state, upon showing that fuel costs for electricity generation or natural gas distribution or consumption have increased as a direct result of increases in transportation and marketing costs of natural gas delivered from the federal domain of the outer continental shelf and upon which such entities are dependent for a portion of their supply. Increased transportation and marketing costs shall not include increases in wellhead prices or increases attributable to inflation factors. In the event that the increase in fuel costs exceeds the tax or combination of taxes owed to the state, every such electric generating plant, natural gas distribution service or other affected purchaser shall be issued tax warrants in amounts not to exceed in the aggregate the difference between the increase in the fuel costs and the tax or taxes owed to the state, which tax warrants may be used in the payment of any tax or combination of taxes owed to any parish, municipality, political subdivision or other taxing authority of the state. Tax credits and warrants shall be issued annually hereunder and shall not exceed two million dollars in the aggregate. No electric generating plant, natural gas distribution service, or other affected purchaser shall be issued tax credits or warrants totaling less than two hundred fifty dollars annually, except that increased costs totaling less than the minimum credit established herein may be carried forward and accumulated for three years from the year in which the increased costs occur in order that the applicant may utilize the tax credit authorized herein prior to the end of the prescriptive period otherwise set forth in this Title. In the event that total increased fuel costs exceed two million dollars in the aggregate, the Secretary of

the Department of Revenue and Taxation shall issue tax credits and warrants based on a formula to be fixed by regulation which shall insure each qualifying applicant a proportionate share of the maximum tax credits established herein.

C. The secretary of the Department of Revenue and Taxation shall promulgate rules providing for the determination of the amount of any tax credit or tax warrant provided for herein and for administration of the provisions of this Section.

D. The state shall have a right of recovery of tax credits granted pursuant to this Section in the event that increased transportation and marketing costs for which credits are granted hereunder are reimbursed or refunded for any reason to any entity receiving the credit.

Section 2. Tax credits or tax warrants authorized under this Act shall apply to gas distributed or consumed during the twelve month period subsequent to 7:00 A.M. on July 1, 1979, and each succeeding twelve month period thereafter and shall be verified and issued by the secretary of the Department of Revenue and Taxation on September 15, 1980 and every September 15 of each year following. Tax credits or tax warrants issued under this Part shall be dated no later than September 15 of the year of issuance and the credits or warrants issued hereunder must be utilized by September 15 of the year next following.

Section 3. In the event that the secretary of the Department of Revenue and Taxation issues tax credit warrants for the payment of taxes owed to a parish, municipality, or other political subdivision, the legislature shall include in its next regular session an appropriation to reimburse the parish, municipality, or other political subdivision in an amount not to exceed total tax credit warrants issued hereunder.

Section 4. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

H. B. NO. 1128

Section 5. All laws or parts of laws in conflict herewith are hereby repealed.

Section 6. The provisions of this Act shall become effective on July 1, 1979.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED:_____

SENATE BILL No. 832
(81r3197)

Introduced by Senators Smelser ~~and~~ , Schweinhaut , Helton, Levitan, and Mason

Read and Examined by Proofreader:

_____
Proofreader.

_____
Proofreader.

Sealed with the Great Seal and presented to the Acting Governor, for his approval this_____ day of_____ at_____o'clock,_____M.

_____
President.

CHAPTER 829

AN ACT concerning

Retail Sales Tax - Fuel Rate Adjustment

FOR the purpose of exempting for a certain period of time from the Retail Sales Tax the fuel rate adjustment included on certain utility bills; and making the passage of this Act contingent upon the enactment of legislation imposing the retail sales tax on food purchased at retail in excess of a certain dollar amount.

BY adding to

Article 81 - Revenue and Taxes
Section 326(ii)
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken by amendment.

Article 81 – Revenue and Taxes

326.

The tax hereby levied does not apply to the following sales:

(II) UNTIL JUNE 30, 1980, THE AMOUNT OF THE FUEL RATE ADJUSTMENT INCLUDED IN THE SALES OF NATURAL OR ARTIFICIAL GAS, ELECTRICITY, OR STEAM USED IN RESIDENTIAL PROPERTIES INCLUDING APARTMENT DWELLINGS. THE FUEL RATE ADJUSTMENT SHALL BE THAT AMOUNT OF THE SALE ABOVE THE BASE RATE APPROVED BY THE PUBLIC SERVICE COMMISSION FOR THOSE FUELS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall ~~be contingent upon enactment of legislation imposing the retail sales tax on food purchased at retail in an amount in excess of $1~~ take effect on July 1, 1978, contingent upon the taking effect of Chapter of the Acts of 1978 (House Bill 404).

~~SECTION 2~~ 3. ~~AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.~~

Approved:

_____
Acting Governor.

_____
President of the Senate.

_____
Speaker of the House of Delegates.

H O U S E O F D E L E G A T E S

81r3161 No. 1727

By: Delegates Maurer ~~and Robertson~~, Robertson, Mitchell and C. Hickman
Introduced and read first time: February 23, 1978
Assigned to: Ways and Means

Committee report: Favorable with amendments
House action: Adopted
Read second time: March 28, 1978

CHAPTER 951

AN ACT concerning

Environmental Surcharge - Sales and Use Tax Exemption

FOR the purpose of excluding from the dofinition of ~~"sale at retail" and the resulting~~ sales tax and the use tax any sales or service tax imposed by a county or the City of Baltimore on the sale of natural or artificial gas, oil, electricity, coal, nuclear fuel assemblies or steam, and the environmental surcharge placed on sales of electricity by the State and which may be passed on to the consumer.

~~BY repealing and reenacting, with amendments,~~

~~Article 81 - Revenue and Taxes~~
~~Section 324(f)(4)~~
~~Annotated Code of Maryland~~
~~(1975 Replacement Volume and 1977 Supplement)~~

BY adding to

Article 81 - Revenue and Taxes
Section 324(i)(5) and (6) and 372(g)(5) and (6)
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 81 - Revenue and Taxes

324.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken by amendment.

As used in this subtitle, the following terms shall mean or include:

~~(f) "Retail sale" and "sale at retail" shall mean the sale in any quantity or quantities of any tangible personal property or service taxable under the terms of this subtitle. Said term shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is (i) to resell the property so transferred in the form in which the same is, or is to be received by him, (ii) to destroy the property so transferred in the manufacturing, assembling, processing or refining of other tangible personal property to be produced for sale or in the generation of electricity, or (iii) to use or incorporate the property so transferred as a material or part, or other tangible personal property to be produced for sale by manufacturing, assembling, processing or refining. Tangible personal property shall be considered to be destroyed in manufacturing, processing, assembling, refining or in the generation of electricity if it is changed in nature by reason of its use in a relatively short period of time, as the nature of coal is changed by burning, as refractories which come in direct contact with molten metals are changed by heat and abrasion, as grinding wheels are reduced to dust, as acids are changed by contamination, and so forth. Property which is broken or mutilated shall not be considered to be destroyed. Tangible personal property shall not be considered to be destroyed in such operations if its value as property is ordinarily dissipated through the gradual wear or tear incident to its use. Machinery and small tools shall not be considered to be destroyed in such operations. The terms "manufacturing," "assembling," "processing," and "refining" shall not include (A) maintaining, servicing, or repairing; (B) testing finished products; or (C) providing for the comfort or health of employees. For the purpose of the tax imposed by this subtitle, the term "sale at retail" shall include but shall not be limited to the following:~~

~~(4) The sale of natural or artificial gas, oil, electricity, coal, nuclear fuel assemblies, or steam, when made to any purchaser for purposes other than resale or for use in manufacturing, assembling, processing, refining, or in the generation of electricity. HOWEVER, THESE TERMS, AS USED IN THIS PARAGRAPH, DO NOT INCLUDE THE AMOUNTS OF A SALES OR SERVICE TAX IMPOSED BY A COUNTY OR THE CITY OF BALTIMORE, AND THE TERM "ELECTRICITY" DOES NOT INCLUDE THE ADDITIONAL ENVIRONMENTAL SURCHARGE PER KILOWATT HOUR OF ELECTRIC ENERGY WHICH IS TO BE PAID BY ANY ELECTRIC COMPANY, AND WHICH MAY BE ADDED TO CUSTOMERS' BILLS, PURSUANT TO §3-302(A) OF THE NATURAL RESOURCES ARTICLE.~~

(i) "Price" means the aggregate value in money of anything or things paid or delivered, or promised to be paid or delivered by a purchaser to a vendor in the consummation and

complete performance of a retail sale without any deduction therefrom on account of the cost of the property sold, cost of materials used, labor or service cost, or any other expense whatsoever. "Price" shall not include the following:

(5) THE AMOUNT OF A SALES OR SERVICE TAX IMPOSED BY A COUNTY OR BALTIMORE CITY ON THE SALE OF NATURAL OR ARTIFICIAL GAS, OIL, ELECTRICITY, COAL, NUCLEAR FUEL ASSEMBLIES, OR STEAM.

(6) THE AMOUNT OF ADDITIONAL ENVIRONMENTAL SURCHARGE PER KILOWATT HOUR OF ELECTRIC ENERGY WHICH IS TO BE PAID BY ANY ELECTRIC COMPANY, AND WHICH MAY BE ADDED TO CUSTOMERS' BILLS UNDER §3-302(A) OF THE NATURAL RESOURCES ARTICLE.

372.

As used in this subtitle, the following terms shall mean or include:

(g) "Price" means the aggregate value in money of any thing or things paid or delivered, or promised to be paid or delivered by a purchaser to a vendor in the consummation and complete performance of a retail sale without any deduction therefrom on account of the cost of the property sold, cost of materials used, labor or service cost, or any other expense whatsoever. "Price" shall be deemed to be the amount received exclusive of the tax hereby imposed provided the vendor shall establish to the satisfaction of the Comptroller that the tax was added to the price. "Price" shall not include the following:

(5) THE AMOUNT OF A SALES OR SERVICE TAX IMPOSED BY A COUNTY OR BALTIMORE CITY ON THE SALE OF NATURAL OR ARTIFICIAL GAS, OIL, ELECTRICITY, COAL, NUCLEAR FUEL ASSEMBLIES, OR STEAM.

(6) THE AMOUNT OF ADDITIONAL ENVIRONMENTAL SURCHARGE PER KILOWATT HOUR OF ELECTRIC ENERGY WHICH IS TO BE PAID BY ANY ELECTRIC COMPANY, AND WHICH MAY BE ADDED TO CUSTOMERS' BILLS UNDER §3-302(A) OF THE NATURAL RESOURCES ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

CHAPTER 786

An Act to amend and reenact § 58-603 of the Code of Virginia, relating to the annual State franchise tax and local license tax on water or heat, light and power companies.

[S 495]

Approved APR 3 1978

Be it enacted by the General Assembly of Virginia:

1. That § 58-603 of the Code of Virginia is amended and reenacted as follows:

§ 58-603. Annual State franchise tax; local license taxes.—Every corporation coming within the provisions of this article shall pay to the State for each tax year an annual State franchise tax equal to one and one-eighth per centum of its gross receipts from all sources up to one hundred thousand dollars of such gross receipts and three and one-half per centum of all such gross receipts from all sources in excess of one hundred thousand dollars, for the privilege of exercising its franchise in this State, which, with the taxes hereinbefore provided for, shall be in lieu of the annual State merchants license tax required under Chapter 7 (§ 58-239 et seq.) of this title and all State taxes or license charges whatsoever upon the franchises of such corporation and the shares of stock issued by it and upon all its property as hereinbefore provided; provided, however, that the tax on gross receipts in excess of one hundred thousand dollars for the tax year nineteen hundred seventy-nine shall be an amount equal to three and two-tenths per centum; for the tax year nineteen hundred eighty shall be an amount equal to two and nine-tenths per centum; for the tax year nineteen hundred eighty-one shall be an amount equal to two and six-tenths per centum; for the tax year nineteen hundred eighty-two shall be an amount equal to two and three-tenths per centum; and for the tax year nineteen hundred eighty-three and thereafter shall be an amount equal to two per centum.

(1) Nothing herein contained shall exempt such corporation from motor vehicle license taxes or motor vehicle fuel taxes or the annual fee required by § 58-450 or from assessments for street and other local improvements, which shall be authorized by law, nor from the county, city, town, district or road levies;

(2) Any city, town or county may impose a license tax under § 58-266.1 upon such corporation for the privilege of doing business therein, which shall not exceed one half of one per centum of the gross receipts of such business accruing to such corporation from such business in such city, town or county;

(3) From the amount of any such license tax there shall be deducted any sum or sums paid by such corporations to such city, town or county as a merchant's license tax and license taxes, except motor vehicle license taxes; ~~and~~

(4) Nothing herein contained shall annul or interfere with or prevent any contract or agreement by ordinance between such corporations and cities and towns as to compensation for the use of the streets or alleys of such cities and towns by such corporations ~~.~~ *; and*

(5) There shall be deducted for purposes of this section from the total gross receipts of any electric cooperative, as defined in § 56-209, which purchases electricity for the sole purpose of resale to other cooperatives, the amount paid in such taxable period by such cooperative to purchase electricity from a vendor of electricity which is subject to the State franchise tax; and

(6) On and after July one, nineteen hundred eighty, there shall be deducted for purposes of this section from the gross receipts of any electric cooperative, as defined in § 56-209, which is engaged in sales to ultimate consumers, the amount paid in such taxable period by such cooperative to purchase electricity from a vendor subject to the State franchise tax.

2. That this act shall be effective on and after January one, nineteen hundred seventy-nine.

President of the Senate

Speaker of the House of Delegates

Approved:

Governor

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 163

(By Mr. Oates)

[Passed March 11, 1978; in effect April 1, 1978.]

AN ACT to amend and reenact sections two, two-b, two-d, two-k, three-b and twenty-five, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article thirteen by adding thereto a new section, designated section two-m; and to amend and reenact section two, article thirteen-c of said chapter eleven, all relating to business and occupation taxes; imposition of privilege taxes on privileges of generating or producing electric power and on supplying of public service by electric light and power companies; establishing rates and measures of such taxes; establishing rate of tax on electric light and power companies which supply public service but which do not produce electric power; establishing rate of tax on electric power used in certain quantities at plant locations of manufacturers; clarifying tax treatment of electricity generated by manufacturers for own use; relating to tax credit for industrial expansion; and expanding definition of "industrial taxpayer" to include persons exercising privilege of generating or producing electric power.

Be it enacted by the Legislature of West Virginia:

That sections two, two-b, two-d, two-k, three-b and twenty-five, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article thirteen be further amended by adding thereto a new section, designated section

two-m; and that section two, article thirteen-c of said chapter eleven be amended and reenacted, all to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2. Imposition of privilege tax.

There is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in sections two-a to two-m, inclusive, of this article.

If any person liable for any tax under sections two-a, two-b, two-l or two-m shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed in said section, except in those instances in which another measure of the tax is expressly provided. The tax commissioner shall prescribe equitable and uniform rules for ascertaining such value.

In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

Gross income included in the measure of the tax under sections two-a, two-b, two-l and two-m of this article shall neither be added nor deducted in computing the tax levied under the other sections of this article.

A person exercising any privilege taxable under sections two-a, two-b, two-l or two-m of this article and

engaging in the business of selling his natural resources, manufactured products, or electricity at retail in this state shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in section two-c of this article for the privilege of engaging in the business of selling such natural resources, manufactured products or electricity at retail in this state. But any person exercising any privilege taxable under sections two-a, two-b, two-l or two-m of this article and engaging in the business of selling his natural resources, manufactured products, or electricity to producers of natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall not be required to pay the tax imposed in section two-c of this article.

Persons exercising any privilege taxable under section two-b or two-m of this article shall not be required to pay the tax imposed in section two-c of this article for the privilege of selling their manufactured products or electricity for delivery outside of this state, but the gross income derived from the sale of such products or electricity outside of this state shall be included in determining the measure of the tax imposed on such person in section two-b or two-m.

A person exercising privileges taxable under the other sections of this article, producing coal, oil, natural gas, minerals, timber or other natural resource products the production of which is taxable under sections two-a and two-l, and using or consuming the same in his business or transferring or delivering the same as any royalty payment, in kind, or the like, shall be deemed to be engaged in the business of mining and producing coal, oil, natural gas, minerals, timber or other natural resource products for sale, profit or commercial use, and shall be required to make returns on account of the production of the business showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products

of like quality or character by other taxpayers, which rules the tax commissioner shall prescribe.

§11-13-2b. Manufacturing, compounding or preparing products; processing of food; exception of generated or produced electric power by public utilities or others; treatment accorded electricity generated by manufacturers for own use.

Upon every person engaging or continuing within this state in the business of manufacturing, compounding or preparing for sale, profit, or commercial use, either directly or through the activity of others in whole or part, any article or articles, substance or substances, commodity or commodities, or newspaper publishing (including all gross income or proceeds of sale from circulation and advertising), except electric power produced by public utilities or others, the amount of the tax to be equal to the value of the article, substance, commodity or newspaper, manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided, multiplied by a rate of eighty-eight one-hundredths of one percent. The measure of this tax is the value of the entire product manufactured, compounded or prepared in this state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state. The value of electricity generated by persons taxed under the provisions of this section, which electricity is directly used by such persons in the business of manufacturing and not sold or otherwise transferred or transmitted to others, shall be exempt from the imposition of any tax under this article. The dressing and processing of food by a person, firm or corporation, which food is to be sold on a wholesale basis by such person, firm or corporation shall not be considered as manufacturing or compounding, but the sale of these products on a wholesale basis shall be subject to the same tax as is imposed on the business of selling at wholesale as provided in section two-c.

It is further provided, however, that in those instances in which the same person partially manufactures, compounds or prepares products within this state and partially manufactures, compounds or prepares such products outside of this state the measure of his tax under this section shall be that proportion of the sale price of the product that the payroll cost of manufacturing within this state bears to the entire payroll cost of manufacturing the product; or, at the option of the taxpayer, the measure of his tax under this section shall be the proportion of the sales value of the articles that the cost of operations in West Virginia bears to the full cost of manufacture of the articles.

§11-13-2d. Public service or utility business.

Upon any person engaging or continuing within this state in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, there is likewise hereby levied and shall be collected taxes on account of the business engaged in equal to gross income of the business multiplied by the respective rates as follows: Street and interurban and electric railways, one and four-tenths percent; water companies, four and four-tenths percent except as to income received by municipally owned water plants; electric light and power companies, four percent on sales and demand charges for domestic purposes and commercial lighting and four percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants producing or purchasing electricity and distributing same: *Provided,* That electric light and power companies which engage in the supplying of public service but which do not generate or produce electric power shall be taxed on the gross income derived therefrom at the rate of three percent on sales and demand charges for domestic purposes and commercial lighting and three percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants:

Provided, however, That the sale of electric power under this section shall be taxed at the rate of two and forty-six hundredths percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year; natural gas companies, four and twenty-nine hundredths percent on the gross income; toll bridge companies, four and twenty-nine hundredths percent; and upon all other public service or utility business, two and eighty-six hundredths percent. The measure of this tax shall not include gross income derived from commerce between this state and other states of the United States or between this state and foreign countries. The measure of the tax under this section shall include only gross income received from the the supplying of public services. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon the appropriate section or sections of this article.

§11-13-2k. Banking and other financial business; legislative findings.

Upon every person engaging or continuing within this state in the business of banking or financial business, from and after the first day of April, one thousand nine hundred seventy-one, the tax shall be equal to one and fifteen one-hundredths percent of the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, however denominated, royalties, charges for bookkeeping or data processing, receipts from check sales, charges or fees, and receipts from the sale of tangible personal property: *Provided,* That gross income shall not include (a) interest received on the obligations of the United States, its agencies and instrumentalities, (b) interest received on the obligations of this or any other state, territory or possession of the

United States, or any political subdivision of any of the foregoing or of the District of Columbia, or (c) interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients: *Provided, however,* That all interest derived on activities exempt under (c) above, shall be reported, as to amounts, on the return of a person taxable under the provisions of this section.

Persons taxed pursuant to the provisions of this section shall not be taxed under sections two-a to two-j, inclusive, or sections two-l or two-m of this article.

The Legislature hereby finds and declares that it is the intent of the Legislature to subject national banking associations and other financial organizations to the tax imposed by this article, in accordance with the authorization contained in section five thousand two hundred nineteen of the revised statutes of the United States as amended by Public Law 91-156 enacted the twenty-fourth day of December, one thousand nine hundred sixty-nine.

§11-13-2m. Business of generating or producing electric power; exception; rates.

(1) Upon every person engaging or continuing within this state in the business of generating or producing electric power for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, when the sale thereof is not subject to tax under section two-d of this article, the amount of the tax to be equal to the value of the electric power, as shown by the gross proceeds derived from the sale thereof by the generator or producer of the same multiplied by a rate of four percent, except that the rate shall be two and forty-six hundredths percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year.

(2) The measure of this tax shall be the value of all

electric power generated or produced in this state for sale, profit or commercial use, regardless of the place of sale or the fact that transmission may be to points outside this state: *Provided*, That the gross income received by municipally owned plants generating or producing electricity shall not be subject to tax under this article.

§11-13-3b. Definitions; reduction allowed in tax due; how computed.

When used in this section, the phrase "normal tax" shall mean the tax computed by the application of rates against values or gross income as set forth in sections two-a to two-m, inclusive, of this article, less exemption at the rate of fifty dollars annually or at the rate of four dollars and sixteen cents per month for the period actually engaged in business.

The normal tax shall be computed by the application of rates against values or gross income as set forth in sections two-a to two-m, inclusive, of this article.

§11-13-25. Cities, towns or villages restricted from imposing additional tax.

Notwithstanding the provisions of section five, article thirteen, chapter eight of this code, no city, town or village shall impose a business and occupation tax:

(a) Upon occupations or privileges taxed under sections two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and two-j of this article, in excess of rates in effect under this article on January one, one thousand nine hundred fifty-nine;

(b) Upon occupations or privileges taxed under section two-k of this article, in excess of one percent of gross income;

(c) Under section two-l of this article; or

(d) Upon occupations or privileges taxed under section two-m of this article, in excess of the tax rate applicable to such occupations or privileges under section two-b of this article on January one, one thousand nine hundred fifty-nine.

ARTICLE 13C. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION.

§11-13C-2. Meaning of terms; "industrial taxpayer" defined.

(a) Any term used in this article shall have the same meaning as when used in comparable context in article thirteen of this chapter, unless a different meaning is clearly required by the context or by definition in this article.

(b) The term "industrial taxpayer" when used in this article shall mean any person liable for tax under article thirteen of this chapter exercising any of the following privileges:

(1) Any privilege taxable under section two-b or two-m of article thirteen of this chapter.

(2) Any privilege taxable under section two-h of article thirteen of this chapter: *Provided,* That such privilege is manufacturing for another, which privilege would be taxable under section two-b or two-m of article thirteen of this chapter if title to the raw materials involved in the manufacturing process were vested in the taxpayer exercising the privilege taxable under section two-h of article thirteen of this chapter.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....

Chairman Senate Committee

.....

Chairman House Committee

Originated in the Senate.

To take effect April 1, 1978.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

.....

Speaker House of Delegates

The within .....this the.....

day of....., 1978.

.....

Governor

Wisconsin - CH 418

1977 Assembly Bill 1220

SECTION 527. 76.03 (5) of the statutes is created to read: **Vetoed in Part**

76.03 (5) Except as provided in s. 66.073 (16) (b), commencing with calendar year 1978 and thereafter, any electric generating or transmission utility plant located in this state which is owned or leased, wholly or in undivided interests, by any person, which is used in or necessary for the generation or transmission of power for use in this or any other state, shall be subject to taxation under ss. 76.01 to 76.26, except such generating or transmission plant or portion thereof as is owned or leased by a cooperative association subject to taxation under s. 76.48 and is used for the furnishing of electric power to members within this state. An electric generating or transmission plant subject to taxation ~~under ss. 76.01 to 76.26~~ shall be assessed to each owner or lessee, whether or not such owner or lessee is organized in this state, according to the proportionate interest in such property.

House Bill No. 5048

PUBLIC ACT NO. 78-86

AN ACT CONCERNING TRUNKLINE OR TRANSMISSION TYPE UTILITY FACILITIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) Notwithstanding any provision of the general statutes to the contrary, the commissioner of transportation may enter into an agreement with the owner or operator of a public service facility, as such facility is defined in section 13a-126 of the general statutes, desiring the longitudinal use of the right-of-way of a limited access highway to accommodate trunkline or transmission type utility facilities and to fix the terms, conditions and rates and charges for use of such right-of-way; provided, no such agreement shall exempt a public service facility from the provisions of chapter 277a of the general statutes.

Certified as correct by

_____

Legislative Commissioner.

_____

Clerk of the Senate.

_____

Clerk of the House.

Approved _____, 1978

_____

Governor.

Senate Bill No. 91

PUBLIC ACT NO. 78-378

AN ACT CONCERNING THE SALE OF LAND BY PUBLIC SERVICE COMPANIES AND THE LEASE OF CERTAIN LANDS BY THE NEW HAVEN WATER COMPANY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 16-50c of the general statutes is repealed and the following is substituted in lieu thereof:

Whenever any public service company, as defined in section 16-1, owning any parcel of unimproved real property containing three acres or more, intends to sell, lease or otherwise dispose of such parcel of land, or a portion thereof, except to the state, the United States or a municipality, such company shall first notify in writing, by certified mail, return receipt requested, the authority, THE COMMISSIONER OF HEALTH, the commissioner of environmental protection and the chief executive officer or officers of the municipality in which such land is situated, of such intention to sell, lease or otherwise dispose of such land, and no agreement to sell, lease or otherwise dispose of such land may be entered into by such public service company except as hereinafter provided. The authority shall approve or disapprove the disposition of such unimproved property pursuant to subsection (1) of section 16-43, not more than one hundred fifty days after said authority has received notice pursuant to this section and failure to take action within such period shall be deemed to constitute approval. The authority shall hold a hearing on all such land transactions in which the acquisition cost of the parcels involved, or the transfer consideration, is in excess of twenty thousand dollars. THIS SECTION SHALL TAKE EFFECT OCTOBER 1, 1978, AND BE EFFECTIVE TO DECEMBER 31, 1978, INCLUSIVE.

Sec. 2. Section 16-50c of the general statutes, as amended by section 162 of public act 77-614, is repealed and the following is substituted in lieu thereof:

Whenever any public service company, as defined in section 16-1, owning any parcel of unimproved real property containing three acres or more, intends to sell, lease or otherwise dispose of such parcel of land, or a portion thereof, except to the state, the United States or a municipality, such company shall first notify in

writing, by certified mail, return receipt requested, the division of public utility control within the department of business regulation, THE COMMISSIONER OF HEALTH SERVICES, the commissioner of environmental protection and the chief executive officer or officers of the municipality in which such land is situated, of such intention to sell, lease or otherwise dispose of such land, and no agreement to sell, lease or otherwise dispose of such land may be entered into by such public service company except as hereinafter provided. The division shall approve or disapprove the disposition of such unimproved property pursuant to subsection (1) of section 16-43, not more than one hundred fifty days after said division has received notice pursuant to this section and failure to take action within such period shall be deemed to constitute approval. The division shall hold a hearing on all such land transactions in which the acquisition cost of the parcels involved, or the transfer consideration, is in excess of twenty thousand dollars.

Sec. 3. Section 16-50d of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Within ninety days after such approval by the public utilities control authority has been so given, such chief executive officer or officers or the commissioner of environmental protection may give written notice to the authority and to the public service company by certified mail, return receipt requested, of the municipality's or the state's desire to acquire such land and each shall have the right to acquire the interest in the land which the public service company has declared its intent to sell, lease or otherwise dispose of, provided the state's right to acquire the land shall be secondary to that of the municipality.

(b) If the chief executive officer or officers of the municipality or the commissioner of environmental protection fail to give notice, as provided in subsection (a), or give notice to the authority and to the public service company by certified mail, return receipt requested, of the municipality's or the state's desire not to acquire such land, such municipality or the state shall have waived its right to acquire such land in accordance with the terms of sections 16-50b to 16-50e, inclusive.

(c) [Within eighteen months after notice has been given by the municipality or the state, of

its desire to acquire such land, as provided in subsection (a), the public service company shall sell the land to the municipality or the state, as the case may be, written notice of which sale shall be given by the public service company and the municipality or the state to the public utilities control authority or, if the parties cannot agree upon the amount to be paid therefor, the municipality or the state may proceed to acquire the land in accordance with the procedure prescribed in section 48-12 provided if such land is subject to the provisions of subsections (b) and (c) of section 25-32, such land shall not be sold without the approval of the department of health.] THE WRITTEN NOTICE GIVEN BY A MUNICIPALITY OR THE STATE PURSUANT TO SUBSECTION (a) SHALL CONSTITUTE ACCEPTANCE BY SUCH MUNICIPALITY OR THE STATE OF THE TERMS, CONDITIONS AND PRICE SET FORTH IN THE AGREEMENT APPROVED BY THE AUTHORITY IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (1) OF SECTION 16-43 AND SECTION 16-50c, AS AMENDED BY SECTION 1 OF THIS ACT. THE MUNICIPALITY OR THE STATE SHALL THEREAFTER ACQUIRE THE INTEREST IN LAND WHICH THE PUBLIC SERVICE COMPANY HAS PROPOSED TO SELL, LEASE OR OTHERWISE DISPOSE OF WITHIN FIFTEEN MONTHS AFTER SUCH WRITTEN NOTICE HAS BEEN GIVEN.

(d) [If the municipality or the state fails to acquire the land or to prefer a petition as provided in said section 48-12 within ninety days after notice has been given by the municipality, or the state, of its desire to acquire the land, as provided in subsection (a), such municipality or the state shall have waived rights to acquire such land in accordance with the terms of sections 16-50b to 16-50e, inclusive.] WITHIN NINETY DAYS AFTER SUCH APPROVAL BY THE PUBLIC UTILITIES CONTROL AUTHORITY HAS BEEN SO GIVEN, SUCH CHIEF EXECUTIVE OFFICER OR OFFICERS OR THE COMMISSIONER OF ENVIRONMENTAL PROTECTION MAY GIVE WRITTEN NOTICE TO THE AUTHORITY AND TO THE PUBLIC SERVICE COMPANY BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OF THE MUNICIPALITY'S OR THE STATE'S INTENT TO ACQUIRE SUCH LAND BY EMINENT DOMAIN AND EACH SHALL HAVE THE RIGHT TO ACQUIRE THE INTEREST IN THE LAND WHICH THE PUBLIC SERVICE COMPANY HAS DECLARED ITS INTENT TO SELL, LEASE OR OTHERWISE DISPOSE OF, PROVIDED THE STATE'S RIGHT TO ACQUIRE THE LAND SHALL BE SECONDARY TO THAT OF THE MUNICIPALITY. THE PROCEDURE FOR ACQUIRING THE LAND SHALL BE AS FOLLOWS: THE COMPTROLLER IN THE

NAME OF THE STATE OR THE MUNICIPALITY SHALL PROCEED IN THE SAME MANNER SPECIFIED FOR REDEVELOPMENT AGENCIES IN ACCORDANCE WITH SECTIONS 8-128 TO 8-133, INCLUSIVE, PROVIDED, IF SUCH LAND IS SUBJECT TO THE PROVISIONS OF SECTION 25-32, AS AMENDED BY SECTION 4 OF PUBLIC ACT 77-606, SUCH LAND SHALL NOT BE SOLD WITHOUT THE APPROVAL OF THE DEPARTMENT OF HEALTH.

(e) [Notwithstanding the provisions of subsection (d) of this section if the public service company thereafter proposes to sell, lease, or otherwise dispose of such land to any person upon terms different than those offered by such public service company to the municipality and the state, such public service company shall first notify the municipality and the commissioner of environmental protection of such proposal, in the manner provided in subsection (a) of this section, and of the terms of such proposed sale or transfer, and such municipality and the state shall have the option to acquire such land upon such terms and may thereupon, in the same manner and within the same time limitations as are provided in subsections (a) to (c), inclusive, of this section, proceed to acquire such land.] In no case shall any such land be sold or transferred to a corporation, ten per cent or more of the capital stock of which is owned or controlled by the stockholders of the public service company, for a consideration less than the fair market value of the land. The provisions of this subsection shall not apply to transfers of land between public service companies.

THIS SECTION SHALL TAKE EFFECT OCTOBER 1, 1978, AND BE EFFECTIVE TO DECEMBER 31, 1978, INCLUSIVE.

Sec. 4. Section 16-50d of the general statutes, as amended by section 162 of public act 77-614, is repealed and the following is substituted in lieu thereof:

(a) Within ninety days after such approval by the division of public utility control within the department of business regulation has been so given, such chief executive officer or officers or the commissioner of environmental protection may give written notice to the division and to the public service company by certified mail, return receipt requested, of the municipality's or the state's desire to acquire such land and each shall have the right to acquire the interest in the land which the public service company has declared its

intent to sell, lease or otherwise dispose of, provided the state's right to acquire the land shall be secondary to that of the municipality.

(b) If the chief executive officer or officers of the municipality or the commissioner of environmental protection fail to give notice, as provided in subsection (a), or give notice to the division and to the public service company by certified mail, return receipt requested, of the municipality's or the state's desire not tc acquire such land, such municipality or the state shall have waived its right to acquire such land in accordance with the terms of sections 16-50b to 16-50e, inclusive.

(c) [Within eighteen months after notice has been given by the municipality or the state, of its desire to acquire such land, as provided in subsection (a), the public service company shall sell the land to the municipality or the state, as the case may be, written notice of which sale shall be given by the public service company and the municipality or the state to the division of public utility control or, if the parties cannot agree upon the amount to be paid therefor, the municipality or the state may proceed to acquire the land in accordance with the procedure prescribed in section 48-12 provided if such land is subject to the provisions of subsections (b) and (c) of section 25-32, such land shall not be sold without the approval of the department of health.] THE WRITTEN NOTICE GIVEN BY A MUNICIPALITY OR THE STATE PURSUANT TO SUBSECTION (a) SHALL CONSTITUTE ACCEPTANCE BY SUCH MUNICIPALITY OR THE STATE OF THE TERMS, CONDITIONS AND PRICE SET FORTH IN THE AGREEMENT APPROVED BY THE DIVISION IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (1) OF SECTION 16-43 AND SECTION 16-50c, AS AMENDED BY SECTION 2 OF THIS ACT. THE MUNICIPALITY OR THE STATE SHALL THEREAFTER ACQUIRE THE INTEREST IN LAND WHICH THE PUBLIC SERVICE COMPANY HAS PROPOSED TO SELL, LEASE OR OTHERWISE DISPOSE OF WITHIN FIFTEEN MONTHS AFTER SUCH WRITTEN NOTICE HAS BEEN GIVEN.

(d) [If the municipality or the state fails to acquire the land or to prefer a petition as provided in said section 48-12 within ninety days after notice has been given by the municipality, or the state, of its desire to acquire the land, as provided in subsection (a), such municipality or the state shall have waived rights to acquire such land in accordance with the terms of sections

16-50b to 16-50e, inclusive.] WITHIN NINETY DAYS AFTER SUCH APPROVAL BY THE DIVISION OF PUBLIC UTILITY CONTROL HAS BEEN SO GIVEN, SUCH CHIEF EXECUTIVE OFFICER OR OFFICERS OR THE COMMISSIONER OF ENVIRONMENTAL PROTECTION MAY GIVE WRITTEN NOTICE TO THE DIVISION AND TO THE PUBLIC SERVICE COMPANY BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OF THE MUNICIPALITY'S OR THE STATE'S INTENT TO ACQUIRE SUCH LAND BY EMINENT DOMAIN AND EACH SHALL HAVE THE RIGHT TO ACQUIRE THE INTEREST IN THE LAND WHICH THE PUBLIC SERVICE COMPANY HAS DECLARED ITS INTENT TO SELL, LEASE OR OTHERWISE DISPOSE OF, PROVIDED THE STATE'S RIGHT TO ACQUIRE THE LAND SHALL BE SECONDARY TO THAT OF THE MUNICIPALITY. THE PROCEDURE FOR ACQUIRING THE LAND SHALL BE AS FOLLOWS: THE COMPTROLLER IN THE NAME OF THE STATE OR THE MUNICIPALITY SHALL PROCEED IN THE SAME MANNER SPECIFIED FOR REDEVELOPMENT AGENCIES IN ACCORDANCE WITH SECTIONS 8-128 TO 8-133, INCLUSIVE, PROVIDED, IF SUCH LAND IS SUBJECT TO THE PROVISIONS OF SECTION 25-32, AS AMENDED BY SECTION 4 OF PUBLIC ACT 77-606, SUCH LAND SHALL NOT BE SOLD WITHOUT THE APPROVAL OF THE DEPARTMENT OF HEALTH SERVICES.

(e) [Notwithstanding the provisions of subsection (d) of this section if the public service company thereafter proposes to sell, lease, or otherwise dispose of such land to any person upon terms different than those offered by such public service company to the municipality and the state, such public service company shall first notify the municipality and the commissioner of environmental protection of such proposal, in the manner provided in subsection (a) of this section, and of the terms of such proposed sale or transfer, and such municipality and the state shall have the option to acquire such land upon such terms and may thereupon, in the same manner and within the same time limitations as are provided in subsections (a) to (c), inclusive, of this section, proceed to acquire such land.] In no case shall any such land be sold or transferred to a corporation, ten per cent or more of the capital stock of which is owned or controlled by the stockholders of the public service company, for a consideration less than the fair market value of the land. The provisions of this subsection shall not apply to transfers of land between public service companies.

Sec. 5. Notwithstanding the provisions of section 25-32 of the general statutes, as amended

by section 4 of public act 77-606, and notwithstanding the provisions of section 8 of said public act 77-606, the commissioner may grant a permit to the New Haven Water Company for the lease of the lands located at 205 Skiff Street, Hamden and hereinafter described, together with all improvements situated thereon, if after a public hearing he finds, in a written decision setting forth the reasons for such findings that the granting of such permit and the terms of such lease will not have a significant adverse impact upon the present and future purity and adequacy of the public drinking water supply:

Beginning at the northwest corner of land of the New Haven Water Company, at a point marked by an iron pipe in the southerly street line of Skiff Street, which point is also the northeast corner of land now or formerly of United Illuminating Company; thence proceeding easterly along the southerly street line of Skiff Street, 295 feet, more or less, to a point which is 30 feet, more or less, west of the west bank of the Mill River; thence proceeding southerly 130 feet, more or less, along a straight line to a point at the crest of a slope, which point is a northeast corner of the paved parking area; thence proceeding southerly along the edge of pavement on a straight line, 217 feet, more or less; thence proceeding westerly on a straight line along the edge of pavement, 20 feet, more or less; thence proceeding southerly on a straight line along the edge of pavement, 165 feet, more or less; thence proceeding southwesterly on a straight line near the edge of pavement, 160 feet, more or less; thence proceeding westerly along a straight line, 190 feet, more or less, to a point which is a southeast corner of land now or formerly of United Illuminating Company and thence proceeding northerly along the division line between the land of the New Haven Water Company and land now or formerly of United Illuminating Company, 700 feet, more or less, to the point of beginning. The commissioner shall review the terms of such lease and inspect the above described properties, together with all improvements situated thereon, at least once every five years and if he finds any significant adverse impact upon the present or future purity or adequacy of the public drinking water supply as a result of such lease, he shall revoke such permit.

Sec. 6. Sections 1 and 3 of this act shall take effect October 1, 1978, and sections 2 and 4 shall take effect January 1, 1979.

Certified as correct by

_____

Legislative Commissioner.

_____

Clerk of the Senate.

_____

Clerk of the House.

Approved _____, 1978

_____

Governor.

CANCELED

A bill to be entitled

An act relating to the Florida Public Service Commission; creating s. 350.001, Florida Statutes; providing legislative intent; amending s. 350.01, Florida Statutes; providing for appointment of Public Service Commissioners; increasing the number of commissioners to five; providing for the filling of vacancies; providing for the retention of commissioners serving current terms until completion of their terms; providing 4-year terms for commissioners and providing for 6-year terms if authorized by a constitutional amendment; providing for filing of a declaration of intention to seek an additional term of office; providing for selection of a commission chairman and his terms and duties; providing procedures to expedite and assign commission proceedings; creating s. 350.031, Florida Statutes; establishing the Florida Public Service Commission Nominating Council; providing for member appointments and filling of vacancies; providing for restriction of membership of persons having certain interests; providing for council duties and responsibilities; requiring meetings of the council to be open and subject to the Sunshine Law; providing for reimbursement of expenses to council members; imposing restrictions on commissioners and employees of the commission after termination

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of service or employment; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 350.001, Florida Statutes, is created to read:

350.001 Legislative intent.--The Florida Public Service Commission has been and shall continue to be an arm of the legislative branch of government. It is the desire of the Legislature that the Governor participate in the appointment process of commissioners to the Public Service Commission. The Legislature accordingly delegates to the Governor a limited authority with respect to the Public Service Commission by authorizing him to participate in the selection of members only from the list provided by the Florida Public Service Commission Nominating Council in the manner prescribed by s. 350.031.

Section 2. Section 350.01, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 350.01, F.S., for present text.)

350.01 Florida Public Service Commission.--

(1) The Florida Public Service Commission shall consist of five commissioners appointed pursuant to s. 350.031.

(2)(a) Each commissioner serving on the effective date of this act shall be permitted to remain in office until the completion of his current term. Upon the expiration of the term, a successor shall be appointed in the manner prescribed by s. 350.031(3) and (4) for a 4-year term, except that the

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terms of the initial members appointed under this act shall be as follows:

1. The vacancy created by the present term ending in January, 1981, shall be filled by appointment for a 4-year term and for 4-year terms thereafter; and

2. The vacancies created by the two present terms ending in January, 1979, shall be filled by appointment for a 3-year term and for 4-year terms thereafter.

(b) Two additional commissioners shall be appointed in the manner prescribed by s. 350.031(3) and (4) for 4-year terms beginning the first Tuesday after the first Monday in January, 1979, and successors shall be appointed for 4-year terms thereafter.

(c) Vacancies on the commission shall be filled for the unexpired portion of the term in the same manner as original appointments to the commission.

(3) If the electorate approves an amendment to the State Constitution at the general election to be held in November, 1978, authorizing commissioners to serve terms in excess of 4 years, the following shall apply:

(a) Each commissioner serving on the effective date of the constitutional amendment or appointed for a term beginning in January, 1979, shall be permitted to remain in office until the completion of his current term or the term beginning in January, 1979. Upon the expiration of such terms, all subsequent appointments shall be made in the manner prescribed by s. 350.031(3) and (4) for 6-year terms.

(b) A vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

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(4) Any person serving on the commission who seeks to be appointed or reappointed shall file with the nominating council at least 180 days before the expiration of his term a statement that he desires to serve an additional term.

(5) One member of the commission shall be elected by majority vote to serve as chairman for a term of 2 years, beginning with the first Tuesday after the first Monday in January, 1979. A member may not serve two consecutive terms as chairman.

(6) The primary duty of the chairman is to serve as chief administrative officer of the commission; however, the chairman may participate in any proceedings pending before the commission when administrative duties and time permit. In order to distribute the work load and expedite the commission's calendar, the chairman, in addition to other administrative duties, has authority to assign the various proceedings pending before the commission requiring hearings to two or more commissioners or to the commission's office of hearing examiners under the supervision of the office of general counsel. Only those commissioners assigned to a proceeding requiring hearings are entitled to participate in the final decision of the commission as to that proceeding; provided, if only two commissioners are assigned to a proceeding requiring hearings and cannot agree on a final decision, the chairman shall cast the deciding vote for final disposition of the proceeding. If more than two commissioners are assigned to any proceeding, a majority of the members assigned shall constitute a quorum and a majority vote of the members assigned shall be essential to final commission disposition of those proceedings requiring actual participation by the commissioners. If a commissioner becomes

unavailable after assignment to a particular proceeding, the chairman shall assign a substitute commissioner. In those proceedings assigned to a hearing examiner, following the conclusion of the hearings, the designated hearing examiner is responsible for preparing recommendations for final disposition by a majority vote of the commission. A petition for reconsideration shall be voted upon by those commissioners participating in the final disposition of the proceeding.

(7) A majority of the commissioners may determine that the full commission shall sit in any proceeding. The public counsel or a person regulated by the Public Service Commission and substantially affected by a proceeding may file a petition that the proceeding be assigned to the full commission. Within 15 days of receipt by the commission of any petition or application, the full commission shall dispose of such petition by majority vote and render a written decision thereon prior to assignment of less than the full commission to a proceeding. In disposing of such petition, the commission shall consider the overall general public interest and impact of the pending proceeding, including but not limited to the following criteria: the magnitude of a rate filing, including the number of customers affected and the total revenues requested; the services rendered to the affected public; the urgency of the requested action; the needs of the consuming public and the utility; value of service involved; the effect on consumer relations, regulatory policies, conservation, economy, competition, public health, and safety of the area involved. If the petition is denied, the commission shall set forth the grounds for denial.

(8) This section does not prohibit a commissioner, designated by the chairman, from conducting a hearing as

provided under s. 120.57(1), s. 323.07, or s. 350.631, and the rules of the commission adopted pursuant thereto.

Section 3. Section 350.031, Florida Statutes, is created to read:

350.031 Florida Public Service Commission Nominating Council.--

(1) There is created a Florida Public Service Commission Nominating Council consisting of nine members. Three members, including one member of the House of Representatives, shall be appointed by the Speaker of the House; three members, including one member of the Senate, shall be appointed by the President of the Senate; and three members shall be selected and appointed by a majority vote of the other six members of the council. For the initial term of appointment, each member appointed by the Speaker of the House and the President of the Senate shall serve for 3 years, except those members of the House and Senate, who shall serve until the end of the elected term of the House member, and each member selected by a majority vote of the six members shall serve for 2 years. Thereafter, all terms shall be for 4 years, except those members of the House and Senate, who shall serve 2-year terms concurrent with the 2-year elected terms of House members. Initial appointments shall be made by the Speaker of the House and the President of the Senate on or before July 10, 1978. The six appointees shall meet and select the remaining three members on or before July 31, 1978. Vacancies on the council shall be filled for the unexpired portion of the term in the same manner as original appointments to the council.

(2) No member or spouse shall be an agent, officer, employee or be any type of partner in any industry regulated

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by the commission, nor shall a member or spouse have any ownership in, including any ownership of shares in, or be in a position to substantially influence or affect, or be in a position to be substantially influenced or affected by the management or managerial policies of any industry regulated by the commission. A member of the council may be removed by the Speaker of the House of Representatives and the President of the Senate upon a finding by the Speaker and the President that the council member has violated any provision of this subsection or for other good cause.

(3) It is the responsibility of the council to recommend to the Governor not fewer than three persons for each vacancy occurring on the Public Service Commission. The council shall submit the recommendations to the Governor by October 1 of those years in which the terms are to begin the following January, or within 60 days after a vacancy occurs for any reason other than the expiration of the term.

(4) The Governor shall fill a vacancy occurring on the Public Service Commission by appointment of one of the persons recommended by the council. If the Governor has not made an appointment by December 1 to fill a vacancy for a term to begin the following January, then the council, by majority vote, shall appoint by December 31 one person from the names previously recommended to the Governor to fill the vacancy. If the Governor has not made the appointment to fill a vacancy occurring for any reason other than the expiration of the term by the sixtieth day following receipt of the recommendations of the council, the council by majority vote shall appoint within 30 days thereafter one person from the names previously recommended to the Governor to fill the vacancy.

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(5) Each appointment to the Public Service Commission shall be subject to confirmation by the Senate.

(6) The council shall establish procedures for applications for membership on the commission. No person shall be recommended to the Governor by the council unless the council is satisfied that the person is competent and knowledgeable in one or more fields which include, but are not limited to, public affairs, law, economics, accounting, engineering, finance, natural resource conservation, energy, or another field substantially related to the duties and functions of the commission. The commission shall fairly represent the above-stated fields. Recommendations of the council shall be on a nonpartisan basis.

(7) All meetings of the council shall be open to the public and subject to the provisions of s. 286.011. A majority of the membership of the council may conduct any business before the council.

(8) Members of the council are entitled to per diem and travel expenses as provided in s. 112.061, which shall be funded by the Florida Public Service Regulatory Trust Fund.

Section 4. (1) Any former commissioner of the Public Service Commission is prohibited from appearing before the commission representing any client or any industry regulated by the Public Service Commission for a period of 2 years following termination of service on the commission.

(2) Any former employee of the commission is prohibited from appearing before the commission representing any client regulated by the Public Service Commission on any matter which was pending at the time of termination and in which such former employee had participated.

Section 5. This act shall take effect July 1, 1978.

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CHAPTER 176

(H.B. No. 352, As Amended)

AN ACT

RELATING TO MUNICIPAL BONDS; AMENDING SECTION 50-1029, IDAHO CODE, TO REDEFINE "REHABILITATE EXISTING ELECTRICAL GENERATING FACILITIES" TO INCLUDE RELATED FACILITIES FOR FLOOD CONTROL, ENVIRONMENTAL, PUBLIC RECREATION AND FISH AND WILDLIFE NECESSARY UNDER STATE AND FEDERAL REGULATIONS; AND AMENDING SECTION 50-1036, IDAHO CODE, TO PROVIDE THAT MUNICIPAL REVENUE BONDS MAY BE SOLD AT PRIVATE SALE WITHOUT ADVERTISING THE SAME FOR COMPETITIVE BIDDING, AND PROVIDING THE AUTHORITY AND PROCEDURES FOR ISSUING REVENUE BOND ANTICIPATION NOTES, AND THE REDEMPTION THEREOF; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 50-1029, Idaho Code, be, and the same is hereby amended to read as follows:

50-1029. DEFINITIONS. For the purpose of this act, unless a different meaning clearly appears from the context, the following terms shall be ascribed the following meanings:

(a) The term "works" shall include water systems, sewerage systems, recreation facilities, off-street parking facilities, air-navigation facilities or any of them as herein defined;

(b) The term "water system" shall include reservoirs, storage facilities, water mains, conduits, aqueducts, pipelines, pumping stations, filtration plants, and all appurtenances and machinery necessary or useful for obtaining, storing, treating, purifying or transporting water for domestic uses or purposes;

(c) The term "sewerage system" shall include intercepting sewers, outfall sewers, force mains, collecting sewers, pumping stations, ejector stations, treatment plants, structures, buildings, machinery, equipment, connections and all other appurtenances necessary, useful or convenient for the collection, transportation, treatment, purification, and disposal of the sewage of any city or any part of territory included within the territorial limits of any city;

(d) The term "off-street parking" shall include all machinery, equipment and appurtenances, including lands, easements, rights-of-way and buildings required, necessary or useful for the parking of motor vehicles on lands or places other than public highways;

(e) The term "air-navigation facilities" shall include land acquisition, construction costs, buildings, equipment, and other necessary appurtenances, either wholly or partly within or without the corporate limits of such city, or wholly or partly within or without the state of Idaho;

(f) The term "rehabilitate existing electrical generating facilities" shall include the reconstruction, replacement, and betterment of existing generation facilities, properties and other related structures, together with all necessary equipment and appurtenances related thereto, used in or useful for the generation of electricity, including power plants, turbine generators, dams, penstocks, step-up transformers, electrical equipment and other facilities related to hydroelectric production plant, and related facilities for flood control, environmental, public recreation and fish and wildlife mitigation and enhancement purposes made necessary in order to comply with applicable state and federal requirements, but does not include transmission and distribution lines and their related structures, equipment and appurtenances.

SECTION 2. That Section 50-1036, Idaho Code, be, and the same is hereby amended to read as follows:

50-1036. BONDS -- FORM -- CONDITIONS -- BOND ANTICIPATION NOTES. (a) All revenue bonds issued under authority of this act shall be sold, executed and delivered in the same manner as provided by the municipal bond law for the sale of general obligation negotiable coupon bonds, except that issues of revenue bonds may, in the discretion of the governing body, be sold at a private sale at not less than par and accrued interest, without advertising the same at competitive bidding. The ordinance authorizing the issuance of said bonds shall prescribe the form of bonds. Said bonds shall bear interest at a rate or rates, payable annually, or at such lesser intervals as may be prescribed by ordinance; may be in one (1) or more series, bear such date or dates, mature at such time or times, and be redeemable before maturity at the option of the city; may be payable in such medium of payment, at such place or places, may carry such registration privileges, may be subject to such terms of redemption, may contain such terms, covenants and conditions, and may be in such form, either coupon or registered, as such ordinance may provide. Said bonds shall be sold at not less than par with accrued interest. Pending preparation of the bonds, interim certificates, in such form and with such provisions as the council may determine, may be issued.

said bonds and interim certificates shall be fully negotiable within the meaning of and for all the purposes of the negotiable instruments law.

Notwithstanding the provisions of the municipal bond law, the governing body in any proceedings authorizing bonds under this act may:

(1) provide for the initial issuance of one (1) or more bonds, in this act called "bond," aggregating the amount of the entire issue;

(2) make such provision for instalment payments of the principal amount of any such bond as it may consider desirable;

(3) provide for the making of any such bond payable to bearer or otherwise, registrable as to principal or as to both principal and interest, and where interest accruing thereon is not represented by interest coupons, for the indorsing of payments of interest on such bonds; and

(4) further make provision in ary such proceedings for the manner and circumstances in and under which any such bond may in the future, at the request of the holder thereof, be converted into bonds of smaller denominations, which bonds of smaller denominations may in turn be either coupon bonds or bonds registrable as to principal, or principal and interest, or both.

(b) Whenever the governing body considers it advisable and in the interests of the city to anticipate the issuance of revenue bonds to be issued under this act, the governing body may from time to time and pursuant to appropriate resolution issue bond anticipation notes. Each resolution authorizing the issuance of bond anticipation notes shall:

(1) describe the revenue bonds in anticipation of which the notes are to be issued; and

(2) shall specify the principal amount of the notes, the rate of interest and maturity date of the notes, which maturity date shall be not to exceed five (5) years from the date of issue of such notes; but the time of payment of any such notes may be extended for a period of not exceeding three (3) years from their maturity date.

Bond anticipation notes shall be issued and sold from time to time in such manner and at such price as the governing body shall by resolution determine. Bond anticipation notes shall be in bearer form, except that the governing body may provide for the registration of the notes in the name of the owner either as to principal alone, or as to principal and interest, and on such terms and conditions as the governing body may determine in the authorizing resolution. Interest on bond anticipation notes may be made payable semiannually, annually, or at maturity. Bond anticipation notes may be made redeemable prior to maturity at the option of the governing body in the manner and upon the terms fixed by the resolution authorizing their issuance. Bond anticipation notes shall be executed and shall be in such form and have such details and terms as shall be provided in the authorizing resolution.

Contemporaneously with the issuance of the revenue bonds in anticipation of which bond anticipation notes are issued, all bond anticipation notes so issued, even though they may not then have matured, shall be paid, both as to principal and interest, to date of payment; and all such notes shall be surrendered and canceled.

Bond anticipation notes and the interest on them shall be secured by a pledge of the income and revenues derived by the city from the project to be undertaken with the proceeds of the bond anticipation notes and shall also be made payable from funds derived from the sale of the revenue bonds in anticipation of which the notes are issued.

Bond anticipation notes may be refunded by the issuance of other bond anticipation notes maturing within not more than eight (8) years from the date of the issuance of the initial issue of bond anticipation notes for which this refunding is to be effected.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 20, 1978.

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 362

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO TAXATION OF OPERATING PROPERTY; AMENDING SECTION 63-113, IDAHO CODE, TO INCLUDE WITHIN THE DEFINITION OF OPERATING PROPERTY INTERSTATE WATER CARRIERS; AMENDING CHAPTER 1, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-114A, IDAHO CODE, TO PROVIDE A UNIFORM DEFINITION OF PUBLIC UTILITIES; AMENDING SECTION 63-701, IDAHO CODE, TO PROVIDE FOR A UNIFORM DEFINITION OF PUBLIC UTILITIES AND TO PROVIDE THAT SPECIFIED SITUS PROPERTY SHALL BE ASSESSED BY THE COUNTY ASSESSOR; AMENDING SECTION 63-702, IDAHO CODE, TO PROVIDE FOR A UNIFORM DEFINITION OF PUBLIC UTILITIES; AMENDING SECTION 63-703, IDAHO CODE, TO PROVIDE FOR A UNIFORM DEFINITION OF PUBLIC UTILITIES; AMENDING SECTION 63-704, IDAHO CODE, TO PROVIDE FOR A UNIFORM DEFINITION OF PUBLIC UTILITIES; AMENDING SECTION 63-706, IDAHO CODE, TO PROVIDE FOR A UNIFORM DEFINITION OF PUBLIC UTILITIES; AMENDING SECTION 63-707, IDAHO CODE, TO PROVIDE NAME CHANGES; AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-113, Idaho Code, be, and the same is hereby amended to read as follows:

63-113. OPERATING PROPERTY DEFINED. The term "operating property" as used in ~~this act~~ chapters 1 through 22, title 63, Idaho Code, shall include all franchises, rights of way, roadbeds, tracks, pipe lines, interstate water transportation tugs, boats, barges, equipment and docks, terminals, rolling stock, equipment, power stations, power sites, lands, reservoirs, generating plants and substations, all immovable or movable property operated in connection with any public utility or car company including the operating property of all railroads, telegraph, telephone, electric current transmission and distribution lines, pipe lines for the transportation of commodities, including water under the jurisdiction of the Idaho public utilities commission, interstate water transportation companies, wholly or partly within this state, and reasonably necessary to the maintenance and operation of such road or line, or in conducting

its business, and shall include all title and interest in such property, as owner, lessee or otherwise.

SECTION 2. That Chapter 1, Title 63, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 63-114A, Idaho Code, and to read as follows:

63-114A. PUBLIC UTILITY DEFINED. (1) That the term "public utility," when used in chapters 1 through 22, title 63, Idaho Code, includes electrical companies, telephone companies, telegraph companies, pipeline companies, natural gas distribution companies and interstate water transportation companies. It also includes water companies, mobile radio and voice telephone communication companies which are under the jurisdiction of the Idaho public utilities commission.

(2) The term "company" as used in this section, includes a corporation, a company, an association and a joint stock association.

SECTION 3. That Section 63-701, Idaho Code, be, and the same is hereby amended to read as follows:

63-701. OPERATING PROPERTY ASSESSABLE BY STATE TAX COMMISSION. The operating property of all public utilities and ~~car--companies-including-the-operating-property-of-all~~ railroads~~,-telegraph,-telephone,-electric--current--transmission-and-distribution-lines,-pipe-lines-for-the-transportation-of-commodities,--including-water,-under-the-jurisdiction-of-the-Idaho-public-utilities-commission,~~ and the franchises of all persons owning, or operating as lessees, or constructing any ~~telegraph,-telephone,-or-electric--current--transmission--or-distribution--line,--any-pipe-line-for-the-transportation-of-commodities-including-water-under-the--jurisdiction--of--the-Idaho~~ public utility ~~utilities--commission,~~ or railroads, wholly or partly within this state shall be assessed for taxation for state, county, city, town, village, school district and other purposes, exclusively by the state tax commission, and all general offices, ticket offices, business offices, warehouses, service centers, moorage grounds or docks, well or pumphouse, shall be assessed to the owner by the county assessor.

SECTION 4. That Section 63-702, Idaho Code, be, and the same is hereby amended to read as follows:

63-702. OPERATOR REPRESENTATIVE OF OWNER -- ASSESSMENT IN NAME OF OWNER. Any person operating a public utility or railroad~~,--telegraph,-telephone-or-electric-current-transmission--line,--pipeline,--water--company--operating--under-the jurisdiction-of-the-Idaho-public--utilities--commission,~~ in this state shall be representative of every title and interest in the operating property of said public utility or railroad~~,-telegraph,-telephone-or-electric-current-transmission-line,--pipeline,--water--company--operating--under--the jurisdiction--of--the--Idaho-public-utilities-commission,~~ as owner, lessee or otherwise, and notice to such person, or his agent or representative, shall be notice to all interests in such property for the purpose of taxation. The assessment of such operating property in the name of the owner, lessee or operating company, shall be deemed and held to be an assessment of all title and interest in such property of every kind and nature.

SECTION 5. That Section 63-703, Idaho Code, be, and the same is hereby amended to read as follows:

63-703. NONOPERATING PROPERTY ASSESSABLE BY COUNTY ASSESSOR. All property belonging to any person owning, operating or constructing any public utility or railroad~~,--telegraph,--telephone--or--electric--current-transmission-lines, pipeline,-water-company-under-the-jurisdiction-of-the--Idaho public--utilities--commission~~, wholly or partly within this state, not included within the meaning of the term "operating property," as defined in this act; namely, property not reasonably necessary for the maintenance and successful operation of such public utility or railroad~~,-telegraph, telephone-or-electric-current-transmission--line,--pipeline, water--company--under--the--jurisdiction-of-the-Idaho-public utilities-commission~~, including vacant lots and tracts of land, and lots and tracts of land with the buildings thereon not used in the operation of such public utility or railroad, ~~telegraph,-telephone-or-electric-current--transmission line,--pipeline,--water--company--under--the-jurisdiction-of Idaho-public-utilities-commission,~~ also tenement and resident property, except section houses, also hotels and eating houses, situate more ~~then-~~{than} one hundred (100) feet from the main track of any such railroad, shall be assessed by the assessor of the county wherein the same is situated.

SECTION 6. That Section 63-704, Idaho Code, be, and the same is hereby amended to read as follows:

63-704. OPERATOR'S STATEMENT -- FILING. Every person owning, operating or constructing, either as owner or lessee, any public utility or railroad~~,--electric--current transmission--or-distribution-line,-pipe-line-for-the-transportation-of-commodities-including-water-under-the-jurisdiction-of-the-Idaho--public--utilities--commission,--telegraph line,--or--telephone--line~~ which is not exempt from taxation under the provisions of this act, shall~~,~~ prepare or cause to be prepared a statement showing all property subject to assessment by the state tax commission, together with such pertinent information as may be required on forms supplied by the state tax commission for such purposes, which statement and forms must be subscribed and sworn to by the owner or lessee, or the president, secretary, auditor, superintendent or principal accounting officer of such person, and delivered to the state tax commission on or before April 30 in each year, and the state tax commission must file such statement and forms in its office.

SECTION 7. That Section 63-706, Idaho Code, be, and the same is hereby amended to read as follows:

63-706. ANNUAL REPORTS OF UTILITIES. Every person owning, operating or constructing, either as owner or lessee, any public utility or railroad~~,-electric-current transmission-line,-telegraph-line-or-telephone--line,--pipe-line,--water--company--under--the--jurisdiction-of-the-Idaho public-utilities-commission,~~ which is not exempt from taxation under the provisions of this act, shall, on or before April 30 in each year, furnish to the state tax commission, certified copies of the annual reports of the board of directors, or other officers, to the stockholders, the annual reports made to the interstate commerce commission, federal communications commission, and federal power commission.

SECTION 8. That Section 63-707, Idaho Code, be, and the same is hereby amended to read as follows:

63-707. MANNER OF ASSESSMENT -- VALUATION. The state tax commission must assess all property which, under the provisions of this chapter ~~act~~, is to be assessed by it, at the meeting of the said commission convening on the second Monday of August in each year, and must complete the assessment of such property on the fourth Monday of August in that year. The said ~~board~~ commission shall at such meeting ascer-

tain and determine the assessed value of all such property in the state, except electric current transmission and distribution lines, and shall determine the total value, the number of miles and value per mile of each railroad, telegraph and telephone line, and pipeline for transportation of commodities, including water companies under the jurisdiction of the Idaho public utilities commission, in the state, the value, number of miles, and value per mile of such line in any county into or through which the said line extends, and the value, number of miles and value per mile, of such line in any incorporated city, school district or other taxing district into or through which the said line extends. The value per mile of any except electric current transmission and distribution lines, is to be determined by dividing the total value of such line within the state by the number of miles of such line within the state.

The said commission shall at such meeting ascertain and determine the assessed value of the electric current transmission and distribution lines in each county separately, and shall determine the total value, the number of miles and value per mile of each electric current transmission and distribution line in each county into or through which said line extends, and the value, number of miles and value per mile of such line in any incorporated city, school district or other taxing district into or through which the said line extends. The value per mile of electric current transmission and distribution lines is to be determined by dividing the total value of such line within each county by the number of miles of such line within said county, and all operating property of such electric current transmission and distribution lines shall be assessed as of and apportioned to the county in which the same is situated as a part of the transmission line in said county.

If the property of any company assessable under this section is of such a nature that it cannot reasonably be apportioned on the basis of rail, wire, pipeline mileage, such as microwave and radio relay stations, the tax commission may adopt such other method or basis of apportionment to the county and taxing districts in which the property is situate as may be feasible and proper.

All property assessed as herein provided shall be valued as of the same time as other property in the state is valued, and the value of all franchises held by any person whose property has been assessed as herein provided shall be included in the value of such property.

SECTION 9. This act shall be in full force and effect on and after January 1, 1979.

IN THE HOUSE OF REPRESENTATIVES
HOUSE AMENDMENTS TO H.B. NO. 362

AMENDMENTS TO SECTION 3

On page 2 of the printed bill, in line 36, delete the characters and words ", and all general offices, ticket offices,", and insert in lieu thereof the following: "; except land or buildings rented by a company or corporation as lessee which is used as or in connection with its business such as".

On page 2 of the printed bill, in line 38, delete the words and character "well or pumphouse,".

CORRECTION TO TITLE

On page 1 of the printed bill, in line 9, delete the word "SITUS", and insert in lieu thereof the word "RENTED".

CHAPTER 379

(H.B. 547)

AN ACT relating to utilities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 278.010 is amended to read as follows:

As used in KRS 278.010 to 278.450, and in KRS 278.990, unless the context otherwise requires:

(1) "Corporation" includes private, quasi-public and public corporations, and all boards, agencies and instrumentalities thereof, associations, joint-stock companies and business trusts;

(2) "Person" includes natural persons, partnerships, corporations, and two or more persons having a joint or common interest;

(3) The unmodified term "utility" means any person except a city who owns, controls, operates or manages an energy utility or a non-energy utility;

(4) "Energy utility" means any person except a city who owns, controls, operates or manages any facility used or to be used for or in connection with:

(a) The generation, production, transmission or distribution of electricity to or for the public, for compensation, for lights, heat, power or other uses;

(b) The production, manufacture, storage, distribution, sale or furnishing of natural or manufactured gas, or a mixture of same, to or for the public for compensation, for light, heat, power or other uses; or

(c) The transporting or conveying of gas, crude oil or other fluid substance by pipeline to or for the public, for compensation.

(5) "Non-energy utility" means any person except a city who owns, controls, operates or manages any facility used or to be used for or in connection with:

(a) The diverting, developing, pumping, impounding, distributing or furnishing of water to or for the public, for compensation;

(b) The transmission or conveyance over wire, in air or otherwise, of any message by telephone or telegraph for the public, for compensation; or

(c) The treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district.

[(3) "Utility" means any person except a city, who owns, controls or operates or manages any facility used or to be used for or in connection with:

(a) The generation, production, transmission or distribution of electricity to or for the public, for compensation, for lights, heat, power or other uses;

(b) The production, manufacture, storage, distribution, sale or furnishing of natural or manufactured gas, or a mixture of same, to or for the public for compensation, for light, heat, power or other uses;

(c) The transporting or conveying of gas, crude oil or other fluid substance by pipeline to or for the public, for compensation;

(d) The diverting, developing, pumping, impounding, distributing or furnishing of water to or for the public, for compensation;

(e) The transmission or conveyance over wire, in air or otherwise, of any message by telephone or telegraph for the public, for compensation; or

(f) The treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district.]

(6) [(4)] "Retail electric supplier" means any person, firm, corporation, association or cooperative corporation, excluding municipal corporations, engaged in the furnishing of retail electric service;

(7) [(5)] "Certified territory" shall mean the areas as certified by and pursuant to KRS 278.017;

(8) [(6)] "Existing distribution line" shall mean an electric line which on June 16, 1972, is being or has been substantially used to supply retail electric service and includes all lines from the distribution substation to the electric consuming facility but does not include any transmission facilities used primarily to transfer energy in bulk;

(9) [(7)] "Retail electric service" means electric service furnished to a consumer for ultimate consumption, but does not include wholesale electric energy furnished by an electric supplier to another electric supplier for resale;

(10) [(8)] "Electric-consuming facilities" means everything that utilizes electric energy from a central station source;

(11) [(9)] "Facility" includes all property, means and instrumentalities owned, operated, leased, licensed, used, furnished or supplied for, by, or in connection with the business of any utility;

(12) [(10)] "Rate" means any individual or joint fare, toll, charge, rental or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement or privilege in any way relating to such fare, toll, charge, rental or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;

(13) [(11)] "Service" includes any practice or requirement in any way relating to the service of any utility, including the voltage of electricity, the heat units and pressure of gas, the purity, pressure and quantity of water, and in general the quality, quantity and pressure of any commodity or product used or to be used for or in connection with the business of any utility;

(14) [(12)] "Adequate service" means having sufficient capacity to meet the maximum estimated requirements of the customer to be served during the year following the commencement of permanent service and to meet the maximum estimated requirements of other actual customers to be supplied from the same lines or facilities during such year and to assure such customers of reasonable continuity of service;

(15) "Energy commission" means the energy regulatory commission;

(16) "Utility commission" means the utility regulatory commission;

(17) The unmodified term "commissions" means both the energy commission and the utility commission. The unmodified term "commission" means the commission with regulatory jurisdiction over the affected utility, as provided in this chapter;

(18) "Commissioner" means a member of either the energy commission or the utility commission.

[(13) "Commission" means the public service commission of Kentucky;

(14) "Commissioner" means one of the members of the commission.]

Section 2. KRS 278.012 is amended to read as follows:

Notwithstanding any other provisions of the Kentucky Revised Statutes, any water association formed for the purpose of furnishing water services to the general public pursuant to KRS Chapter 273 is deemed to be and shall be a *non-energy* [public] utility and shall be subject to the jurisdiction of the *utility* [public service] commission in the same manner and to the same extent as any other *non-energy* utility as defined in KRS 278.010.

Section 3. KRS 278.015 is amended to read as follows:

Notwithstanding any of the provisions of KRS chapter 74 any water district, combined water [, gas] or sewer district, or water commission shall be a *non-energy* [public] utility and shall be subject to the jurisdiction of the *utility* [public service] commission in the same manner and to the same extent as any other *non-energy* utility as defined in KRS 278.010.

Section 4. KRS 278.017 is amended to read as follows:

(1) Except as otherwise provided in this section, the boundaries of the certified territory of each retail electric supplier are hereby set as a line or lines substantially equidistant between its existing distribution lines and the nearest existing distribution lines of any other retail electric supplier in every direction, with the result that there is hereby certified to each retail electric supplier such area which in its entirety is located substantially in closer proximity to one of its existing distribution lines than to the nearest existing distribution line of any other retail electric supplier.

(2) On or before one hundred twenty (120) days after June 16, 1972, or, when requested in writing by a retail electric supplier and for good cause shown, such further time as the *energy* commission may fix by order, each retail electric supplier shall file with the commission a map or maps showing all of its existing distribution lines. The commission shall prepare or cause to be prepared within one hundred twenty (120) days thereafter a map or maps of uniform scale to show, accurately and clearly, the boundaries of the certified territory of each retail electric supplier as established under subsection (1) of this section, and shall issue such map or maps of certified territory to each retail electric supplier. Any retail electric supplier who feels itself aggrieved by reason of a certification of territory pursuant to this section may protest the certification of territory within a one hundred twenty-day period after issuance of the map of certified territory by the commission; and the commission shall have the power, after hearing, to revise or vacate such certified territories or portions thereof.

(3) In such hearing, the commission shall be guided by the following conditions as they existed on June 16, 1972:

(a) The proximity of existing distribution lines to such certified territory.

(b) Which supplier was first furnishing retail electric service, and the age of existing facilities in the area.

(c) The adequacy and dependability of existing distribution lines to provide dependable, high quality retail electric service at reasonable costs.

(d) The elimination and prevention of duplication of electric lines and facilities supplying such territory. In its determination of such protest, the commission hearing shall be de novo; and neither supplier shall bear the burden of proof.

(4) In each area, where the commission shall determine that the existing distribution lines of two or more retail electric suppliers are so intertwined or located that subsection (1) of this section cannot reasonably be applied, the commission shall, after hearing, certify the service territory or territories for the retail electric suppliers under the provisions of subsection (3) of this section.

Section 5. KRS 278.018 is amended to read as follows:

(1) Except as otherwise provided herein, each retail electric supplier shall have the exclusive right to furnish retail electric service to all electric-consuming facilities located within its certified territory, and shall not furnish, make available, render or extend its retail electric service to a consumer for use in electric-consuming facilities located within the certified territory of another retail electric supplier; provided that any retail electric supplier may extend its facilities through the certified territory of another retail electric supplier, if such extension is necessary for such supplier to connect any of its facilities or to serve its consumers within its own certified territory. In the event that a new electric-consuming facility should locate in two or more adjacent certified territories, the commission shall determine which retail electric supplier shall serve said facility based on criteria in KRS 278.017 (3).

(2) Except as provided in subsections (3) and (5) of this section, any new electric-consuming facility located in an area which has not as yet been included in a map issued by the commission, pursuant to KRS 278.017 (2), or certified, pursuant to KRS 278.017 (4), shall be furnished retail electric service by the retail electric supplier which has an existing distribution line in closer proximity to such electric-consuming facility than is the nearest existing distribution line of any other retail electric supplier. Any disputes under this subsection shall be resolved by the commission.

(3) The commission may, after a hearing had upon due notice, make such findings as may be supported by proof as to whether any *retail electric supplier* [utility] operating in a certified territory is rendering or proposes to render adequate service to an electric-consuming facility and in the event the commission finds that such *retail electric supplier* [utility] is not rendering or does not propose to render adequate service, the commission may enter an order specifying in what particulars such *retail electric supplier* [utility] has failed to render or propose to render adequate service and order that such failure be corrected within a reasonable time, such time to be fixed in such order. If the *retail electric supplier* [utility] so ordered to correct such failure fails to comply with such order, the commission may authorize another retail electric supplier to furnish retail electric service to such facility.

(4) Except as provided in subsection (3) of this section, no retail electric supplier shall furnish, make available, render or extend retail electric service to any electric-consuming facility to which such service is being lawfully furnished by another retail electric supplier on June 16, 1972, or to which retail electric service is lawfully commenced thereafter in accordance with this section by another retail electric supplier.

(5) The provisions of KRS 278.016 to 278.020 shall not preclude any retail electric supplier from extending its service after June 16, 1972, to property and facilities owned and operated by said retail electric supplier.

(6) Notwithstanding the effectuation of certified territories established by or pursuant to KRS 278.016 to 278.020, and the exclusive right to service within such territory, a retail electric supplier may contract with another retail electric supplier for the purpose of allocating territories and consumers between such retail electric suppliers and designating which territories and consumers are to be served by which of said retail electric suppliers. Notwithstanding any other provisions of law, a contract between retail electric suppliers as herein provided when approved by the commission shall be valid and enforceable. The commission shall approve such a contract if it finds that the contract will promote the purposes of KRS 278.016 and will provide adequate and reasonable service to all areas and consumers affected thereby.

Section 6. KRS 278.020 is amended to read as follows:

(1) No person, partnership, public or private corporation or combination thereof shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until such person has obtained from the *appropriate* [public service] commission a certificate that public convenience and necessity require such construction. Upon the filing of an application for such a certificate, and after a public hearing of all parties interested, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part. Unless exercised within one year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.

(2) No utility shall exercise any right or privilege under any franchise or permit, after the exercise of that right or privilege has been voluntarily suspended or discontinued for more than one year, without first obtaining from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity authorizing the exercise of that right or privilege.

(3) No utility shall apply for or obtain any franchise, license or permit from any city or other governmental agency until it has obtained from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity showing that there is a demand and need for the service sought to be rendered.

(4) All carriers or conveyors of electricity or electric power are declared to be common carriers and subject to the obligations incident thereto.

Section 7. KRS 278.025 is amended to read as follows:

(1) Notwithstanding any other provision of the law to the contrary, no person, partnership, public or private corporation or combination thereof shall begin the construction of any facility to be used for the generation of electricity to or for the public for compensation without having first obtained from the *energy* [public service] commission a certificate of Environmental Compatibility. This requirement shall not apply to such facilities for which an application for a certificate of convenience and necessity has been filed with, or granted by, the Public Service Commission prior to June 21, 1974.

(2) Prior to making application for such a certificate such person, partnership, public or private corporation or combination thereof shall submit to the Department for Natural Resources and Environmental Protection or any local pollution control district exercising concurrent jurisdiction with the Department a statement of Environmental Compatibility of the proposed site.

(3) The statement of Environmental Compatibility shall contain such information as the Department (or local pollution control district) considers necessary in making its report to the Commission including but not limited to the following:

(a) A complete description of the proposed project;

(b) Comments on the effects of air pollutants from the proposed facility on public health and welfare, the effects of the proposed facility on the waters of the Commonwealth, the treatment, handling and disposal of solid waste from the proposed facility, noise pollution if any, and other adverse environmental effects which cannot be avoided.

(4) The Department for Natural Resources and Environmental Protection (or any local pollution control district exercising concurrent jurisdiction with the Department) shall within sixty (60) days after receiving the statement of Environmental Compatibility report to the [Public Service] Commission any recommendation on or objections to the proposed facility. The Commission upon request by the Department may extend said sixty (60) day period for an additional thirty (30) days.

(5) On receipt of the report from the Department for Natural Resources and Environmental Protection (or the local pollution control district) or if the period for filing said report has expired without the receipt of such report, the Commission shall conduct a public hearing on the application which shall be open to all interested persons. For the purpose of this paragraph an "interested person" shall mean any person whose living environment would be affected by the construction of the proposed facility.

(6) In granting or denying the application for a certificate of Environmental Compatibility, the Commission shall consider the community needs, the industrial development, customer requirements and the economics of the facility, all of which shall be balanced against any adverse environmental factors.

Section 8. KRS 278.040 is amended to read as follows:

(1) The energy regulatory commission shall regulate energy utilities as defined in KRS 278.010(4) and enforce the provisions of this chapter with respect to such energy utilities. The utility regulatory commission shall regulate non-energy utilities as defined in KRS 278.010(5), and enforce the provisions of this chapter with respect to such non-energy utilities. Each commission shall be a body corporate, with power to sue and be sued in its corporate name. Each commission may adopt a seal bearing its name, which seal shall be affixed to all writs and official documents, and to such other instruments as such commission directs, and all courts shall take judicial notice of the seal.

(2) The jurisdiction of the commissions shall extend to all utilities in this state. The energy regulatory commission shall have exclusive jurisdiction over the regulation of rates and service of all energy utilities and the utility regulatory commission shall have exclusive jurisdiction over the regulation of rates and service of all non-energy utilities. If a utility which is an energy utility also renders service as a non-energy utility, it shall be regulated by the energy commission with respect to all of its rates and services. Provided however, that nothing in this chapter is intended to limit or restrict the police jurisdiction, contract right or powers of cities or political subdivisions.

(3) The commissions may adopt, in keeping with KRS Chapter 13, reasonable regulations to implement the provisions of KRS Chapter 278 and investigate the methods and practices of the utilities subject to their respective jurisdictions to require them to conform to the laws of this state, and to all reasonable rules, regulations and orders of the commissions not contrary to law.

[(1) The public service commission shall regulate utilities and enforce the provisions of this chapter. The commission shall be a body corporate, with power to sue and be sued in its corporate name. The commission may adopt a seal bearing the name "Public Service Commission of Kentucky," which seal shall be affixed to all writs and official documents, and to such other instruments as the commission directs, and all courts shall take judicial note of the seal.

(2) The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.

(3) The commission may adopt, in keeping with KRS Chapter 13, reasonable regulations to implement the provisions of KRS Chapter 278 and investigate the methods and practices of utilities to require them to conform to the laws of this state, and to all reasonable rules, regulations and orders of the commission not contrary to law.]

Section 9. KRS 278.046 is amended to read as follows:

The *energy* commission by regulation may prescribe the form and require the appropriate authorities annually to report data relating to rates, finances, and operations of municipally owned electric utilities.

Section 10. KRS 278.047 is amended to read as follows:

(1) The rates charged for services by municipally owned electric utilities shall not be increased except after a public hearing following reasonable notice thereof.

(2) [By January 1, 1978] The rates charged for services and the standards of services maintained by municipally owned electric utilities shall be the same for customers inside and outside the corporate limits.

Section 11. KRS 278.050 is amended to read as follows:

(1) Each commission shall consist of three (3) members appointed by the governor with the advice and consent of the senate. If the senate is not in session when a term expires or a vacancy occurs, the governor shall make the appointment to take effect at once, subject only to the approval of the joint interim committee on state government of the legislative research commission if such appointment is made more than ninety days prior to the commencement of a session of the general assembly. Each of the three (3) members of each commission shall be appointed on or before the first day of April, 1979 for staggered terms as follows: one (1) shall serve until the first day of April, 1981, one (1) until the first day of April, 1982, and one (1) until the first day of April, 1983, and thereafter for a term of four (4) years and until a successor is appointed and qualified. Members of the energy regulatory commission shall devote their entire time to the duties of their offices.

(2) The governor shall appoint one (1) of the commissioners on each commission to act as chairman thereof and the chairman shall be the chief executive officer of such commission. The governor shall designate one (1) of the commissioners on each commission to serve as vice chairman thereof and act for the chairman in the latter's absence.

(3) Vacancies for unexpired terms shall be filled in the same manner as original appointments, but the appointee shall hold office only to the end of the unexpired term.

[(1) The public service commission shall consist of five members appointed by the governor with the advice and consent of the senate. If the senate is not in session when a term expires or a vacancy occurs, the governor shall make the appointment to take effect at once, subject to the approval of the senate when convened. Each of the five members of said commission shall be appointed on or before March 1, 1976 for staggered terms as follows: two (2) shall serve until March 1, 1977, two (2) until March 1, 1978 and one (1) until March 1, 1979 and thereafter for a term of four years and until a successor is appointed and qualified.

(2) The Governor shall appoint one of the commissioners to act as chairman of the commission and the chairman shall be the chief executive officer of the commission. The governor shall designate one of the commissioners to serve as vice chairman and act for the chairman in the latter's absence.

(3) Vacancies for unexpired terms shall be filled in the same manner as original appointments, but the appointee shall hold office only to the end of the unexpired term.]

Section 12. KRS 278.060 is amended to read as follows:

(1) Each commissioner shall be a resident and qualified voter of this state, not less than twenty-five (25) years of age at the time of his appointment and qualification, and shall have resided in this state for at least three (3) years prior to his appointment and qualification. Each commissioner shall take and subscribe to

the constitutional oath of office, which shall be recorded in the office of the secretary of state.

(2) No person shall be appointed to or hold the office of commissioner who holds any official relationship to any utility, or who owns any stocks or bonds thereof, or who has any pecuniary interest therein.

(3) No commissioner shall receive any rebate, pass, percentage of contract or other thing of value from any utility.

(4) *In addition to the restrictions on members of the energy commission set forth in KRS 278.050(1), no commissioner shall engage in any occupation or business inconsistent with his duties as such commissioner* [No commissioner shall engage in any occupation or business inconsistent with his duties as such commissioner].

(5) If any commissioner becomes a member of any political party committee, his office as commissioner shall be thereby vacated.

(6) In making appointments to the commission, the governor shall consider the various kinds of expertise relevant to utility regulation and the varied interests to be protected by the commission, including those of consumers as well as utility investors, and not all members should be of the same occupation or profession.

Section 13. KRS 278.080 is amended to read as follows:

A majority of *each commission* [the commissioners] shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of *such* [the] commission. No vacancy in *a* [the] commission shall impair the right of the remaining commissioners to exercise all of the powers of *such* [the] commission. Any investigation, inquiry, or hearing that *a* [the] commission has power to undertake or hold may be undertaken or held, and the evidence therein taken, by any one or more *members of such commission* [commissioners] or a hearing examiner designated for that purpose by *such* [the] commission, and every finding, opinion or order made by the commissioner or commissioners or hearing examiner so designated shall, when approved or confirmed by *such* [the] commission, become the finding, opinion or order *thereof* [of the commission].

Section 14. KRS 278.090 is amended to read as follows:

(1) The principal office of *each* [the] commission shall be located at the state capital, and it shall be kept open during the usual business hours.

(2) *Each* [The] commission shall hold meetings at its principal office and at such other convenient places in the state as are expedient or necessary for the proper performance of its duties.

Section 15. KRS 278.100 is amended to read as follows:

(1) There shall be one (1) executive director and one (1) secretary who shall serve both commissions and be jointly appointed by the chairman of each commission, and who shall hold office during the pleasure of the joint chairmen and shall devote their entire time to the duties of their offices. In the event that the chairmen of the commissions cannot agree within sixty (60) days of the initial or any subsequent vacancy therein on an appointee for either office, then the secretary of the public protection and regulation cabinet shall appoint a person to hold the appropriate office in accordance with the provisions of this section. The executive director shall be selected on the basis of experience and training demonstrating capacity to deal with the problems of management and governmental regulation and knowledge relating to utility regulation. The executive director shall be the chief administrative officer of the office of the commissions and shall provide the staff direction and coordination in implementing the program and discharging the duties of the commissions. The secretary shall keep a full and true record of all the proceedings of the commissions, of all books and papers ordered filed by the commissions, and of all orders made by the commissions or approved and confirmed by them and ordered filed, and shall be responsible to them for the safe custody and preservation of all such documents in their office.

(2) The chairmen of the commissions shall designate from time to time staff persons to perform the duties of the executive director and secretary during their absence, and during the absence of either, the person so designated shall possess the same powers as their principal.

(3) The executive director with the approval of the chairmen of the commissions may assign the secretary additional administrative duties.

[(1) The commission shall appoint an executive director and a secretary, who shall hold office during its pleasure and shall devote their entire time to the duties of their offices. The executive director shall be selected on the basis of experience and training demonstrating capacity to deal with the problems of management and governmenal regulation and knowledge relatable to utility regulation. The executive director shall be the chief administrative officer of the office of the commisson and shall provide the staff direction and coordination in implementing the program and discharging the duties of the commission. The secretary shall keep a full and true record of all the proceedings of the commission, of all books and papers ordered filed by the commission, and of all orders made by the commission or approved and confirmed by it and ordered filed, and shall be responsible to it for the safe custody and preservation of all such documents in its office.

(2) The commission shall designate from time to time staff persons to perform the duties of the executive director and secretary during their absence, and during the absence of either, the person so designated shall possess the same powers as their principal.

(3) The executive director with the approval of the commission may assign the secretary additional administrative duties.]

Section 16. KRS 278.110 is amended to read as follows:

The *commissions* [commission] acting through the executive director may employ such clerks, stenographers, rate experts, agents, special agents, engineers, accountants, auditors, inspectors, lawyers, hearing examiner, experts and other classified service employes and the *commissions* [commission] may contract for services of persons in a professional or scientific capacity to make or conduct a hearing or a temporary or special inquiry, investigation or examination as *they deem* [it deems] necessary to carry out the provisions of this chapter, or to perform the duties and exercise the powers conferred by law upon the *commissions* [commission].

Section 17. KRS 278.115 is amended to read as follows:

The commission by regulation shall organize *their* [its] office for administration and management under the executive director to reflect *their* [its] functions. The organization may be changed from time to time and may include division directors subject to the exemption from the classified service as provided in KRS 18-140(h).

Section 18. KRS 278.120 is amended to read as follows:

(1) The chairman [of the commission] and [each of] the other *two (2)* [four] members *of each commission* shall be paid a salary fixed under KRS 64.640 to be paid monthly.

(2) The executive director and the secretary of the commission shall be paid a salary to be fixed by the commission, with the approval of the governor.

(3) The commissioners, the executive director, the secretary and employes of the commission are entitled to all expenses, including hotel bills, incurred in traveling on business of the commission.

(4) The salaries and expenses provided for by this section, and all other expenses of the commission incurred in the administration of this chapter, shall be paid out of appropriations as provided by law out of the general expenditure fund.

Section 19. KRS 278.130 is amended to read as follows:

(1) For the purpose of maintaining the *commissions* [public service commission], including the payment of salaries and all other expenses, and the cost of regulation of the utilities subject to *their* [its] jurisdic-

tion, the department of revenue shall each year assess the utilities in proportion to their earnings or receipts derived from intrastate business in Kentucky for the preceding calendar year, and shall notify each utility on or before July 1 of the amount assessed against it. The total amount so assessed shall not in any year exceed one and one-half mills on intrastate receipts, which shall be deposited into the state treasury to the credit of the general fund. The sum by each utility shall not be less than $50 in any one year.

(2) The assessments provided for in this section shall be in lieu of all other fees or assessments levied by any city or other political subdivision for the control or regulation of utilities.

Section 20. KRS 278.140 is amended to read as follows:

To ascertain the amount of the assessment provided for in KRS 278.130, each utility shall, on or before March 31 of each year, file with the commission *having jurisdiction over it* a report of its gross earnings or receipts derived from intrastate business for the preceding calendar year.

Section 21. KRS 278.150 is amended to read as follows:

(1) *Each* [The] commission shall, on or before June 1, certify to the department of revenue the amount of intrastate business of each utility in the state *subject to its jurisdiction* during the previous calendar year. The department of revenue shall collect and pay the assessment into the state treasury to the credit of the general expenditure fund. All such assessments shall be paid into the state treasury through the executive department for finance and administration on or before July 31 of the year in which the assessments are made.

(2) If any amount in the special fund for the maintenance of the *commissions* [commission] remains unexpended at the end of *any* [the 1971-72] fiscal year, that amount shall not lapse, but shall remain credited to the account of the commission and may be used during any succeeding year.

Section 22. KRS 278.160 is amended to read as follows:

(1) Under rules prescribed by the *commissions* [commission], each utility shall file with the *appropriate* commission, within such time and in such form as the commission designates, schedules showing all rates established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

(2) No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

Section 23. KRS 278.170 is amended to read as follows:

(1) No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

(2) Any utility may grant free or reduced rate service to its officers, agents or employes, and may exchange free or reduced rate service with other utilities for the benefit of the officers, agents and employes of both utilities. Any utility may grant free or reduced rate service to the United States, to charitable and eleemosynary institutions, and to persons engaged in charitable and eleemosynary work, and may grant free or reduced rate service for the purpose of providing relief in case of flood, epidemic, pestilence or other calamity. The terms "officers" and "employes," as used in this subsection, include furloughed, pensioned and superannuated officers and employes, and persons who have become disabled or infirm in the service of the utility. Notice must be given to the *appropriate* commission and its agreement obtained for such reduced rate service except in case of an emergency, in which case the commission shall be notified at least five (5) days after the service is rendered.

(3) The *appropriate* commission may determine any question of fact arising under this section.

Section 24. KRS 278.180 is amended to read as follows:

(1) Except as provided in subsection (2) of this section, no change shall be made by any utility in any rate except upon twenty (20) days' notice to the *appropriate* commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect. The commission may order a rate change only after giving an identical notice to the utility, and any aggrieved party petitioning within the period for a hearing shall be entitled thereto before said order is entered.

(2) The commission, upon application of any utility, may prescribe a less time within which a reduction of rates may be made.

Section 25. KRS 278.185 is amended to read as follows:

(1) The *utilities* [public service] commission shall require that all sewerage corporations under its jurisdiction shall, when submitting an application for a rate change, notify all its customers of the application.

(2) Notification to the customers of the rate change application shall be in writing and shall include an estimate of the probable financial impact upon the customers.

(3) The cost of notifying customers of a rate change shall be borne by the sewerage corporation.

(4) The *utilities* [public service] commission shall make such reasonable rules and regulations as are deemed necessary to further the purpose of this section.

Section 26. KRS 278.190 is amended to read as follows:

(1) Whenever any utility files with the *appropriate* commission any schedule stating new rates, the commission may, upon its own motion, or upon complaint as provided in KRS 278.260, and upon reasonable notice, enter upon a hearing concerning the reasonableness of the new rates.

(2) Pending such hearing and the decision thereon, and after notice to the utility, the commission may, at any time before said schedule becomes effective, suspend the operation of said schedule and defer the use of such rate, charge, classification or service, but not for a longer period than five (5) months beyond the time when it would otherwise go into effect; and after such hearing, either completed before or after the rate, charge, classification or service goes into effect, the commission may make such orders with reference thereto as it deems proper in the matter. If the proceeding has not been concluded and an order made at the expiration of such five (5) months the utility may place the proposed change of rate, charge, classification or service in effect at the end of such period after notifying the commission, in writing, of its intention so to do. Where increased rates or charges are thus made effective, the commission may, by order, require the interested utility or utilities to maintain their records in such manner as will enable them, or the commission, or any of its customers, to determine the amounts to be refunded and to whom due in the event a refund is ordered, and upon completion of the hearing and decision may, by further order, require such utility or utilities to refund to the persons in whose behalf such amounts were paid such portion of such increased rates or charges as by its decision shall be found unreasonable. Provided, however, if the commission, at any time, during said five (5) months' suspension period, finds that an emergency exists or that the company's credit or operations will be materially impaired or damaged by the failure to permit said rates to become effective during said five (5) months' period, said commission may, after any hearing or hearings, permit all or a portion of said rates to become effective under such terms and conditions as the commission may, by order, prescribe.

(3) At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility and the commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible, and in any event not later than ten (10) months after the filing of such schedules.

(4) In the event the commission, by order, directs any utility to make a refund, as hereinabove provided, of all or any portion of such increased rates or charges, the utility shall make the same within sixty (60) days after a final determination of the proceeding by an order of the court or commission with or without interest in the discretion of the commission. If the utility fails to make such refund within sixty (60) days after such final determination, any party entitled to such refund may, after ten (10) days' written demand, bring an

action therefor in any court of competent jurisdiction of this state, and may recover, in addition to the amount of the refund due, legal interest, court costs and reasonable attorney's fees. No such action may be maintained unless instituted within one (1) year after such final determination. Any number of persons entitled to such refunds may join in as plaintiffs in a single action and the court shall render a judgment severally for each plaintiff as his interest may appear.

Section 27. KRS 278.200 is amended to read as follows:

The commission *having jurisdiction over the affected utility* may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by any contract, franchise or agreement between the utility and any city, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission, but no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the commission in the manner prescribed in this chapter.

Section 28. KRS 278.210 is amended to read as follows:

(1) The *appropriate* commission may provide instruments for, and carry on, the examination and testing of any meter or appliance used to measure the product or service of any utility, and the examination and testing of any instrument used by a utility to test the accuracy of any meter or appliance used to measure its products or services.

(2) Any patron of a utility may, upon request and payment of the fees fixed by the *appropriate* commission, have a test made of the meter or appliance by which his use of the products or services of the utility is measured.

(3) The *appropriate* commission may establish reasonable fees for testing such meters and appliances at the request of a patron of a utility. If the appliance is found to be commercially defective or inaccurate to the extent of more than two per cent (2%) to the disadvantage of the patron, the fees shall be repaid to the patron and paid by the utility.

Section 29. KRS 278.220 is amended to read as follows:

Each [The] commission may establish a system of accounts to be kept by utilities *subject to its jurisdiction*, or may classify utilities and establish a system of accounts for each class, and may prescribe the manner in which such accounts shall be kept. The system established shall conform as nearly as practicable to the uniform system of accounts prescribed by the National Association of Railway and Utilities Commissioners, except that the system established for telephone and telegraph companies shall conform as nearly as practicable to the system adopted or approved by the Interstate Commerce Commission or other federal agency regulating telephone and telegraph companies.

Section 30. KRS 278.230 is amended to read as follows:

(1) The commissioners and the officers and employes of *each* [the] commission may, during all reasonable hours, enter upon the premises of any utility *subject to its jurisdiction* for the purpose of examining any books or records, or for making any examination or test, or for exercising any power provided for in this chapter, and may set up and use on such premises apparatus and appliances necessary for any such examination or test. The utility shall have the right to be represented at the making of any such examination, test or inspection.

(2) *The books, accounts, papers and records of the* [every] utility shall be available to the commission for inspection and examination. If the books, accounts, papers and records are not within the state, the commission may, by notice and order, require their production or the production of verified copies at such time and place as it designates, any expense incurred to be borne by the utility so ordered.

(3) Every utility, when required by the commission, shall file with it any reports, schedules, classifications or other information that the commission reasonably requires. The commission shall prepare and dis-

tribute to the utilities blank forms for any information required under this chapter. All such reports shall be under oath when required by the commission.

Section 31. KRS 278.240 is amended to read as follows:

Copies of official documents and orders filed or deposited according to law in the office of *either* [the]commission, certified by a commissioner, or by the secretary under the seal of the commission, to be true copies of the originals, shall be evidence in like manner as the originals in all matters before the commission and in courts of competent jurisdiction.

Section 32. KRS 278.250 is amended to read as follows:

Whenever it is necessary in the performance of its duties, *either* [the] commission may investigate and examine the condition of any utility *subject to its jurisdiction*. In conducting such investigation, the commission may proceed with or without a hearing as it deems best, but shall make no order without giving a hearing to the parties affected thereby.

Section 33. KRS 278.260 is amended to read as follows:

Upon a complaint in writing made against any utility by any mercantile, agricultural or manufacturing society, or by any body politic or municipal organization, or by any [public] utility, or by any ten (10) patrons of the utility complained of, or by any ten (10) complainants of all or any of the aforementioned classes, that any rate in which the complainant is directly interested is unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act affecting or relating to the service of the utility or any service in connection therewith is unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with or without notice, to make such investigation as it deems necessary or convenient. The commission may also make such an investigation on its own motion. No order affecting the rates or service complained of shall be entered by the commission without a formal public hearing.

Section 34. KRS 278.270 is amended to read as follows:

Whenever *either* [the] commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that any rate *of a utility subject to its jurisdiction* is unjust, unreasonable, insufficient, unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by order prescribe a just and reasonable rate to be followed in the future.

Section 35. KRS 278.280 is amended to read as follows:

(1) Whenever *either* [the] commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that the rules, regulations, practices, equipment, appliances, facilities or service of any utility *subject to its jurisdiction*, or the method of manufacture, distribution, transmission, storage or supply employed by *such utility* [it], are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation.

(2) The commission shall prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by *the* [any] utility, and, on proper demand and tender of rates, the utility shall furnish the commodity or render the service within the time and upon the conditions provided in the rules.

(3) Any person or group of persons may come before the *appropriate* commission and by petition ask that any utility *subject to its jurisdiction* be compelled to make any reasonable extension. The commission shall hear and determine the reasonableness of the extension, and sustain or deny the petition in whole or in part.

Section 36. KRS 278.290 is amended to read as follows:

(1) Subject to the provisions of subsection (2) of this section, *either* [the] commission may ascertain and fix the value of the whole or any part of the property of any utility *subject to its jurisdiction* in so far as the value is material to the exercise of the jurisdiction of the commission, and may make revaluations from time to time and ascertain the value of all new construction, extensions and additions to the property of the utility. In fixing the value of any property under this subsection, the commission shall give due consideration to the history and development of the utility and its property, original cost, cost of reproduction as a going concern, capital structure, and other elements of value recognized by the law of the land for rate-making purposes.

(2) The commission shall not value or revalue the property of any utility unless the valuation or revaluation is necessary or advisable in order to determine the legality or reasonableness of any rate or service or of the issuance of securities, and then only after an investigation affecting the rate, service or securities has been instituted by the commission upon complaint or application or upon its own motion, and a hearing has been held on reasonable notice.

(3) In any rate investigation where the utility serves two (2) or more municipalities, the commission may, in computing the rate of return on the property used and useful, take as the base for the computation the valuation of the system as a whole, but may make a differential in the case of an individual municipality in proportion to the increased cost of service, if the utility can show that such a differential should be allowed.

Section 37. KRS 278.300 is amended to read as follows:

(1) No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the *appropriate* commission.

(2) Application for authority to issue or assume securities or evidences of indebtedness shall be made in such form as the commission prescribes. Every such application shall be made under oath, and shall be signed and filed on behalf of the utility by its president, or by a vice president, auditor, comptroller or other executive officer having knowledge of the matters set forth and duly designated by the utility. Every such application shall be placed at the head of the docket of the commission and disposed of promptly within sixty days after it is filed with the commission, unless it is necessary for good cause to continue the application for longer time than sixty days, in which case the order making the continuance shall state fully the facts that make it necessary.

(3) The commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

(4) The commission may grant or deny the application in whole or in part, or may grant it with such modifications and upon such terms and conditions as the commission deems necessary or appropriate. The order of the commission shall specify that the securities or evidences of indebtedness, or the proceeds thereof, shall be used only for the lawful purposes specified in the application, and both the application of the utility and the order of the commission shall state in general terms the purpose of the issuance or assumption.

(5) A copy of any order made and entered by the commission under this section, duly certified by the secretary of the commission, shall be sufficient evidence for all purposes of full and complete compliance by the utility with all procedural and other matters required precedent to the entry of the order.

(6) Securities and evidences of indebtedness issued and obligations and liabilities assumed by a utility, for which, under the provisions of this section, the authorization of the commission is required, shall comply with the terms and conditions of the order of authorization entered prior to the issue or assumption, and where the order has been fully complied with the validity of the issue or assumption shall not be affected by a failure to comply with any provision of this section or rule of the commission relating to procedure or other matters preceding the entry of the order of authorization or order supplemental thereto.

(7) The commission may require periodical or special reports from *the* [any] utility issuing any security or evidence of indebtedness. The report shall show, in such detail as the commission requires, the disposition made of such securities or evidences of indebtedness, and the application of the proceeds thereof.

(8) This section does not apply to notes issued by a utility, for proper purposes and not in violation of law, that are payable at periods of not more than two years from the date thereof, or to like notes, payable at a period of not more than two years from date thereof, that are issued to pay or refund in whole or in part any such notes, or to renewals of such notes from time to time, not exceeding in the aggregate six years from the date of the issue of the original notes so renewed or refunded.

(9) Nothing in this section implies any guarantee of securities or evidences of indebtedness by the state, or any obligation on the part of the state with respect thereto, and nothing in this section limits the power of any court having jurisdiction to authorize or cause receiver's certificates or debentures to be issued according to the rules and practice obtaining in receivership proceedings in courts of equity.

(10) This section does not apply in any instance where the issuance of securities or evidences of indebtedness is subject to the supervision or control of the federal government or any agency thereof, but the *appropriate* commission may appear as a party to any proceeding filed or pending before any federal agency if the issuance of the securities or evidences of indebtedness will materially affect any utility over which the commission has jurisdiction.

(11) This section also does not apply to the issuance of securities or evidence of indebtedness by a utility principally engaged in transportation of gas by pipeline in interstate commerce and subject to the supervision, control or jurisdiction of the federal government or any agency, board or commission thereof.

Section 38. KRS 278.310 is amended to read as follows:

(1) *Each* [The] commission shall fix the time and place for each hearing held by it, and shall serve notice thereof upon the utility and the complainant not less than twenty (20) days before the time set for the hearing. The commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest or for the protection of substantial rights.

(2) All hearings and investigations before the commission or any commissioner shall be governed by rules adopted by the commission, and in the conduct thereof neither the commission nor the commissioner shall be bound by the technical rules of legal evidence.

(3) The complainant and the person complained of shall be entitled to be heard in person or by attorney and to introduce evidence.

Section 39. KRS 278.320 is amended to read as follows:

Each [The] commission and each of the commissioners may issue subpoenas, subpoenas duces tecum, and all necessary process in proceedings brought before or initiated by the commission, and such process shall extend to all parts of the state. Service of process in all proceedings brought before or initiated by the commission may be made by certified mail, return receipt requested or by registered mail, or in the same manner as other process in civil cases, as the commission directs.

Section 40. KRS 278.330 is amended to read as follows:

Each [The] commission and each of the commissioners, for the purposes mentioned in the preceding sections of this chapter, may administer oaths, examine witnesses, and certify official acts. If any person fails to comply with any lawful order of the commission or of any commissioner, or with process, or if any witness refuses to testify concerning any matter on which he may lawfully be interrogated, any circuit court judge, on application of the commission or of a commissioner, may compel obedience by proceedings for contempt as in the case of disobedience of a subpoena issued from the circuit court or a refusal to testify therein. Witnesses summoned before the commission, and witnesses whose depositions are taken pursuant to the provisions of the preceding sections of this chapter, and the officer taking the depositions, shall be entitled to the same fees as are paid for like services in circuit courts, the fees to be paid by the party in whose behalf the witness is subpoenaed.

Section 41. KRS 278.340 is amended to read as follows:

Each [The] commission or any commissioner, or any party to the proceeding, in any investigation or hearing before the commission or any commissioner, may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions.

Section 42. KRS 278.350 is amended to read as follows:

No person shall be excused from testifying or from producing any book, paper or account at any inquiry by, or hearing before, *either* [the] commission or any commissioner, upon the ground that the testimony or the book, paper or account required of him may tend to incriminate him or subject him to penalty or forfeiture. No person shall be prosecuted or subjected to any forfeiture or penalty for, or on account of, anything concerning which he was compelled to testify under oath or to produce documentary evidence, except that no person so testifying shall be exempt from prosecution or punishment for perjury committed by him in his testimony.

Section 43. KRS 278.360 is amended to read as follows:

A full and complete record shall be kept of all contested proceedings had before *each* [the] commission or any commissioner on any formal hearing, and all testimony shall be taken down by a reporter appointed by the commission.

Section 44. KRS 278.370 is amended to read as follows:

Every order, finding, authorization or certificate issued or approved by *either* [the] commission under any of the preceding provisions of this chapter shall be in writing and shall be entered on the records of the commission. A certificate under the seal of the commission that any such order, finding, authorization or certificate has not been modified, stayed, suspended or revoked shall be received as evidence in any proceeding as to the facts stated therein.

Section 45. KRS 278.380 is amended to read as follows:

Each [The] commission shall deliver a certified copy of any order issued by it to each party to the proceeding in which the order was made, and to an officer or agent of the utility affected thereby.

Section 46. KRS 278.390 is amended to read as follows:

Each [The] commission may compel obedience to its lawful orders by mandamus, injunction or other proper proceedings in the Franklin circuit court or any other court of competent jurisdiction, and such proceedings shall have priority over all pending cases. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, or vacated in whole or in part, by order or decree of a court of competent jurisdiction.

Section 47. KRS 278.400 is amended to read as follows:

After a determination has been made by *either* [the] commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order upon him, apply for a hearing with respect to any of the matters determined. The application shall specify the matters on which a rehearing is sought. The commission shall either grant or deny the application for rehearing within twenty (20) days after it is filed, and failure of the commission to act upon the application within that period shall be deemed a denial of the application. Notice of the hearing shall be given in the same manner as notice of an original hearing. Upon the rehearing any party may offer additional evidence that could not with reasonable diligence have been offered on the former hearing. Upon the rehearing, the commission may change, modify, vacate or affirm its former orders, and make and enter such order as it deems necessary.

Section 48. KRS 278.410 is amended to read as follows:

(1) Any party to a *commission* proceeding [before the commission] or any utility affected by an order of the commission may, within twenty (20) days after being served with the order, or within twenty (20) days after *its* [his] application for rehearing has been denied by failure of the commission to act, or within twenty (20) days after being served with the final order on rehearing, when a rehearing has been granted, bring an action against the commission in the Franklin Circuit Court to vacate or set aside the order or determination on the ground that it is unlawful or unreasonable. Notice of the institution of such action shall be given to all parties of recordbefore the commission.

(2) The answer of the commission shall be served and filed within twenty (20) days after service of the complaint. The action shall then be at issue and stand ready for trial upon ten (10) days' notice to either party, on the equity side of the docket of the court. The answer need not deny verbatim the allegations of the petition, but a general denial thereof on behalf of the commission shall be sufficient.

(3) Injunctive relief may be granted by the circuit court in the manner and upon the terms provided by law.

Section 49. KRS 278.420 is amended to read as follows:

If an action is commenced against *either* [the] commission because of an order made in any proceedings before it, the commission shall promptly cause a certified transcript of all proceedings had and testimony taken therein to be made and filed with the clerk of the court in which the action is pending. The cost of preparing and certifying the record shall be paid to the commission by the party bringing the action, and taxed as part of the costs, to be paid as directed by the court upon final determination of the action. Copies of the transcript shall be furnished at cost to any party to the proceeding.

Section 50. KRS 278.430 is amended to read as follows:

In all trials, actions or proceedings arising under the preceding provisions of this chapter or growing out of *either commission's* [the] exercise of the authority or powers granted to *it* [the commission], the party seeking to set aside any determination, requirement, direction or order of the commission shall have the burden of proof to show by clear and satisfactory evidence that the determination, requirement, direction or order is unreasonable or unlawful.

Section 51. KRS 278.485 is amended to read as follows:

Every gas pipeline company obtaining gas from producing wells located within this state, upon the request of the owner of the property on or over which any producing well or gas gathering pipeline is located or the owner of real estate whose property and point of desired service is located within one-half (1/2) air-mile of said company's producing gas well or gas gathering pipeline, shall furnish gas service to such owner and applicant, subject to and upon the following terms, conditions and provisions, to-wit:

(1) The gas service shall be furnished at rates and minimum monthly charges determined by the *energy* [public service] commission.

(2) The applicant for such gas service shall construct or cause to be constructed, and shall maintain and keep in good repair, the service lines, and shall provide and install or cause to be installed, and keep in good repair, the necessary automatic gas regulators, and shall pay the entire cost thereof. The company, at its own expense, shall provide, install and maintain the necessary gas meters.

(3) The construction of each service line, the installation, type and number of automatic gas regulators and gas meter or meters and the connection thereof with the gas producing well or pipeline shall be under the supervision of the *energy* [public service] commission or an agent thereof; and, shall conform to such standards of safety, location and convenience as may be prescribed by said commission.

(4) Neither the gas producer nor the gas pipeline company shall be responsible for maintaining any fixed or specified gas pressure. Neither the gas producer nor the gas pipeline company shall be liable for any accident or accidental injuries or damages which may result from any defect or failure of any automatic gas regulator or for any leakage or other defect or failure of any service line installed or constructed by the applicant.

(5) Nothing in this section shall be construed as requiring any gas pipeline company to serve any such owner of property or applicant from any line or lines established on the discharge side of any compressor station, or from any line or lines serving or connecting with any gas storage field. The provisions of this section shall apply only to producing gas wells and to gas pipelines commonly known as gathering lines.

(6) Nothing in this section shall be construed to restrict the right of any gas pipeline company to abandon any gas well or any gathering pipeline, or any part thereof, and to remove any such abandoned pipeline or lines.

(7) Subject to the rules and regulations of the *energy* [public service] commission, any service may be disconnected and discontinued by the company for failure of the customer to pay any bill as and when due and payable.

Section 52. KRS 278.510 is amended to read as follows:

(1) No telephone company doing an exchange business in a city shall consolidate with any other telephone company doing an exchange business in the same city, or purchase, lease or operate the plant or line of any such company, until the proper city authorities have found, after such investigation as they deem necessary, that no substantial public benefits result from the separate existence of the companies and that actual competitive conditions do not exist, and have stated their finding in a resolution consenting to such consolidation, lease, sale or operating arrangement.

(2) No telephone company doing a toll line business shall consolidate with any other company doing a like business whose lines serve the same communities or localities, or purchase, lease or operate the plant or lines of any such company until the *utility* [public service] commission has found, after such investigation as it deems necessary, that no substantial public benefits result from the separate existence of the companies and that actual competitive conditions do not exist, and has stated its finding in a resolution consenting to such consolidation, lease, sale or operating arrangement. Whenever a joint application of two (2) or more such telephone companies requesting such finding and consent is filed with the *utility* [public service] commission, the commission shall make such investigation, hold such hearings, examine such witnesses and require the production of such books, papers, and records as it deems pertinent to the determination of the application, and shall grant or withhold such consent as the facts warrant.

(3) The *utility* [public service] commission shall have jurisdiction of those matters set out in of the constitution that relate to telephone companies, and shall enter in its minutes a record of its acts in relation thereto.

Section 53. KRS 278.530 is amended to read as follows:

(1) Whenever any telephone company desires to connect its exchange or lines with the exchange or lines of another telephone company and the latter refuses to permit this to be done upon reasonable terms, rates and conditions, the company desiring the connection may proceed as provided in subsection (2) or as provided in subsection (3) of this section.

(2) The company desiring the connection may file a written statement with the *utility* [public service] commission setting out the reasons why the connection is desired and the points at which the connection should be made, and giving the name and address of the owner or chief officer residing in this state of each company with which the connection is desired. The secretary of the commission shall thereupon cause a copy of the written statement to be served upon the companies owning or operating such lines or exchanges, by mailing a copy to the owner or chief officer residing in this state, and shall fix a date, not earlier than ten (10) days from the date of mailing the notice, for the hearing of the application. Upon the day so fixed for the hearing, the companies may respond in writing to the application, and either side may introduce such testimony as it desires and be heard by attorneys. After the hearing is completed the commission shall make its finding and enter it in a book to be kept for that purpose, and shall mail a copy thereof to each side; and if the commission directs the connection to be made it shall indicate the points where the connection is to be made, the number of wires to be connected, the terms and conditions and the rates to be charged, and the division of the rates charged between the companies handling the messages. The cost of making the connection shall be borne equally by the parties. If any company refuses to make a connection for a period of thirty (30) days after the finding of the commission directing the connection to be made, the company desiring the connection may make the connection and may recover one-half (1/2) of the cost thereof from the company so refusing.

(3) In lieu of the procedure provided in subsection (2) of this section, the company desiring the connection may compel the connection upon reasonable terms by suit in equity in the Franklin Circuit Court or in

the circuit court of the county in which the company making the demand resides or has its chief office in this state, and the court shall, by mandatory injunction, compel the physical connection of the wires and interchange of messages, and enforce the same by contempt proceedings and in the same manner that other mandatory injunctions are enforced.

Section 54. KRS 278.990 is amended to read as follows:

(1) Any officer, agent or employe of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of KRS 278.010 to 278.450, or who procures, aids or abets any violation of those provisions by any such utility, shall be fined not more than one thousand dollars ($1,000) or imprisoned for not more than six (6) months, or both. If any such utility that is a private corporation violates any of the provisions of KRS 278.010 to 278.450, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any lawful requirement or order of the [public service] commission *having jurisdiction*, the utility shall for each offense forfeit and pay to the state treasurer, to be credited to the general fund, a sum not less than twenty-five dollars ($25.00) nor more than one thousand dollars ($1,000). Each act, omission or failure by an officer, agent or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission or failure of the utility.

(2) Actions to recover the principal amount due and penalties under KRS 278.010 to 278.450 and this subsection shall be brought in the name of the commonwealth in the Franklin Circuit Court. Whenever any utility is subject to a penalty under KRS 278.010 to 278.450 or this subsection, the [public service] commission *having jurisdiction* shall certify the facts to its counsel, who shall bring an action for recovery of the principal amount due and the penalty. The commission may compromise and dismiss the action on terms approved by the court. The principal amount due shall be paid into the state treasury and credited to the account of the commission, and all penalties recovered in such actions shall be paid into the state treasury and credited to the general fund.

(3) Any utility that fails to pay an assessment as provided for by KRS 278.130 to 278.150 shall forfeit and pay to the state one thousand dollars ($1,000), and twenty-five dollars ($25.00) for each day it fails to pay the assessment, and shall not be released thereby from its liability for the assessment.

(4) Any utility that issues any securities or evidences of indebtedness, or assumes any obligation or liability in respect to the securities or evidences of indebtedness of any other person, or makes any sale or other disposition of securities or evidences of indebtedness, or the proceeds thereof, for purposes other than the purposes specified in the order of the [public service] commission made with respect thereto under KRS 278.300, shall be fined not more than ten thousand dollars ($10,000).

(5) Any utility that violates any of the provisions of KRS 278.460 shall be fined not less than one hundred dollars ($100) for each offense.

(6) Any company that willfully fails to receive, transport and deliver oil or gas as required by KRS 278.490 shall, in addition to being liable in damages to the injured person, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500), and each day of wilful failure shall constitute a separate offense.

(7) Any telephone company that refuses to make a connection with the exchange or lines of another company for a period of thirty (30) days after being ordered to do so by the *utility* [public service] commission under subsection (2) of KRS 278.530 shall be fined not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), to be recovered by indictment in the Franklin Circuit Court or in the circuit court of the county where the company requesting the connection resides or has its chief office in this state. If the company desiring the connection proceeds to make the connection, as permitted by subsection (2) of KRS 278.530, and the company so connected with refuses to receive and transmit the toll messages offered to it by the company making the connection, or refuses to deliver messages from its own lines or exchanges to the lines or exchanges of the company making the connection, the company so refusing shall be fined one hundred dollars ($100) for each day it refuses, to be recovered by indictment in the courts mentioned in the first sentence of this subsection; if it continues so to refuse for a period of six (6) months it shall forfeit its right to do business in this state, and any of its officers, agents or employes who does or attempts to do any business in this state for it after the expiration of the six (6) months' period shall be fined fifty dollars ($50.00) for each day he does or attempts to do such business.

(8) Any company that violates any of the provisions of KRS 278.520 or 278.530 for which there is no other penalty provided shall be fined five hundred dollars ($500) for each offense, and each day of such violation shall constitute a separate offense.

Section 55. KRS 278.992 is amended to read as follows:

Any person who violates any regulation adopted and filed pursuant to KRS chapter 13 by the *energy* [public service] commission governing the safety of pipeline facilities and/or the transportation of gas as those terms are defined in the natural gas pipeline safety act of 1968, U. S. congress, shall be subject to a civil penalty to be assessed by the *energy* [public service] commission not to exceed $1,000 for each violation for each day that the violation persists. However, the maximum civil penalty shall not exceed $200,000 for any related series of violations. Any civil penalty assessed for such a violation may be compromised by the commission. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the commonwealth of Kentucky to the person charged or may be recovered in a civil action in the Franklin Circuit Court.

Section 56. The statute reviser is directed to change the term "public service commission" to utility regulatory commission in those statutes where public service commission appears, and is in reference to duties assigned the utility regulatory commission in this Act. The statute reviser is directed to substitute energy regulatory commission for public service commission in those statutes referring to duties assigned the energy regulatory commission by this Act. In statutes relating to administrative organization, bonding and any matters not specifically assigned to one of the two commissions in this Act, the statute reviser shall substitute both energy regulatory commission and utility regulatory commission in statutes where public service commission now appears.

Section 57. This Act shall become effective April 1, 1979.

Approved March 30, 1978

LC 78-2474

Regular Session, 1978

HOUSE BILL NO. 1129

BY MR. LEBLEU

ORIGINAL BILL

AN ACT

To amend Title 48 of the Louisiana Revised Statutes of 1950 by adding thereto a new Section to be designated as Section 382.1 thereof, relative to the construction and maintenance of highways and drainage canals; to provide that whenever a highway or drainage canal is constructed across an existing underground utility line, the owner of the utility line shall bear the cost involved in the lowering of said utility lines; and otherwise to provide with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 382.1 of Title 48 of the Louisiana Revised Statutes of 1950 is hereby enacted to read as follows:

§382.1. Highways and drainage canals crossing underground utility line

Whenever a highway, road, street, or drainage canal is constructed by the state of Louisiana or any parish or municipality thereof which crosses an existing underground utility line, the owner of the utility line shall bear all costs involved in the lowering of said line.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provision, item, or application, and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Regular Session, 1978

SENATE BILL NO. 31

BY MR. GERALD

ENROLLED

ACT NO. 397

AN ACT

To amend and reenact Subsection B of Section 4305 of Title 33 of the Louisiana Revised Statutes of 1950, relative to fees and expenditures of members of boards of commissioners of gas utility districts created by parish governing authorities, to provide with respect to such boards in parishes having between 250,000 and 325,000 population in which there presently exists a single gas utility district, by providing for the fees payable for attending meetings, the number of meetings, reimbursement for expenditures, compensation of officers and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Subsection B of Section 4305 of Title 33 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted to read as follows:

§4305. Domicile; meetings; officers; bonds; depositories; compensation; rate-fixing

* * *

B. (1) No member of the board of commissioners shall be paid a salary for his services, but may be paid a fee of twenty dollars for each meeting he attends, not in excess of twenty-five meetings in each year, and shall be entitled to reimbursement for all proper expenditures which he makes in carrying on the business of the district. If any member of the board serves as secretary or treasurer or secretary-treasurer, he may receive such reasonable additional compensation therefor as is commensurate with the duties to be performed.

(2) Notwithstanding any contrary provision of this Subsection or of any other provision of law, in any parish having a population, according to the latest official federal decennial census, of not

less than 250,000 or more than 325,000 in which there presently exists a single gas utility district, no member of the board of commissioners shall be paid a salary for his services, but may be, paid a fee of up to fifty dollars for each meeting he attends as determined by the board, for not in excess of twenty-four regular and twelve special meetings in each year, and shall be entitled to reimbursement for all expenditures which he incurs in carrying on the business of the district. The meeting fee may be adjusted once annually to reflect the change in the valuation of the dollar; however, the total fee shall not exceed fifty dollars per meeting. The chief executive officer of the board, president or chairman, the vice-president or vice-chairman when he serves as chief executive officer, the secretary, the treasurer, or the secretary-treasurer may receive such reasonable additional compensation for administrative services as is commensurate with the duties to be performed.

* * *

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items or applications of this Act which can be given effect without the invalid provisions, items or applications, and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

_____

PRESIDENT OF THE SENATE

_____

SPEAKER OF THE HOUSE OF REPRESENTATIVES

_____

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

H O U S E O F D E L E G A T E S

81r3221 No. 1362

By: Delegates Weisengoff and Walters
Introduced and read first time: February 10, 1978
Assigned to: Environmental Matters

Committee report: Favorable with amendments
House action: Adopted
Read second time: March 9, 1978

CHAPTER 377

AN ACT concerning

Public Service Commission - Yard Track Safety

FOR the purpose of authorizing the Public Service Commission or its authorized agents to close yard tracks immediately under certain conditions.

BY repealing and reenacting, with amendments,

Article 78 - Public Service Commission Law
Section 38A
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 78 - Public Service Commission Law

38A.

(A) In order to provide employees a reasonably safe place to work, it shall be the duty of all persons, firms or corporations engaged in the operation of railroads in this State to keep and maintain those margins alongside their yard tracks (except designated cleanout and repair tracks) where such railroad employees are required to walk frequently in the course of their duties, reasonably free from debris and vegetation which unreasonably affects the safety of such employees while working. This section shall be enforced by the Commission upon complaint and after due hearing; violations to be punishable by a fine of not less than one hundred dollars ($100.00) nor more than five

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken by amendment.

hundred dollars ($500.00). Each day of noncompliance with any order issued by the Commission under the provisions of this section shall be regarded as a separate violation.

(B) IF THE COMMISSION OR ITS AUTHORIZED AGENT FINDS ANY CONDITION IN OR ON A YARD TRACK OR IN THE WALKWAY THAT CONSTITUTES A AN IMMEDIATE DANGER TO THE HEALTH OR SAFETY OF THE PUBLIC OR ANY RAILROAD EMPLOYEE, THAT YARD TRACK MAY BE IMMEDIATELY CLOSED UNTIL THE SITUATION IS CORRECTED.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

H O U S E O F D E L E G A T E S

81r4106 No. 1814

By: Delegate Weisengoff
Introduced and read first time: February 24, 1978
Assigned to: Environmental Matters

Committee report: Favorable
House action: Adopted
Read second time: March 22, 1978

CHAPTER 748

AN ACT concerning

Public Service Commission -
Gubernatorial Commission

FOR the purpose of altering the date by which the Gubernatorial Commission to study the Public Service Commission Law is required to make a final report, with recommendations and legislation.

BY repealing and reenacting, with amendments,

Chapter 944 of the Acts of the General Assembly of 1977
Section 1(1)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That chapter(s) of the Acts of the General Assembly be repealed, amended, or enacted to read as follows:

Chapter 944 of the Acts of 1977

1. There is established a Gubernatorial Commission to study the provisions of Article 78 - Public Service Commission Law. The Commission shall complete a thorough review of these provisions to determine if any changes in the law or procedures and regulations of the Commission are advisable. The Commission shall make a final report including any recommendations and draft legislation by [July 1, 1978] JANUARY 10, 1979. An interim report shall be made to the General Assembly at the beginning of the 1978 Session of the General Assembly.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken by amendment.

GENERAL ASSEMBLY OF NORTH CAROLINA

1977 SESSION (2nd SESSION, 1978)

RATIFIED BILL

RESOLUTION 101

SENATE JOINT RESOLUTION 966

A JOINT RESOLUTION PROVIDING FOR JOINT SESSIONS OF THE SENATE AND HOUSE COMMITTEES ON UTILITIES TO CONSIDER THE GOVERNOR'S NOMINATION TO THE UTILITIES COMMISSION, AND PROVIDING FOR A JOINT SESSION OF THE SENATE AND HOUSE OF REPRESENTATIVES TO ACT ON CONFIRMATION OF NOMINATION MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10 nominations made by the Governor to fill vacancies in the membership of the North Carolina Utilities Commission are subject to confirmation by the General Assembly in joint session; and

Whereas, a vacancy on the Utilities Commission has occurred by reason of the resignation of a former member; and

Whereas, the Governor has nominated Edward B. Hipp to fill the vacancy subject to confirmation by the North Carolina General Assembly;

Now, therefore, be it resolved by the Senate, the House of Representatives concurring:

Section 1. The Senate Committee on Public Utilities and Energy and the House Committee on Public Utilities shall, in joint session, consider the nominee of the Governor for such vacancy, if the committees deem such action appropriate, and shall report their recommendations developed in joint session to a joint session of the Senate and House of Representatives.

Sec. 2. The Senate and House of Representatives shall meet in the House Chamber in joint session on June 8, 1978, to receive the report of their committees and for the purpose of voting on confirmation of the appointment of the Governor to fill such existing vacancy if the two houses deem such action appropriate.

Sec. 3. In any joint session of the Senate and House of Representatives for the purposes set out in Section 2 of this resolution, the roll of the Senate shall be called and the vote taken, then the roll of the House shall be called and the vote taken on the question of confirmation of the appointee, after which the vote in each house shall be tabulated and announced. Approval of a majority of each house shall be required for confirmation. Other proceedings in the joint session shall be governed by the Rules of the North Carolina House of Representatives insofar as those rules are applicable.

Sec. 4. In the event of failure of confirmation, the Governor shall be immediately notified of the failure to confirm.

Sec. 5. This resolution is effective upon ratification.

In the General Assembly read three times and ratified, this the day of June, 1978.

JAMES C. GREEN, SR.

James C. Green

President of the Senate

CARL J. STEWART, JR.

Carl J. Stewart, Jr.

Speaker of the House of Representatives

AN ACT

To amend section 4905.14 of the Revised Code to require an annual report by gas companies, natural gas companies, and electric light companies relating to projected demand of the services of the company and ability to fulfill such projected demand.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 4905.14 of the Revised Code be amended to read as follows:

Sec. 4905.14. (A) Every public utility shall file with the public utilities commission, at such time and in such form as the commission prescribes, an annual report, duly verified, covering the yearly period fixed by the commission. The commission shall prescribe the character of the information to be embodied in such annual report, and shall furnish to each public utility a blank form for it. If any such report is defective or erroneous, the commission may order that it be amended within a prescribed time. Such annual reports shall be preserved in the office of the commission. The commission may, at any time, require specific answers to questions upon which it desires information.

(B) ON THE FIRST DAY OF JULY AND THE FIRST DAY OF NOVEMBER OF EACH YEAR, EACH GAS COMPANY, NATURAL GAS COMPANY, AND ELECTRIC LIGHT COMPANY SHALL FILE WITH THE PUBLIC UTILITIES COMMISSION A REPORT IN QUINTUPLICATE STATING:

(1) THE TOTAL DEMAND, STATED IN TERMS OF KILOWATT HOURS OR CUBIC FEET, THAT THE COMPANY PROJECTS WILL BE EXPECTED OF THE COMPANY FOR THE FOLLOWING TWELVE MONTHS;

(2) WITH RESPECT TO ELECTRIC LIGHT COMPANIES, THE SUPPLY OF FUEL FOR THE GENERATION OF ELECTRICITY THAT THEY WILL POSSESS AS OF THE FIRST DAY OF JULY AND THE FIRST DAY OF NOVEMBER;

(3) WITH RESPECT TO GAS COMPANIES AND NATURAL GAS COMPANIES, THE PERTINENT DETAILS OF SUPPLY CONTRACTS WITH PIPELINE COMPANIES AND PRODUCERS FOR THE FOLLOWING TWELVE MONTHS THAT THEY HAVE EXECUTED AND THE QUANTITY OF GAS THAT THEY WILL POSSESS IN STORAGE AND WILL BE AVAILABLE FOR DELIVERY AS OF THE FIRST DAY OF JULY AND THE FIRST DAY OF NOVEMBER;

(4) WHERE IT APPEARS FROM A COMPARISON OF THE INFORMATION REPORTED IN DIVISION (B) (1) OF THIS SECTION WITH THAT REPORTED IN DIVISION (B) (2) OR (3) OF THIS SECTION THAT THE TOTAL DEMAND PROJECTED BY THE COMPANY FOR THE TWELVE MONTHS FOLLOWING THE DATE OF THE REPORT WILL EXCEED THE ABILITY OF THE COMPANY TO FURNISH IT, THE MEANS BY WHICH THE COMPANY INTENDS TO EMPLOY IN ORDER TO PREVENT ANY INTERRUPTION OR CURTAILMENT OF SERVICE.

(C) The public utilities commission may require any telephone company to file with its annual report, supplementary reports of each exchange area owned or operated by it, in such detail as the commission may prescribe. Upon request of fifteen per cent of the subscribers of any telephone exchange, the public utility commission shall require said report for such exchange area.

(D) THE PUBLIC UTILITIES COMMISSION SHALL, WITHIN TEN DAYS OF RECEIPT OF THE REPORT REQUIRED UNDER DIVISION (B) OF THIS SECTION, FORWARD ONE COPY TO THE CLERK OF THE SENATE, THE LEGISLATIVE CLERK OF THE HOUSE OF REPRESENTATIVES, THE GOVERNOR, AND THE ENERGY AND RESOURCE DEVELOPMENT AGENCY.

(E) THE AGENCY SHALL SUBMIT A SUMMARY AND AN ANALYSIS OF THE REPORTS WITH RECOMMENDATIONS TO THE GENERAL ASSEMBLY BY THE FIFTEENTH DAY OF AUGUST AND THE FIFTEENTH DAY OF DECEMBER

SECTION 2. That existing section 4905.14 of the Revised Code is hereby repealed.

Vernal G. Sieferd
Speaker of the House of Representatives.

Richard F. Celeste
President of the Senate.

Passed July 27, 1977

Approved AUGUST 19, 1977

James A. Rhodes
Governor.

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

David A. Johnston
Director, Legislative Service Commission.
By Fred D. Puckett
Chief of Code Revision

Filed in the office of the Secretary of State at Columbus, Ohio, on the 19th day of August, A. D. 1977,

Ted W. Brown
Secretary of State.

File No. 131. Effective Date November 18, 1977.

An Act

ENROLLED SENATE
BILL NO. 400

BY: TERRILL, TALIAFERRO and McDANIEL of the SENATE

and

DUKE, WILSON, COTNER, COWAN, GLOVER, STEPHENSON and KENNEDY of the HOUSE

AN ACT RELATING TO TORTS; DEFINING CERTAIN TERMS; PROVIDING FOR THE UNAUTHORIZED USE OF UTILITY SERVICES; PROHIBITING THE DAMAGE OF CERTAIN APPARATUS AND THE USE AND DIVERSION OF UTILITIES, UNDER CERTAIN CONDITIONS; SPECIFYING CERTAIN PENALTIES; AUTHORIZING RESTORATION OF UTILITIES PRIOR TO FINAL DISPOSITION OF A CIVIL ACTION, UNDER CERTAIN CONDITIONS; LIMITING SCOPE OF APPLICATION; PROVIDING FOR POWERS, DUTIES AND JURISDICTION OF THE OKLAHOMA CORPORATION COMMISSION; DIRECTING CODIFICATION; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. A. As used in this section:

1. "Utility" means any person, firm, corporation, district or association, whether private, municipal, body politic or cooperative, which is engaged in the sale, generation, distribution or delivery of electricity, water or gas;

2. "Person" means any individual, firm, partnership, corporation or association; and

3. "Utility service" means the furnishing, sale, generation, distribution or delivery of electricity, water or gas by a utility as defined herein.

B. It shall be unlawful for any person, with intent to defraud a utility, to:

Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Correctly Enrolled

1. Alter, tamper with, injure or knowingly allow the altering, tampering with or injuring of any pipeline, line, wire, conduit, conductor, meter, meter seal, transformer or other equipment used by a utility to deliver or register service;

2. Prevent any installed metering device from registering correctly the quantity of service passing through such metering device;

3. Make or cause to be made any connection between any pipeline, lines, wires, conduits, conductors, meters, transformers or other equipment in such manner as to prevent the correct registration of service by any metering device, or to otherwise use electricity without the consent of the utility; or

4. Supply or cause to be supplied any utility service to any person without such service first passing through the metering device provided by the utility for measuring and registering the quantity of service.

C. Any person who is convicted of violating the provisions of subsection B of this section shall be guilty of a misdemeanor punishable by payment of a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a period not to exceed six (6) months, or by such fine and imprisonment.

D. If a civil action is brought by a utility against a person, said person may post a bond, cash or other security with the utility in an amount equal to the value of the service alleged to be unlawfully used or diverted. Upon posting of said bond or cash, and until final disposition of the case, the utility shall restore to said person any service which it may have terminated.

E. Nothing in this section shall be construed to apply to licensed and certified contractors while performing usual and ordinary service in accordance with recognized standards.

F. This section shall not be construed as repealing any laws of the state relating to the powers, duties or jurisdiction of the

Correctly Enrolled: _____, Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Oklahoma Corporation Commission, but shall be held as auxiliary and supplementary thereto.

SECTION 2. Section 1 of this act shall be codified in the Oklahoma Statutes as Section 23 of Title 76, unless there is created a duplication in numbering.

SECTION 3. The provisions of this act are severable and if any part or provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 22d day of March, 1978.

attest: Robert H. Cobb
President of the Senate

Passed the House of Representatives the 15th day of March, 1978.

Speaker of the House of Representatives

Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Correctly Enrolled:

Correctly Enrolled: _____, _____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

OFFICE OF THE GOVERNOR

Received by the Governor this 23rd

day of March, 1978,

at 3:50 o'clock P M.

By: Botsworth Smith

Approved by the Governor of the State of Oklahoma the 28th day of

March, 1978, at 2:45 o'clock P M.

David Boren

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 28th

day of March, 1978,

at 4:20 o'clock P M.

Jerome W. Byrd

By: _____

CHAPTER NO. 692

SENATE BILL NO. 1726

By Blank

Substituted for: House Bill No. 2027

By Burnett (Fentress)

AN ACT Relating to the prevention of negligent or unsafe excavation or demolition operations resulting in damage to underground utilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. (Short Title.) This act may be cited as the "Underground Utility Damage Prevention Act".

SECTION 2. (Definitions.) As used in this act:

(1) "damage" includes the substantial weakening of structural or lateral support of an underground utility, penetration or destruction of any protective coating, housing or other protective device of an underground utility, the partial or complete severance of an underground utility and rendering any underground utility inaccessible;

(2) "demolish" or "demolition" means any operation by which a structure or mass of material is wrecked, razed, rendered, moved or removed by means of any tools, equipment, or discharge of explosives;

(3) "excavate" or "excavation" means an operation for the purpose of the movement, placement, or removal of earth, rock, or other materials in or on the ground by use of mechanized equipment or by discharge of explosives, and including augering, backfilling, ging, ditching, drilling, grading, plowing-in, ..ling-in, ripping, scraping, trenching and

tunneling, but not including the tilling of soil for agricultural purposes; or the digging of holes for fence posts on private property. Agricultural purposes shall include surface activities, such as plowing, planting and combining, but does not include blasting, setting drainage tiles, sub-soiling or other sub-surface activities;

(4) "mechanized equipment" means equipment operated by means of mechanical power including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows and other equipment used for plowing-in or pulling-in cable or pipe;

(5) "person" means any individual; any corporation, partnership, association, or any other entity organized under the laws of any state; any state; any subdivision or instrumentality of a state; and any employee, agent, or legal representative thereof;

(6) "utility" means any line, system or facility used for producing, storing, conveying, transmitting, or distributing communications, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam or sewerage;

(7) "operator" means any person who owns or operates a utility; and

(8) "working day" means every day, except Saturday, Sunday, and national and legal state holidays.

SECTION 3. (Excavation and Demolition Permits.) A permit issued pursuant to law authorizing excavation or demolition operations, shall not be deemed to relieve a person from the responsibility for complying with the provisions of this act.

SECTION 4. (Prohibition.) Except as provided in Section 9, no person may excavate in a street, highway, public space, a private easement of an operator, or demolish a building without having first ascertained in the manner prescribed in Sections 6 and 8 the location of all underground utilities in the area that would be affected by the proposed excavation or demolition.

SECTION 5. (Filing Requirements of Utility Operators.)

(a) No later than 30 days before the effective date of all other sections of this act, each operator having underground facilities (including those facilities that have been abandoned in place by the operator but not yet physically removed) in a county shall file a notice with the Register of Deeds of said county that said utility company has facilities in that county, including a list also of towns and cities where facilities are located, the name of the operator and the name, title, address and telephone number of its representative designated to receive the written or telephonic notice of intent required by Section 6.

(b) Changes in any of the information contained in the list filed under Section 5(a) shall be filed by the operator with the Register of Deeds of the county, or the Register of Deeds of each county in which these utilities are located, within thirty working days of the change.

(c) A filing fee as determined by the Register of Deeds shall accompany the filing. These filings shall be filed and an index shall be maintained and kept up to date by the Register's office.

(d) The Register of Deeds shall, within one working day, furnish to the party requesting such information, in writing when requested, a list of utility companies having facilities in that county

and all other information about those utility companies as outlined in paragraph (a). This information shall also include the date, time and name of requesting party.

(e) After the effective date of this act, operators shall maintain records and drawings of all changes and additions to its underground facilities.

SECTION 6. (Notice of Intent to Excavate or Demolish.)

(a) Except as provided in Section 9, before commencing any excavation or demolition operation designated in Section 4, each person responsible for such excavation or demolition shall serve written or telephonic notice of intent to excavate or demolish at least three, but not more than ten full working days, unless a shorter period is provided by agreement between the person responsible for the excavation or demolition and the operator or designated representative.

1. On each operator which has filed a list required by Section 5 indicating that it has underground utilities located in the proposed area of excavation or demolition; or

2. If the proposed area of excavation or demolition is served by an association provided for in Section 7, on such association and on each operator which has filed a list required by Section 5 indicating that it has underground utilities in the proposed area of excavation or demolition that is not receiving the services of the association; provided, where demolition of a building is proposed, operators shall be given reasonable time to remove or protect their utilities before demolition of the building is commenced.

(b) The written or telephonic notice required by Section 6(a) must contain the name, address, and telephone number of the person filing the notice of intent, and, if different, the person responsible for the excavation or demolition, the starting date, anticipated duration, and type of excavation or demolition operation to be conducted, the specific location of the proposed excavation or demolition, and whether or not explosives are anticipated to be used.

(c) If the notification required by this section is made by telephone, an adequate record of such notification shall be maintained by the operators and associations notified to document compliance with the requirements of this act, and a copy of this record shall be furnished to the person giving notice of intent to excavate or demolish if requested.

SECTION 7. (Operator Associations.) Operators may form and operate an association providing for mutual receipt of Section 6 notifications of excavation or demolition operations in a defined geographical area. An association that provides such service on behalf of operators having underground utilities within Tennessee (county) shall file with the Register of Deeds of the county in which those utilities are located, the telephone number and address of the association, a description of the geographical area served by the association, and a list of the names and addresses of each operator receiving such service from the association.

SECTION 8. (Response to Notice of Intent to Excavate or Demolish.) Each operator or designated representative (including an association established in accordance with Section 7) notified in accordance with Section 6, shall, not less than two working days in advance of the proposed excavation or demolition

(unless a shorter period is provided by agreement between the person responsible for the excavation or demolition and the operator or designated representative), furnish the following information to the person responsible for the excavation or demolition:

(1) The approximate location and description of all its known underground utilities which may be damaged as a result of the excavation or demolition;

(2) The location and description of all known utility markers indicating the approximate location of the underground utilities; and

(3) Any other information that would assist that person in locating and thereby avoiding damage to the underground utilities including temporary markings or maps, if required in the judgment of the operator, indicating the approximate location of the underground utility in locations where permanent utility markers do not exist.

For the purposes of this section the approximate location of underground utilities is defined as a (strip of land at least 4 feet wide but not wider than the width of the utility plus 2 feet on either side of the utility.) If the approximate location of an underground facility is marked with temporary markers, stakes or other physical means, the public utility shall follow the color coding prescribed herein:

Utility and Type of Product	Specific Group Identifying Color
Electric power distribution and tranmission	Safety red
Municipal electric systems	Safety red
Gas distribution and transmission	High visibility safety yellow
Oil distribution and transmission	High visibility safet low

Dangerous materials, product lines	High visibility safety yellow
Telephone and telegraph systems	Safety alert orange
Cable television	Safety alert orange
Police and fire communications	Safety alert orange
Water systems	Safety precaution blue
Sewer systems	Safety green

SECTION 9. (Emergency Excavation or Demolition.) Compliance with the notice requirements of Section 6 is not required of persons responsible for emergency excavation or demolition, for repair or restoration of service or to ameliorate an imminent danger to life, health, or property, provided, however, that such persons give, as soon as practicable, oral notice of the emergency excavation or demolition to each operator having underground utilities located in the area (or to an association provided for in Section 7, that serves an operator) where such excavation or demolition is to be performed and requests emergency assistance from each operator so identified in locating and providing immediate protection to its underground utilities. An imminent danger to life, health, or property exists whenever there is a substantial likelihood that loss of life, health, or property will result before the procedures under Sections 6 and 8 can be fully complied with.

SECTION 10. (Precautions to Avoid Damage.) In addition to the notification requirements of Section 6, each person responsible for any excavation or demolition operation designated in Section 4 shall:

(1) Plan the excavation or demolition to avoid damage to or minimize interference with underground utilities in and near the construction area;

(2) Maintain a clearance between an underground utility and the cutting edge or point of any mechanized equipment, taking into account the known limit of control of such cutting edge or point, as may be reasonably necessary to avoid damage to such utility; and

(3) Provide such support for underground utilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such utilities.

SECTION 11. (Excavation or Demolition Damage.)

(a) Except as provided by Section 11(b), each person responsible for any excavation or demolition operation designated in Section 4 that results in any damage to an underground utility shall, immediately upon discovery of such damage, notify the operator of such utility of the location and nature of the damage and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such utility.

(b) Each person responsible for any excavation or demolition operation designated in Section 4 that results in damage to an underground utility permitting the escape of any flammable, toxic, or corrosive gas or liquid shall, immediately upon discovery of such damage, notify the operator, police and fire departments, and take any other action as may be reasonably necessary, to protect persons and property and to minimize the hazards until arrival of the operator's personnel or police and fire departments.

(c) During initial excavation, if an underground utility is found to be unsound due to deterioration, the person responsible for excavation shall immediately notify the utility company involved and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such utility.

SECTION 12. (Civil Penalties.) Any person who violates any provision of this act shall be subject to a civil penalty of not to exceed $1,000.00 for each violation. Actions to recover the penalty provided for in this section shall be brought by the Attorney General of Tennessee at the request of any person in the chancery or circuit court in the county in which the cause, or some part thereof, arose or in which the defendant has its principal place of business or resides. All penalties recovered in any such actions shall be paid into the general fund of the state. Nothing in this act shall be construed to modify or repeal existing laws pertaining to the tort liability of local governments and their employees. This act does not affect any civil remedies for personal injury or property (including underground utilities) damage except as otherwise specifically provided for in this act.

SECTION 13. (Severability.) If any provision of this act or the applicability thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 14. (Effective Date.) Except for the filing requirement of Section 5, this act is effective September 1, 1978. Section 5 is effective upon enactment of this act, the public welfare requiring it.

PASSED: March 8, 1978

John S. Wilder,
SPEAKER OF THE SENATE

Ned R. McWherter,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED: March 27, 1978

Ray Blanton,
GOVERNOR

Ned R. McWherter,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

John S. Wilder,
SPEAKER OF THE SENATE

APPROVED: March 28, 1978

Ray Blanton,
GOVERNOR

CHAPTER NO. 746

HOUSE BILL NO. 2314

By Rhinehart, Murphy (Shelby)

Substituted for: Senate Bill No. 2029

By Neal

AN ACT to establish civil and criminal liability and penalties for the fraudulent diversion of electrical power and to authorize a lien against property that is the situs of such fraudulently diverted electrical power.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. It shall be unlawful for any person to divert or use electrical power with the intent to deprive any public or private electric power supplier from receiving proper charges for such electrical power.

SECTION 2. Any person found to have altered any metering device to improperly monitor the amount of electricity used on or by the premises of such person shall be presumed to be in violation of this Act.

SECTION 3. Any electrical power supplier who can properly establish the amount of electrical power fraudulently taken on or by any premises shall have the right to declare a lien for the value of such electrical power against the property on which the electrical taken. The lien shall be filed within ninety (90) days of the supplier's first actual knowledge of the fraudulently diverted electricity. The lien shall be perfected in the manner required by Sections 64-1101 through 64-1142, of Tennessee Code Annotated.

SECTION 4. Any electrical power supplier damaged by any person found in violation of this act shall have a cause of action against such person in the circuit courts of this state for all damages resulting therefrom, including actual, compensatory, incidental and punitive damages. Such electrical power supplier shall be entitled to no less than three (3) times the amount of actual damages and shall also be entitled to reasonable attorney fees required to prosecute the offender.

SECTION 5. Any person found in violation of this Act shall be subject to a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) or imprisonment for a period of not more than eleven (11) months and twenty-nine (29) days or both.

SECTION 6. Civil actions pursuant to the provisions of this Act shall be commenced within one (1) year following the date of discovery of the viola[illegible].

SECTION 7. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

SECTION 8. This Act shall take effect July 1, 1978, the public welfare requiring it.

PASSED: March 20, 1978

Ned R. McWherter,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

John S. Wilder,
SPEAKER OF THE SENATE

APPROVED: March 28, 1978

Ray Blanton,
GOVERNOR

CHAPTER 700

An Act to amend and reenact § 56-234.3 of the Code of Virginia, relating to approval of expenditures for and monitoring of new generation facilities and projected operation programs of public utilities.

[H 906]

Approved APR 8 1978

Be it enacted by the General Assembly of Virginia:

1. That § 56-234.3 of the Code of Virginia is amended and reenacted as follows:

§ 56-234.3. Approval of expenditures for and monitoring of new generation facilities and projected operation programs of electric utilities.—Prior to construction or financial commitments therefor, any electric utility subject to the jurisdiction of the State Corporation Commission intending to construct any new generation facility capable of producing one hundred megawatts or more of electric energy shall submit to the State Corporation Commission a petition setting forth the nature of the proposed construction and the necessity therefor in relation to its projected forecast of programs of operation. The Commission, upon receipt of the petition, shall order that a public hearing be held to assist it in accumulating as much relevant data as possible in reaching its determination for the necessity of the proposed generation facility. The Commission shall review the petition, consider the testimony given at the public hearing, and determine whether the proposed improvements are necessary to enable the public utility to furnish reasonably adequate service and facilities at reasonable and just rates. After making its determination, the Commission shall enter an order either approving or disapproving the proposed expenditure.

Every electric utility capable of producing one hundred megawatts or more of electric energy shall annually file with the Commission a five and ten-year projected forecast of its programs of operation. Such a forecast shall include, but not be limited to, the anticipated required capacity to fulfill the requirements of the forecast, how the utility will achieve such capacity, the financial requirements for the period covered, the anticipated sources of those financial requirements, the research and development procedures, where appropriate, of new energy sources, and the budget for the research and development program.

In addition, the Commission shall have the authority whenever it finds that the public interest so requires, to investigate and monitor the construction projects of any public utility to assure that such projects are being conducted in an economical, expeditious, and efficient manner.

Whenever uneconomical, inefficient or wasteful practices, procedures, designs or planning are found to exist, the Commission shall have the authority to employ, at the sole expense of the utility, qualified persons, answerable solely to the Commission, who shall audit and investigate such practices, procedures, designs or planning and recommend to the Commission measures necessary to correct or eliminate such practices, procedures, designs or planning.

The Commission shall have the authority to approve, disapprove, or alter the utility's program in a manner consistent with the best interest of the citizens of the Commonwealth. The petitioning or filing public utility may appeal the decision of the Commission to the Supreme Court of Virginia.

President of the Senate

Speaker of the House of Delegates

Approved:

Governor

STATE OF WISCONSIN

1977 Senate Bill 627 Date published*: May 12, 1978

CHAPTER 311, LAWS OF 1977

AN ACT to create 941.36 of the statutes, relating to fraudulent tapping of electricity, gas or water and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 941.36 of the statutes is created to read:

941.36 Fraudulent tapping of electric wires or gas or water meters or pipes. (1) Whoever, without permission and for the purpose of obtaining electrical current, gas or water with intent to defraud any vendor of electricity, gas or water by doing any of the following, may be fined not more than $500 or imprisoned not more than 30 days or both:

(a) Connects or causes to be connected by wire or any other device with the wire, cables or conductors of any such vendor.

(b) Connects or disconnects the meters, pipes or conduits of the vendor or in any other manner tampers or interferes with the meters, pipes or conduits, or connects with the meters, pipes or conduits by pipes, conduits or other instruments.

(2) The existence of any of the conditions with reference to meters, pipes, conduits or attachments, described in this section, is presumptive evidence that the person to whom gas, electricity or water is at the time being furnished by or through the meters, pipes, conduits or attachments has, with intent to defraud, created or caused to be created the conditions. The presumption does not apply to any person furnished with gas, electricity or water for less than 31 days or until there has been at least one meter reading.

SECTION 2. **Clarification regarding classification.** On June 1, 1978, the effective date of chapter 173, laws of 1977, relating to the revision of the criminal code, the text of section 941.36 (1) (intro.) of the statutes, as created by this act, shall be amended as follows: the phrase "is guilty of a Class C misdemeanor" shall be substituted for the phrase "may be fined not more than $500 or imprisoned not more than 30 days or both".

* Section 990.05, *1975 Wisconsin Statutes*: **Laws and acts; time of going into force.** "Every law or act which does not expressly prescribe the time it takes effect shall take effect on the day after its publication."

STATE OF WISCONSIN

1977 Senate Bill 607 **Date published*:** May 16, 1978

CHAPTER 350 , LAWS OF 1977

AN ACT to amend 182.0175 (2) (e): and to create 182.0175 (2) (e) 1 to 5 of the statutes, relating to requiring color coding of underground transmission facilities for nonemergency demolition or excavation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 182.0175 (2) (e) of the statutes is amended to read:

182.0175 (2) (e) Every person owning transmission facilities ~~shall~~, upon receipt of notice under par. (a) 3, shall mark in a reasonable manner the locations of transmission facilities in the field so as to enable the person engaged in excavation or demolition to locate the transmission facilities without endangering the security of such facilities. The marking of facilities shall be accomplished within 3 working days after receipt of the notice, except if notice is given more than 10 days before the excavation or demolition is scheduled to begin, marking need not be accomplished more than 3 working days before excavation or demolition is scheduled to begin. If the approximate location of an underground transmission facility is marked with stakes or other physical means, the color coding shall be as follows except that color coding shall not be required for permanent markers required by state and federal codes:

SECTION 2. 182.0175 (2) (e) 1 to 5 of the statutes are created to read:

182.0175 (2) (e) 1. Electric power distribution and transmission: safety red.

2. Natural gas distribution and transmission, oil distribution and transmission and dangerous materials products lines: high visibility safety yellow.

3. Telephone and telegraph systems, cable television and police and fire communications: safety alert orange.

4. Water systems: safety precaution blue.

5. Sewer systems: safety green.

* Section 990.05, *1975 Wisconsin Statutes*: **Laws and acts; time of going into force.** "Every law or act which does not expressly prescribe the time it takes effect shall take effect on the day after its publication."

Wisconsin - CH 418

1977 Assembly Bill 1220

SECTION 704. 196.02 (12) of the statutes is created to read:

196.02 (12) The public service commission may sue and be sued in that name, and may confer with or participate in any proceedings before any regulatory agency of any other state or of the federal government.

A BILL FOR AN ACT

RELATING TO TAX INCENTIVES FOR ENERGY CONSERVATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. 235- Energy conservation devices for hot water heaters; income tax credit. (a) Each individual and corporate resident taxpayer who files an individual or corporate net income tax return for a taxable year, may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit may be claimed for the cost and installation of material for the insulation of a hot water heater tank and hot water pipes where exposed. The tax credit shall be granted for the total cost and installation of the insulation material for the hot water heater tank and hot water pipes where exposed; provided the tax credit shall not exceed $30. The credit shall be claimed against net

income tax liability for the year in which the insulation material was purchased and installed; provided the tax credit shall be applicable only in respect to hot water heater tank and hot water pipe insulation material which is installed after December 31, 1977 but before December 31, 1984. Tax credits which exceed the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted.

(b) The director of taxation shall prepare such forms as may be necessary to claim a credit under this section. The director may also require the taxpayer to furnish reasonable information in order to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(c) As used in this section, "insulation material" means any new identifiable material, device, apparatus, or the like that covers, wraps, surrounds, or can otherwise be affixed to a hot water tank and exposed hot water pipes to prevent or reduce the loss of heat from the tank."

SECTION 2. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1977.

LRB 968-076

HOUSE FILE 602

AN ACT

TO AMEND THE IOWA HOUSING FINANCE AUTHORITY RELATING TO THE ELIGIBILITY OF APPLICANTS, PROPERTY IMPROVEMENT LOANS, LEASE-PURCHASE AGREEMENTS, HOMESTEADING, AND A LOAN AND GRANT FUND.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section two hundred twenty point one (220.1), subsection six (6), paragraph a, and subsection eleven (11), paragraph a, Code 1977, is amended to read as follows:

a. "Families" includes but is not limited to families consisting of a single adult person ~~in the case of a person~~ who is primarily responsible for his or her own support, is at least sixty-two years of age, is disabled, is handicapped, is displaced, or is the remaining member of a tenant family.

11. a. "Housing" means single family and multifamily dwellings, and facilities incidental or appurtenant to the dwellings, and includes noninstitutional residential care facilities and shall also include a modular or mobile home which is permanently affixed to a foundation and is assessed as realty.

Sec. 2. Section two hundred twenty point one (220.1), Code 1977, is amended by adding the following new subsection:

NEW SUBSECTION. "Property improvement loan" means a financial obligation secured by collateral acceptable to the authority, the proceeds of which shall be used for improvement or rehabilitation of housing which is deemed by the authority to be substandard in its protective coatings or its structural, plumbing, heating, cooling, or electrical systems; and regardless of the condition of the property the term "property improvement loan" may include loans to increase the energy efficiency of housing or to finance solar or other renewable energy systems for use in that housing.

Sec. 3. Section two hundred twenty point two (220.2), subsection one (1), Code 1977, is amended to read as follows:

1. The Iowa housing finance authority is established, and constituted a public instrumentality and agency of the state exercising public and essential governmental functions, established to undertake programs which assist in attainment of adequate housing for low or moderate income families, elderly families, families which include one or more persons who are handicapped or disabled, and the Iowa homesteading program. The powers of the authority shall be vested in and exercised by a board of nine members appointed by the governor with the approval of two-thirds of the members of the senate. No more than five members shall belong to the same political party. ~~Any individual or organization may submit the names of nominees for membership to the governor in writing within thirty days of the effective date of this section, but the governor is not bound to select the members from the nominees submitted.~~ As far as possible the governor shall include within the membership persons ~~determined by him to~~ who represent ~~the following interests:~~

~~a. Community and housing development industries.~~

~~b. Housing finance industries.~~

~~c. Real estate sales industry.~~

~~d. Elderly families.~~

~~e. Minorities.~~

~~f. Lower income families.~~

~~g. Very low income families.~~

~~h. Handicapped and disabled families.~~

~~i. Average taxpayer.~~

community and housing development industries, housing finance industries, real estate sales industry, elderly families, minorities, lower income families, very low income families, handicapped and disabled families, average taxpayers, local government, and any other person specially interested in community housing.

Sec. 4. Section two hundred twenty point four (220.4),

Code 1977, is amended by adding the following new subsection:

NEW SUBSECTION. The authority shall exercise diligence and care in selection of projects to receive its assistance, and shall apply customary and acceptable business and lending standards in selection and subsequent implementation of such projects.

Sec. 5. Section two hundred twenty point six (220.6), subsection two (2), Code 1977, is amended to read as follows:

2. The executive director shall advise the authority on matters relating to housing and housing finance, carry out all directives from the authority, and hire and supervise the authority's staff pursuant to its directions and under the provisions of chapter 19A, except that principal administrative assistants with responsibilities in housing development, accounting, mortgage loan processing, and investment portfolio management shall be exempt.

Sec. 6. Section two hundred twenty point ten (220.10), Code 1977, is amended to read as follows:

220.10 SURPLUS MONEYS--LOAN AND GRANT FUND.

1. All moneys declared by the authority to be surplus moneys which are not required to service bonds and notes issued by the authority, to pay administrative expenses of the authority, or to accumulate necessary operating or loss reserves, shall be used by the authority to provide grants, subsidies, and services to lower income families and very low income families through any of the programs authorized in this chapter.

2. The authority may establish a loan and grant fund which may be comprised of the proceeds of appropriations, grants, contributions, surplus moneys transferred as provided in this section and repayment of authority loans made from such fund.

Sec. 7. Section two hundred twenty point twelve (220.12), Code 1977, is amended to read as follows:

220.12 PROPERTY IMPROVEMENT LOANS AND MORTGAGE LOANS.

1. The authority may make property improvement loans and mortgage loans, including but not limited to mortgage loans

insured, guaranteed, or otherwise secured by the federal government or by private mortgage insurers, to housing sponsors to provide ~~long-term~~ financing ~~for the purchase, or rehabilitation~~ of adequate housing for low or moderate income families, elderly families, families which include one or more persons who are handicapped or disabled, and noninstitutional residential care facilities.

2. A property improvement loan or mortgage loan under this section may be made only when the authority determines that the housing sponsor is unable to obtain the necessary financing from other sources upon terms and conditions which the sponsor reasonably could be expected to fulfill.

3. The authority shall make and execute contracts with mortgage lenders for the servicing of property improvement loans and mortgage loans made under this section. The authority may pay the reasonable value of services rendered pursuant to such contracts.

4. Mortgage loans and property improvement loans shall contain terms and provisions including interest rates, and be in a form as established by rules of the authority. The authority shall require the housing sponsor to execute assurances and guarantees reasonably related to protecting the security of the mortgage loan, as the authority deems necessary.

5. In considering an application for a property improvement loan or mortgage loan under this section, the authority shall determine that the housing will be adequate and provide for the special needs of families of low or moderate income, elderly families, or families which include one or more persons who are handicapped or disabled, or will meet state standards for noninstitutional residential care facilities, and shall also give consideration to:

a. The comparative need for housing or noninstitutional residential care facilities in the area.

b. The ability of the applicant to operate, manage and maintain the proposed housing.

6. Each property improvement loan or mortgage loan shall be subject to an agreement between the authority and the housing sponsor which will subject the housing sponsor to limitations established by the authority as to rentals and other charges, builders' and developers' profits and fees, and dispositions of interests in the property mortgaged, including provisions to prohibit assumption of a mortgage without permission of the mortgagee.

7. As a condition of a property improvement loan or mortgage loan, the authority may, upon reasonable notice, during construction or rehabilitation of the housing and during its operation:

a. Enter upon and inspect the physical condition of the premises, examine books and records of the housing sponsor, and impose fees to cover the cost of the inspections and examinations.

b. Require alterations or repairs as necessary to protect the security of its investment and the welfare of the occupants, and to insure that the housing is in conformity with applicable federal, state and local laws.

c. Require whatever action is necessary to comply with applicable federal, state and local laws, and file and prosecute a complaint or seek injunctive relief for a violation of applicable federal, state or local laws.

8. A property improvement loan or mortgage loan may be prepaid to maturity after a period of years as determined by rule of the authority, if the authority determines that the prepayment will not result in a material escalation of rents or fees charged to the occupants.

9. The authority may require as a condition of a property improvement loan that the improvements to be made therewith shall include bringing the property into compliance with thermal efficiency standards established by the state building code commissioner for existing structures or into compliance with such other thermal efficiency standards as the authority may deem appropriate.

Sec. 8. Section two hundred twenty point thirteen (220.13), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

220.13 LEASE-PURCHASE AGREEMENTS. In order to encourage eventual home ownership by low or moderate income families who are able to establish home ownership capability by showing regularity of payment and property maintenance, the authority may assist in the provision of housing to such families by means of down payment grants made pursuant to the lease-purchase program.

1. To the extent funds are available, the authority may provide down payment grants on behalf of low and moderate income families to nonprofit sponsors to defray all or part of the down payment on real property that is transferred by such sponsors to such families under the terms of the lease-purchase program.

2. To qualify for a down payment grant, the tenant shall have occupied the property for at least one year, have performed all routine maintenance, and have made all lease or rental payments on time and in full, during the year ending on the date of transfer.

3. Not more than thirty days prior to transfer of a property, an independent appraisal of such property shall be obtained, and the down payment shall not exceed ten percent of the lesser of the appraised value or agreed upon price.

4. Such down payment grant may be collectible in full and immediately by the authority in the following cases, when the beneficiary of the grant has lived in and occupied the property for less than five continuous years.

a. If the purchaser, at any future time, resells the property to a family that is not eligible for assistance under this section.

b. If the property is totally destroyed and insurance settlement is made.

Sec. 9. Section two hundred twenty point fourteen (220.14), Code 1977, is amended by striking the section and inserting

in lieu thereof the following:

220.14 IOWA HOMESTEADING PROGRAM.

1. The Iowa homesteading program is established under the supervision of the authority to alleviate problems of slums and blighted areas, to provide for rehabilitation of deteriorating housing, and to provide the opportunity to rehabilitate and occupy such housing, to low and moderate income families, all of which are deemed to be public purposes. The authority may establish homesteading projects in any part of the state, subject to approval of the local governing body; and, in cooperation with suitable local agencies, the authority may provide financial and technical assistance to housing sponsors for the establishment and implementation of homesteading projects which meet the requirements of this chapter, and the authority may cooperate with similar local projects to provide housing.

2. Homesteading projects which meet the requirements of this chapter may be designated by the authority as Iowa homesteading projects. The conditional and absolute conveyance of fee simple title to real property, to a homesteading applicant, shall result in the inclusion of such real property in a designated Iowa homesteading project. The result of such designation shall be the cancellation of back taxes, penalties, interest and costs of the real property pursuant to sections four hundred forty-six point thirty-nine (446.39) and five hundred sixty-nine point eight (569.8) of the Code, notwithstanding any other financial, technical or principal involvement in the property by the authority.

3. The authority may provide property improvement or mortgage loans to facilitate designated Iowa homesteading projects. Such loans may be for the purpose of financing acquisition, improvement or rehabilitation of housing included in a designated homesteading project. Such loans shall be made only upon property for which a conditional conveyance will be granted. The interest rates, security requirements and other terms of such loans shall be established by the

authority and shall be as low as practical considering market conditions.

a. The housing sponsor of the designated homesteading project shall agree to:

(1) Approval of homesteading applicants on a first-in-time is first-in-right basis, unless probability of success with a subsequent applicant is substantially higher. In cases of two or more applicants for a single property, priority may be given to a resident of the city or county where the property is located, or to the applicant with the lowest income who is otherwise qualified.

(2) Assistance to approved applicants in seeking and obtaining counseling and financial assistance from appropriate sources during homesteading, and for a period of three years after the date of absolute conveyance.

(3) Conditional conveyance of unoccupied residential property to the applicant with or without any substantial consideration, which consideration may include the value of work performed by the applicant in rehabilitating the property during the period of the conditional conveyance.

(4) Arrangement of local supervision and administration of the designated homesteading project, including announced quarterly inspections of homesteads during rehabilitation.

(5) Revocation of the conditional conveyance, at option of the authority, upon any material breach of the agreement between the housing sponsor and the authority.

(6) Repossession of property, subject to authority approval and upon proper notice and hearing unless waived in writing by the homesteading applicant, for unreasonable failure to complete rehabilitation as agreed upon at the time of conditional conveyance.

(7) Absolute conveyance of fee simple title to the applicant, upon satisfactory completion of rehabilitation and arrangement of mortgage financing from the authority or other institutions, as appropriate.

b. An approved applicant for a designated homesteading

project shall:

(1) Agree to rehabilitate the property to meet applicable building or housing code standards within a two-year period after conditional conveyance. However, the two-year period may be extended for just cause.

(2) Agree to live in and occupy the homesteading property for five continuous years from the date of conditional conveyance. Such agreement may be waived by mutual agreement of the authority, the housing sponsor, and the applicant.

c. The authority may:

(1) Encourage homesteading sponsors and participating political subdivisions to coordinate approaches to neighborhood and area wide improvement through upgrading the public services and facilities through a designated Iowa homesteading project.

(2) Recommend legislation to provide appropriate exemptions from real property tax laws for properties included in a designated homesteading project.

(3) Recommend temporary suspension or temporary or permanent modification of building and housing code requirements to the extent necessary to permit safe and economical rehabilitation of housing included in a designated homesteading project.

Sec. 10. Section two hundred twenty point seventeen (220.17), unnumbered paragraphs one (1), two (2) and three (3), Code 1977, are amended to read as follows:

~~The authority may establish a fund to be known as the "emergency housing fund" to be administered by the authority separate and distinct from other moneys or funds administered by the authority.~~

~~The emergency housing fund may be comprised of the proceeds of appropriations, grants and other contributions and the authority is authorized to accept contributions to the fund from any source.~~

The ~~emergency housing fund~~ authority may ~~be used to~~ make grants and temporary loans at interest rates and terms as determined by the authority, for the following purposes:

Sec. 11. Section two hundred twenty point eighteen (220.18), Code 1977, is amended to read as follows:

220.18 SPECIAL HOUSING ASSISTANCE ~~FUND~~. ~~The authority may establish a revolving fund to be known as the "housing assistance fund", to be administered by the authority as a trust fund separate and distinct from other moneys or funds administered by the authority.~~

~~The housing assistance fund may be comprised of the proceeds of appropriations, grants and other contributions, earnings accruing to the authority, surplus moneys transferred as provided in section 220.10, and of fund notes issued by the authority as provided in section 220.19, and the authority is authorized to accept contributions to the fund from any source.~~

1. The ~~housing assistance fund~~ authority may ~~be used to~~ make temporary loans at interest rates and terms as determined by the authority, ~~for the following purposes:~~

~~1.~~ --~~To~~ to defray development costs for housing for low or moderate income families provided by housing sponsors. A "development cost" loan shall be repaid in full by the borrower concurrent with obtaining a construction loan, unless the authority extends the period for repayment, but the period for repayment shall not be extended beyond the date of obtaining a mortgage loan on the housing. As used in this section, "development costs" means the costs approved by the authority as appropriate expenditures which may be incurred by builders and developers prior to commitment and initial advance of the proceeds of a construction loan or a mortgage loan, including but not limited to:

a. Payments for options to purchase properties on the proposed housing site, deposits on contracts of purchase, or, with approval of the authority, payments for the purchasing of such properties.

b. Legal and organizational expenses including payment of attorney fees, project manager, clerical and other staff salaries, office rent and other incidental expenses.

c. Payment of fees for preliminary feasibility studies and advances for planning, engineering and architectural work.

d. Expenses for tenant surveys and market analysis.

e. Necessary application and other fees.

2. ~~To~~ The authority may make or participate in the making of property improvement loans or mortgage loans for rehabilitation or preservation of existing dwellings for the use of low or moderate income families, elderly families or families which include one or more persons who are handicapped or disabled. A rehabilitation or preservation loan may be for the estimated cost of the rehabilitation work to be done, for the purpose of refinancing an existing mortgage loan, for the purpose of doing the rehabilitation work, or for the purpose of acquiring housing in which rehabilitation work is to be done. The rehabilitation or preservation loan shall not exceed, with all other existing indebtedness of the property, the estimated market value of the property as determined by the authority, after the rehabilitation or preservation is completed, and the term of a loan shall not exceed the estimated useful life of the property as determined by the authority, after rehabilitation or preservation. The proposed rehabilitation or preservation shall assure that the property will not contain any substantial violation of applicable housing codes. A rehabilitation or preservation loan under this subsection may be made only when the authority determines that the proposed mortgagor is unable to obtain the necessary financing from other sources upon terms and conditions which the proposed mortgagor reasonably could be expected to fulfill. A rehabilitation or preservation loan under this subsection may be provided only within an area of a city for which an authorized city agency submits a satisfactory affirmative neighborhood preservation program, or in other areas within or outside of cities where the authority determines that rehabilitation or preservation is economically sound and a program of neighborhood preservation is inappropriate. The following criteria, along with others

reasonably related to the purposes of this chapter, which may be determined by the authority, shall be considered in determining whether an affirmative neighborhood preservation program is satisfactory:

a. The degree of blight, decay or deterioration of housing or the imminent threat of blight, decay or deterioration of housing within the area.

b. The degree to which financing for repairs, remodeling or rehabilitation of housing within the area is available.

c. The proportion of residential structures within the area which are owner-occupied.

d. The degree to which the financial resources of proposed occupants of the housing, including resources available to them under this chapter or other federal, state, and local laws and programs, provide reasonable assurances of the economic feasibility of the financing of rehabilitation or preservation.

e. The expressed commitment of the city to provide a concentrated effort to enforce the applicable housing codes within the area.

f. The expressed commitment of the city to provide capital improvements and other city services so as to stabilize, improve and restore the neighborhood.

Sec. 12. Section two hundred twenty point twenty-one (220.21), Code 1977, is amended by striking subsection eight (8).

Sec. 13. Section two hundred twenty point twenty-six (220.26), subsection one (1), Code 1977, is amended to read as follows:

1. The authority may issue its negotiable bonds and notes in principal amounts as, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its corporate purposes, the payment of interest on its bonds and notes, the establishment of reserves to secure its bonds and notes, and all other expenditures of the authority

incident to and necessary or convenient to carry out its purposes and powers. However, the authority may not have a total principal amount of bonds and notes outstanding at any time in excess of one two hundred fifty million dollars. The bonds and notes shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of the uniform commercial code.

Sec. 14. Section two hundred twenty point twenty-six (220.26), Code 1977, is amended by adding the following new subsection:

NEW SUBSECTION. The authority may make or participate in the making of loans to housing sponsors to provide interim construction financing for the construction or rehabilitation of adequate housing for low or moderate income persons or families, elderly persons or families, and persons or families which include one or more persons who are handicapped or disabled, and of noninstitutional residential care facilities. An interim construction loan may be made under this section only if the loan is the subject of a commitment from an agency or instrumentality of the United States government or from the authority, to provide long-term financing for the mortgage loan and interim construction advances made under the interim construction loan will be insured or guaranteed by an agency or instrumentality of the United States government.

Sec. 15. Section two hundred twenty point twenty-seven (220.27), Code 1977, is amended by adding the following new subsection:

NEW SUBSECTION. The authority shall cause to be delivered to the legislative fiscal committee within ninety (90) days of the close of its fiscal year its annual report certified by an independent certified public accountant (who may be the accountant or a member of the firm of accountants who regularly audits the books and accounts of the authority) selected by the authority. In the event that the principal amount of any bonds or notes deposited in a bond reserve fund

is withdrawn for payment of principal or interest thereby reducing the amount of that fund to less than the bond reserve fund requirement, the authority shall immediately notify the general assembly of this event and shall thereafter take steps to restore such bond reserve to the bond reserve fund requirement for that fund from any amounts available, other than principal of a bond issue, which are not pledged to the payment of other bonds or notes.

DALE M. COCHRAN
Speaker of the House

ARTHUR A. NEU
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 602, Sixty-seventh General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved _____, 1978

ROBERT D. RAY
Governor

SENATE BILL No. 546

AN ACT concerning taxation of income; concerning the Kansas adjusted gross income of a resident individual; amending K.S.A. 79-32,117, as amended by section 4 of 1978 Senate Bill No. 515, and repealing the existing section.

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

Section 1. K.S.A. 79-32,117, as amended by section 4 of 1978 Senate Bill No. 515, is hereby amended to read as follows: 79-32,117. (a) The Kansas adjusted gross income of an individual means such individual's federal adjusted gross income for the taxable year, with the modifications specified in this section.

(b) There shall be added to federal adjusted gross income:

(i) Interest income, to the extent that the same is not included in federal adjusted gross income, on obligations of any state or political subdivision thereof, but to the extent that interest income on obligations of this state or a political subdivision thereof is specifically exempt from income tax under the laws of this state authorizing the issuance of such obligations, it shall be excluded from computation of Kansas adjusted gross income whether or not included in federal adjusted gross income.

(ii) Income taxes imposed by this state or any other taxing jurisdiction to the extent deductible in determining federal adjusted gross income and not credited against federal income tax.

(iii) The federal net operating loss deduction.

(iv) Federal income tax refunds received by the taxpayer if the deduction of the taxes being refunded resulted in a tax benefit for Kansas income tax purposes during the prior taxable year. Such refunds shall be included in income in the year actually received regardless of the method of accounting used by the taxpayer. For purposes hereof, a tax benefit shall be deemed to have resulted if the amount of the tax had been deducted in determining income subject to a Kansas income tax for a prior year regardless of the rate of taxation applied in such prior year to the Kansas taxable income, but only that portion of the refund shall be included as bears the same proportion to the total refund received as the federal taxes deducted in the year to which such refund is attributable bears to the total federal income taxes paid for such year. For purposes of the foregoing sentence, federal taxes shall be considered to have been deducted only to the extent such deduction does not reduce Kansas taxable income below zero.

(v) The amount of any depreciation deduction or business expense deduction claimed on the taxpayer's federal income tax return for any capital expenditure in making any building or facility accessible to the handicapped, for which expenditure the taxpayer claimed the credit allowed by section 3 of ~~this~~ act *1979 Senate Bill No. 515.*

(c) There shall be subtracted from federal adjusted gross income:

(i) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States and its possessions to the extent included in federal adjusted gross income but exempt from state income taxes under the laws of the United States.

(ii) Any amounts received which are included in federal adjusted gross income but which are specifically exempt from Kansas income taxation under the laws of the state of Kansas.

(iii) The portion of any gain or loss from the sale or other disposition of property having a higher adjusted basis for Kansas income tax purposes than for federal income tax purposes on the date such property was sold or disposed of in a transaction in which gain or loss was recognized for purposes of federal income tax that does not exceed such difference in basis, but if a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to that portion of such gain which is included in federal adjusted gross income. For Kansas income tax purposes the basis in carryover basis property, as defined by 26 U.S.C. 1023 (b)(1), shall be determined in accordance with the provisions of 26 U.S.C. 1014 existing on December 31, 1976.

(iv) The amount necessary to prevent the taxation under this act of any annuity or other amount of income or gain which was properly included in income or gain and was taxed under the laws of this state for a taxable year prior to the effective date of this act, as amended, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain.

(v) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any taxing jurisdiction, to the extent included in gross income for federal income tax purposes.

(vi) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income.

(vii) Amounts received as annuities under the federal civil service retirement system, from the civil service retirement and disability fund.

(viii) Amounts up to two thousand dollars ($2,000) received by persons over sixty-five (65) years of age as retirement benefits for services in the armed forces of the United States.

(ix) Amounts received by retired railroad employees as a supplemental annuity under the provisions of 45 U. S. C. 228b (a) and 228c (a) (1) *et seq.*

(x) Amounts received by retired employees of a city and by retired employees of any board of such city as retirement allowances pursuant to K.S.A. 13-14,106 or pursuant to any charter ordinance exempting a city from the provisions of K.S.A. 13-14,106.

(xi) Amounts up to fifty percent (50%) or five hundred dollars ($500), whichever is less, of the costs of labor and materials incurred by the taxpayer, *per building,* in the insulation of ~~the taxpayer's principal dwelling in this state and dwellings in this state owned and held by the taxpayer for the production of income during the taxable year~~ *each building owned by said taxpayer, which building was in existence on July 1, 1977, is intended for single family or multi-family occupation and is located in this state.* For the purposes of this subsection, the term "insulation" shall mean the act of installing materials in the walls, floors or ceilings of ~~dwellings~~ *buildings,* which materials are specifically designed to reduce the loss or gain of ~~energy~~ *heat* within such ~~dwellings~~ *buildings* and which materials meet the minimum criteria and standards for energy conservation for new ~~dwellings~~ *buildings* prescribed by the federal housing administration in existence on the effective date of this act and as such criteria and standards are further modified by rules and regulations of the state secretary of revenue.

(xii) For taxable years beginning after December 31, 1976, the amount of the federal tentative jobs tax credit disallowance under the provisions of 26 U.S.C. 280 C.

(d) There shall be added to or subtracted from federal adjusted gross income the taxpayer's share, as beneficiary of an estate or trust, of the Kansas fiduciary adjustment determined under K.S.A. 79-32,135.

(e) The amount of modifications required to be made under this section by a partner which relates to items of income, gain, loss, deduction or credit of a partnership shall be determined under K.S.A. 79-32,131 to the extent that such items affect federal adjusted gross income of the partner.

New Sec. 2. The provisions of this act shall be applicable to all taxable years commencing after December 31, 1977.

Sec. 3. K.S.A. 79-32,117, as amended by section 4 of 1978 Senate Bill No. 515, is hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body.

_____

Senate adopted Conference Committee report_____

_____
President of the Senate.

_____
Secretary of the Senate.

Passed the HOUSE as amended_____

House adopted Conference Committee report_____

_____
Speaker of the House.

_____
Chief Clerk of the House.

APPROVED _____

_____
Governor.

ENTITLED, An Act to provide a property tax assessment credit for renewable resource energy systems.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. Terms used in this Act, unless the context otherwise requires, mean:

(1) "Renewable resources," a relatively nondepleting source of energy, including, but not limited to the sun, wind, and giothermal and biomass sources;

(2) "Biomass," an energy source derived from the conversion of organic matter by biological, thermochemical combustion, and advanced processes. The organic matter may include, but is not limited to, agriculture and forest residues, municipal sewage and other organic wastes;

(3) "Equipment," all the controls, tanks, pumps, heat exchangers, generators, and other hardware necessary to install a renewable resource energy system, except that associated with a secondary system;

(4) "Renewable resource energy system" or "system," the equipment which produces energy from a renewable resource for on-site consumption;

(5) "Residential applications" or "residential," the use of a renewable resource energy system for space conditioning, water heating, or electrical generation or any combination thereof, for a structure;

(6) "Commercial application" or "commercial," the use of a renewable resource energy system in commercial, industrial, or agricultural production or processing;

(7) "Secondary system," the equipment and hardware necessary to supplement, complement or in any manner support a renewable resource energy system;

(8) "Structure," a building whose interior space is conditioned by heating or cooling. The term includes but is not limited to dwellings, operating plants, office buildings and public buildings;

(9) "Base credit," the property tax assessment credit as authorized during the last year of qualification under section 6 of this Act;

(10) "Secretary," the secretary of revenue.

Section 2. An owner of any real property is entitled to a property tax assessment credit if the owner attaches or includes a renewable resource energy system as a part of an improvement to real property for either residential or commercial applications.

Section 3. The property tax assessment credit for a residential application is a sum equal to the assessed valuation of the real property with the renewable resource energy system minus the assessed valuation of the real property without the system. However, a property tax assessment credit shall not be less than the actual installed cost of the renewable resource energy system.

Section 4. The property tax assessment credit for a commercial application is fifty percent of the actual installed cost of the renewable resource energy system.

Section 5. The property tax assessment credit provided for in sections 3 and 4 of this Act shall be adjusted to include any federal income tax credit which may be available at the time the owner applies for the assessment credit.

Section 6. The property tax assessment credit may be applied for five continuous years for a residential application and three continu-

ous years for a commercial application. At the end of this time, the owner of the real property is entitled to a property tax assessment credit of:

(1) Seventy-five percent of the base credit for the first year subsequent to termination of the credit period;

(2) Fifty percent of the base credit for the second year subsequent to termination of the credit period;

(3) Twenty-five percent of the base credit for the third year subsequent to termination of the credit period.

Section 7. A property tax assessment credit may not be used for systems which produce energy for sale to persons other than the owner of the real property on which the system is located.

Section 8. The property tax assessment credit shall not apply when title to the property has been transferred. This section does not apply to transfers of residential property when the new owner will be the first occupant of the structure.

Section 9. An applicant for an energy property tax assessment credit shall file two copies of the statement with the auditor of the county in which the property is located and one copy with the department of revenue. An owner of more than one renewable resource energy system shall file a separate statement for each system. The statement shall be filed between November first and December tenth of each year for which the credit is to be applied.

Section 10. The statement shall be made on forms prescribed by the secretary of the department of revenue. The forms shall include at least the following information:

(1) The name and current address of the owner;

(2) The legal description of the property;

(3) Whether the credit is for a residential or commercial application;

(4) The type of general energy source for the system;

(5) The primary use of the system;

(6) The total installed cost of the system; and

(7) Such other information as the secretary requires.

Copies of all receipts and such other records as may be necessary to establish the actual installed cost of the system shall be attached to a certified statement.

Section 11. Upon verification of the statement by the assessor of the county in which the real property is located, the auditor shall make the deduction.

Section 12. That §§ 10-6-35.5 to 10-6-35.7, inclusive, be repealed.

CHAPTER NO. 884

HOUSE BILL NO. 2299

By Murphy (Davidson)

Substituted for: Senate Bill No. 2130

By Crouch

AN ACT to amend Tennessee Code Annotated, Title 13, Chapter 23, relative to a program of loans to persons and families of lower and moderate incomes for the purpose of making improvements to residential housing to improve energy efficiency of the residential housing.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 13-2303, is amended by adding new subsections thereto as follows:

( ) "Energy saving improvement" means an improvement to a residential housing unit through the installation of insulation, heating or cooling systems conservative of energy, or other fixtures to the structure capable of reducing its total energy needs.

( ) "Solar hot water heater" means an appliance or system capable of producing most or all of the hot water needs of an average Tennessee household through the use of natural sunlight.

SECTION 2. Tennessee Code Annotated, Section 13-2315, is amended by adding a new subsection as follows:

( ) To purchase, make, or participate in the making of insured loans to low and moderate income persons and families for the purpose of making energy saving improvements to residential housing units. Such loans s be secured by a mortgage lien on the imp.oved or

rehabilitated property. The agency shall also be empowered to make loans to low and moderate income persons and families for the purpose of purchasing solar hot water heaters for residential housing units.

SECTION 3. Tennessee Code Annotated, Section 13-2316, is amended by adding a new subsection as follows:

( ) In making loans for rehabilitation of residential housing, the agency shall consider proposals for energy saving improvements and solar hot water heaters, and, if feasible, include the costs of such improvements or heater in the amount of the loan.

SECTION 4. Tennessee Code Annotated, Title 13, Chapter 23, is amended by adding a new section as follows:

Section. _____. The agency shall be empowered to make loans for energy saving improvements and solar hot water heaters to persons and families of lower and moderate incomes for residential housing occupied and owned or rented by such person or family. Such loans shall be under such conditions, with such security, and with such repayment plans as the agency may determine. In determining repayment schedules, however, the agency shall attempt to match repayments with the savings resulting to the person or family in their residential utility bill from the improvement or solar water heater. Consideration shall also be given to providing a revolving loan fund.

The agency shall be provided with standards for a listing of reliable and efficient solar hot water heaters by the appropriate federal agency.

SECTION 5. Tennessee Code Annotated, Title 13, Chapter 23, is amended by adding a new section as follows:

Section _____ Section _____. The agency shall give consideration in making and appliances included in the proposed design, improvement or rehabilitation of residential housing and shall, in making loans, give maximum consideration to any proposal which would decrease energy use typical of present construction or designs.

SECTION 6. This Act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: March 28, 1978

Ned R. McWherter,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

John S. Wilder,
SPEAKER OF THE SENATE

APPROVED: April 14, 1978

Ray Blanton,
GOVERNOR

CHAPTER 631

An Act to amend and reenact § 36-55.31:1 of the Code of Virginia, relating to loans for energy saving devices by the Virginia Housing Development Authority.

[H 100]

Approved APR 7 - 1978

Be it enacted by the General Assembly of Virginia:

1. That § 36-55.31:1 of the Code of Virginia is amended and reenacted as follows:

§ 36-55.31:1. Loans for installation of certain energy saving devices.—The Virginia Housing Development Authority shall establish a program of loans for financing the purchase and installation of insulation, storm windows and doors and solar or other alternative energy sources which will reduce the reliance on present sources of energy for use in the dwellings of residents of the Commonwealth or public or nonprofit buildings or facilities. Any and all funds available through specific State appropriations or federal grants or other State or federal assistance for such purposes may be utilized by the Virginia Housing Development Authority. Any loan made ~~hereunder~~ *pursuant to this section may be secured by a mortgage or otherwise or may be unsecured,* shall be repaid ~~and~~ , shall bear interest ~~in accordance with the rules and regulations as promulgated by the Commissioners of the Virginia Housing Development Authority~~ *and shall be upon such terms and conditions as may be determined by HDA in its rules and regulations or in the HDA resolution, or commitment for, such loan. Any such loans made with respect to dwellings of residents of the Commonwealth shall be limited to dwellings occupied by persons or families of low and moderate income* . The Commissioners of the Virginia Housing Development Authority shall promulgate rules and regulations for the orderly administration of this section.

State of Arizona
Senate
Thirty-third Legislature
Second Regular Session
1978

CHAPTER 112

SENATE BILL 1411

AN ACT

RELATING TO TAXATION; PRESCRIBING CERTAIN EXEMPTIONS TO TRANSACTION PRIVILEGE TAXES AND USE TAX; DEFINING "SOLAR ENERGY DEVICE"; PROVIDING AN INCOME TAX CREDIT FOR INSTALLATION OF CERTAIN RESIDENTIAL INSULATING AND INSULATING DEVICES; PROVIDING CERTAIN LIMITATION, AND AMENDING SECTIONS 42-1312.01, 42-1409, 43-123.37, 43-128.03 AND 43-128.04, ARIZONA REVISED STATUTES.

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

Section 1. Section 42-1312.01, Arizona Revised Statutes, is amended to read:

42-1312.01. Exemptions

A. In addition to the exemptions prescribed by the terms of section 42-1312, the following categories shall also be exempt:

1. Manufacturing or processing. Machinery or equipment, used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining" and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.

2. Mining. Machinery or equipment used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and the handling, loading or transportation of such extracted material to the surface. "Mining" includes underground, surface and open-pit operations for the extraction of ores and minerals.

3. Telephone and telegraph companies. Tangible personal property consisting of central office switching equipment, switchboards, private branch exchange equipment, microwave radio and carrier equipment and coaxial cable.

4. Electric power production and transmission. Tangible personal property consisting of machinery, equipment or transmission lines used directly in the production or transmission of electrical power, but not including distribution and, in addition, transformers and control equipment used at transmission substation sites.

5. Pipelines. Pipes or valves four inches in diameter or larger used for transporting oil, natural gas, artificial gas, water or coal slurry.

6. Air transportation. Tangible personal property consisting of airplanes, navigational and communication instruments and other accessories and related equipment sold to:

(a) Airlines holding a federal or state certificate of public convenience and necessity or foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used in transportation of persons, property or United States mail in intrastate, interstate or foreign commerce.

(b) Any foreign government for use by such government outside of this state, or sold to persons who are not residents of this state and who will not use such property in this state other than in the removal of such property from this state.

7. Railroads. Tangible personal property consisting of rolling stock, rails, ties, signal control equipment used directly in the transportation of persons or property in intrastate or interstate transportation for hire.

8. Oil or gas. Machinery or equipment used directly in the drilling for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

9. Solar energy devices. A system or series of ~~devices designed primarily to provide heating or cooling or both, or to produce electrical or mechanical power or both, or to pump irrigation water by means of collecting and transferring solar generated energy including devices having the capacity for storing solar energy~~ MECHANISMS DESIGNED PRIMARILY TO PROVIDE HEATING, TO PROVIDE COOLING, TO PRODUCE ELECTRICAL POWER, TO PRODUCE MECHANICAL POWER OR TO PROVIDE ANY COMBINATION OF THE FOREGOING BY MEANS OF COLLECTING AND TRANSFERRING SOLAR GENERATED ENERGY INTO SUCH USES EITHER BY ACTIVE OR PASSIVE MEANS. SUCH SYSTEMS MAY ALSO HAVE THE CAPABILITY OF STORING SUCH ENERGY FOR FUTURE UTILIZATION. PASSIVE SYSTEMS SHALL CLEARLY BE DESIGNATED AS A SOLAR ENERGY DEVICE OR AS A TROMBE WALL AND NOT MERELY A PART OF A NORMAL STRUCTURE SUCH AS A WINDOW.

10. Bus companies. Bus companies holding a federal or state certificate of convenience and necessity. Tangible personal property consisting of buses used directly in the transportation of persons or property in interstate or intrastate transportation for hire.

B. The exemptions provided in subsection A of this section shall not include:

1. Expendable materials.

2. Janitorial equipment and hand tools.

3. Office equipment, furniture and supplies.

4. Tangible personal property used in selling or distributing activities.

5. Tangible personal property used in research.

6. Motor vehicles required to be licensed by this state, except buses specifically exempted pursuant to paragraph 10 of subsection A of this section, without regard to the use of such motor vehicles.

7. Shops, buildings, docks, depots and all other materials of whatever kind or character not specifically included as exempt.

Sec. 2. Section 42-1409, Arizona Revised Statutes, is amended to read:

42-1409. Exemptions

A. The tax levied by this article does not apply to the storage, use or consumption in this state of the following described tangible personal property:

1. Tangible personal property sold in this state, the gross receipts from the sale of which are required to be included in the measure of the tax imposed by article 1 of this chapter.

2. Tangible personal property the sale or use of which has already been subjected to an excise tax equal to or in excess of that imposed by this article under the laws of some other state of the United States.

3. Tangible personal property, the storage, use or consumption of which the constitution or laws of the United States prohibit this state from taxing.

4. Tangible personal property which directly enters into and becomes an ingredient or component part of any manufactured, fabricated or processed article, substance or commodity for sale in the regular course of business.

5. Motor vehicle fuel the sales or distribution of which in this state are subject to the tax imposed under the provisions of article 1, chapter 9 of title 28.

6. Tangible personal property sold to a person licensed as a contractor under chapter 10 of title 32 and holding a privilege tax license for engaging or continuing in the business of contracting under the provisions of article 1 of this chapter, when the tangible property so sold is by the contractor incorporated or fabricated into any structure, project, development or improvement in fulfillment of a contract therefor.

7. Tangible personal property brought into the state by a nonresident for his own storage, use or consumption while temporarily within the state, unless such property is used in conducting a business in this state.

8. Livestock, poultry, seed, feed and supplies for use or consumption in the businesses of farming, ranching and feeding livestock or poultry, not including equipment, fertilizers, herbicides and insecticides.

9. Tangible personal property not exceeding two hundred dollars in any one month purchased by an individual at retail outside the continental limits of the United States for his personal use and enjoyment.

10. All personal property purchased outside this state by any hospital organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, or operated by the state or any political subdivision of the state.

B. In addition to the exemptions prescribed by the terms of subsection A of this section, the following categories shall also be exempt:

1. Manufacturing or processing. Machinery or equipment used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining", and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.

2. Mining. Machinery or equipment used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and the handling, loading or transportation of such extracted material to the surface. "Mining" includes underground, surface and open-pit operations for the extraction of ores and minerals.

3. Telephone and telegraph companies. Tangible personal property consisting of central office switching equipment, switchboards, private branch exchange equipment, microwave radio and carrier equipment, and coaxial cable.

4. Electric power production and transmission. Tangible personal property consisting of machinery or equipment used directly in the production or transmission of electrical power, but not including distribution and, in addition, transformers and equipment used at transmission substation sites.

5. Pipelines. Pipes or valves four inches in diameter or larger used in the transmission and distribution of oil, natural gas, artificial gas, water or coal slurry.

6. Air transportation. Tangible personal property consisting of airplanes, navigational and communication instruments and other accessories and related equipment sold to:

(a) Airlines holding a federal or state certificate of public convenience and necessity or foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used in transportation of persons, property or United States mail in intrastate, interstate or foreign commerce.

(b) Any foreign government for use by such government outside of this state.

(c) Persons who are not residents of this state and who will not use such property in this state other than in the removal of such property from this state.

7. Railroads. Tangible personal property consisting of rolling stock, rails, ties, signal control equipment used directly in the transportation of persons or property in intrastate or interstate transportation for hire.

8. Oil or gas. Machinery or equipment used directly in the drilling for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

9. Solar energy devices. A system or series of ~~devices designed~~

~~primarily to provide heating or cooling or both, or to produce electrical or mechanical power or both, or to pump irrigation water by means of collecting and transferring solar generated energy including devices having the capacity for storing solar energy~~ MECHANISMS DESIGNED PRIMARILY TO PROVIDE HEATING, TO PROVIDE COOLING, TO PRODUCE ELECTRICAL POWER, TO PRODUCE MECHANICAL POWER OR TO PROVIDE ANY COMBINATION OF THE FOREGOING BY MEANS OF COLLECTING AND TRANSFERRING SOLAR GENERATED ENERGY INTO SUCH USES EITHER BY ACTIVE OR PASSIVE MEANS. SUCH SYSTEMS MAY ALSO HAVE THE CAPABILITY OF STORING SUCH ENERGY FOR FUTURE UTILIZATION. PASSIVE SYSTEMS SHALL CLEARLY BE DESIGNATED AS A SOLAR ENERGY DEVICE OR AS A TROMBE WALL AND NOT MERELY A PART OF A NORMAL STRUCTURE SUCH AS A WINDOW.

10. Bus companies. Bus companies holding a federal or state certificate of convenience and necessity. Tangible personal property consisting of buses used directly in the transportation of persons or property in interstate or intrastate transportation for hire.

C. The exemptions provided in subsection B of this section shall not include:

1. Expendable materials.

2. Janitorial equipment and hand tools.

3. Office equipment, furniture and supplies.

4. Tangible personal property used in selling or distributing activities.

5. Tangible personal property used in research.

6. Motor vehicles required to be licensed by this state, except buses specifically exempted pursuant to paragraph 10 of subsection B of this section, without regard to the use of such motor vehicles.

7. Shops, buildings, docks, depots and all other materials of whatever kind or character not specifically included as exempt.

Sec. 3. Section 43-123.37, Arizona Revised Statutes, is amended to read:

43-123.37. Election to amortize expenditures incurred in the acquisition of any solar energy device

(a) General Rule. Any taxpayer may elect to amortize the adjusted basis of any solar energy device, whether for residential, commercial, industrial or governmental installations or experimental or demonstration projects, ~~designed to produce heat or electricity~~ based upon a period of thirty-six months. In computing net income, such amortization shall be allowed as a deduction ratably over the period allowed under this subsection beginning with the month in which such device is completed or acquired and is placed in service by the taxpayer. This election shall be indicated by the taxpayer in an appropriate statement in the taxpayer's income tax return for the taxable year of the acquisition or completion and placement in service of such device. An election to discontinue amortization with respect to the remainder of the amortization period is permitted and shall be indicated by an appropriate statement in the taxpayer's income tax return for the taxable year of discontinuance.

(b) Deduction in lieu of depreciation. The deduction provided under subsection (a) shall be in lieu of any allowance for the exhaustion,

wear and tear of property used in a trade or business, or of property held for the production of income, including a reasonable allowance for obsolescence as provided under section 43-123.14.

(c) Deduction in lieu of credit. The deduction provided pursuant to subsection (a) shall be in lieu of any credit allowed for installation of a solar heating and cooling device in the taxpayer's residence pursuant to section 43-128.03.

(d) Determining the adjusted basis. In determining the adjusted basis for the purposes of subsection (a), such device~~,~~ shall include only an amount that is properly attributable to the construction, reconstruction, remodeling, installation or acquisition of such device.

(e) Definition. In this section and section 42-123.01, "solar energy device" means a system or a series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, or any combination thereof, by means of collecting and transferring solar-generated energy into such uses ~~and which also may~~ EITHER BY ACTIVE OR PASSIVE MEANS. SUCH SYSTEMS MAY ALSO have the capability of storing such energy for future utilization. PASSIVE SYSTEMS SHALL CLEARLY BE DESIGNATED AS A SOLAR ENERGY DEVICE OR AS A TROMBE WALL AND NOT MERELY A PART OF A NORMAL STRUCTURE SUCH AS A WINDOW.

Sec. 4. Section 43-128.03, Arizona Revised Statutes, is amended to read:

43-128.03. Credit allowed taxpayers for solar energy devices

A. There shall be allowed to each resident who is not a dependent of another taxpayer a tax credit against the taxes imposed by this title for a taxable year for installation of any solar ~~heating and cooling device or combined solar heating and cooling~~ ENERGY device in the taxpayer's residence located in Arizona. Such credit shall be equal to thirty-five per cent of the cost of such device in 1978 and such credit shall decrease at a rate of five per cent per year. The maximum credit shall not exceed one thousand dollars. The person providing such device shall furnish the taxpayer with an accounting of the cost to the taxpayer.

B. A taxpayer may claim the credit provided by the provisions of this section only once in a taxable year, and only once for a given residence.

C. If the allowable tax credit exceeds the income taxes otherwise due on the claimant's income, or if there are no state income taxes due on the claimant's income, the amount of the claim not used as an offset against income taxes may be carried forward as a tax credit against subsequent years' income tax liability for a period not to exceed five years.

D. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax credit that would have been allowed for a joint return.

E. The credit provided pursuant to subsection A OF THIS SECTION

shall be in lieu of any deduction allowed for installation of a solar energy device in the taxpayer's residence pursuant to section 43-123.37.

F. For the purposes of this section, "solar ~~heating-and-cooling device"-and-"combined-solar-heating-and-cooling-device",-with-respect-to any-building-or-appurtenant-structure,-mean-the-use-of-solar-energy-to provide-both-such-portion-of-the-total-heating-needs-of-such-building-or appurtenant-structure,-including-hot-water,-and-such-portion-of-the-total cooling-needs-of-such-building,-or-such-portion-of-the-needs-of-such building-for-hot-water-where-its-remaining-heating-needs-are-met-by-other methods-and-such-portion-of-the-total-cooling-needs-of-such-building-or appurtenant-structure,-or-may-be-required-under-performance-criteria-so prescribed,-and-include-cooling-by-means-of-nocturnal-heat-radiation, by-evaporation-or-by-other-methods-of-meeting-peakload-energy-requirements at-nonpeakload-times~~ ENERGY DEVICE" MEANS A SYSTEM OR A SERIES OF MECHANISMS DESIGNED PRIMARILY TO PROVIDE HEATING, TO PROVIDE COOLING, TO PRODUCE ELECTRICAL POWER, TO PRODUCE MECHANICAL POWER OR TO PROVIDE ANY COMBINATION OF THE FOREGOING BY MEANS OF COLLECTING AND TRANSFERRING SOLAR GENERATED ENERGY INTO SUCH USES EITHER BY ACTIVE OR PASSIVE MEANS. SUCH SYSTEMS MAY ALSO HAVE THE CAPABILITY OF STORING SUCH ENERGY FOR FUTURE UTILIZATION. PASSIVE SYSTEMS SHALL CLEARLY BE DESIGNATED AS A SOLAR ENERGY DEVICE OR AS A TROMBE WALL AND NOT MERELY A PART OF A NORMAL STRUCTURE SUCH AS A WINDOW.

Sec. 5. Section 43-128.04, Arizona Revised Statutes, is amended to read:

43-128.04. Credit allowed taxpayers for installation of residential insulation and devices

A. There shall be allowed to each resident who is not a dependent of another taxpayer a tax credit against the taxes imposed by this title for a taxable year for installation during such taxable year of additional loose fill insulation, roll insulation, RIGID INSULATION, FOAM INSULATION, INSULATING SCREEN, REFLECTIVE GLASS OR FILM, INSULATING WINDOWS, THERMAL INSULATING DOORS, wind driven turbine ATTIC ventilators, mechanically driven ATTIC ventilation devices or passive roof vents, WASTE HEAT WATER HEATERS, to such taxpayer's residence. The credit for the total amount of all such improvements shall be equal to twenty-five per cent of the cost of such improvements, not to exceed one hundred dollars.

~~B.--A-taxpayer-may-claim-the-credit-provided-by-the-provisions of-this-section-only-once-in-a-taxable-year,-and-only-once-for-a given-principal-residence.~~

~~C.~~ B. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax credit that would have been allowed for a joint return.

C. OWNERS IN JOINT TENANCY, TENANTS IN COMMON OR OTHER OWNERS OF A RESIDENCE WHO FILE SEPARATE RETURNS FOR A TAXABLE YEAR MAY EACH CLAIM ONLY THEIR PRO RATA SHARE OF THE TAX CREDIT ALLOWED UNDER SUBSECTION A, BASED UPON THEIR OWNERSHIP INTEREST IN THE RESIDENCE, PROVIDING THAT IN NO EVENT SHALL THE TOTAL CREDITS ALLOWED ALL SUCH OWNERS OF A RESIDENCE

FOR THE IMPROVEMENTS DESCRIBED IN SUBSECTION A EXCEED THE SUM OF ONE HUNDRED DOLLARS FOR A TAXABLE YEAR FOR INSTALLATION DURING SUCH TAXABLE YEAR.

D. For the purposes of this section:

1. "Insulation" means any material or combination of materials which ~~retards the flow of heat energy~~ IS SPECIFICALLY DESIGNED TO RETARD HEAT FLOW IN OR OUT OF THE BUILDING ENVELOPE.

2. "Loose fill insulation" means any blown or poured loose fill insulation USED TO CONTROL HEAT FLOW IN OR OUT OF THE BUILDING ENVELOPE. ~~used in attic spaces of residences.~~

3. "RIGID INSULATION" MEANS ANY RIGID FORM OF INSULATION USED TO CONTROL HEAT FLOW IN OR OUT OF THE BUILDING ENVELOPE.

4. "FOAM INSULATION" MEANS ANY FOAM TYPE INSULATION USED TO CONTROL HEAT FLOW IN OR OUT OF THE BUILDING ENVELOPE.

5. "INSULATING SCREEN" MEANS ANY REFLECTIVE OR LOUVERED DEVICE SPECIFICALLY DESIGNED TO REDUCE SOLAR HEAT GAIN.

6. "REFLECTIVE GLASS OR FILM" MEANS ANY METALIZED GLAZING MATERIAL OR PRODUCT SPECIFICALLY DESIGNED TO REDUCE SOLAR HEAT GAIN.

7. "INSULATING WINDOW" MEANS ANY MULTIPLE-GLAZED WINDOW OR SUCH SYSTEM DESIGNED FOR THE SAME PURPOSE AS A MULTIPLE-GLAZED WINDOW.

8. "THERMAL INSULATING DOOR" MEANS ANY DOOR SPECIFICALLY DESIGNED WITH INSULATING MATERIAL.

~~5.~~ 9. "Mechanically driven ATTIC ventilation devices" means any power utilizing device which aids in ventilating attic spaces of residences.

~~6.~~ 10. "Passive roof vents" means nonmechanical devices which allow the natural ventilation of attic spaces of residences.

~~3.~~ 11. "Roll insulation" means any roll form insulation. ~~used in attic spaces of residences.~~

~~4.~~ 12. "Wind driven turbine ATTIC ventilators" means any nonmechanical device installed on the roof to aid in ventilating attic spaces of residences.

13. "WASTE HEAT WATER HEATER" MEANS ANY MECHANICAL DEVICE WHICH USES THE WASTE HEAT GENERATED BY THE REFRIGERATION PROCESS TO HEAT WATER.

E. INSTALLATION OF RESIDENTIAL INSULATION OR DEVICES ALLOWED FOR CREDIT UNDER THIS SECTION MUST MEET ALL REQUIRED FIRE SAFETY AND BUILDING CODE REGULATIONS, OR OTHER APPLICABLE FEDERAL, STATE, OR LOCAL LAW.

F. CREDIT UNDER THIS SECTION SHALL NOT BE ALLOWED FOR INSTALLATION OF INSULATION IN VIOLATION OF TITLE 32, CHAPTER 10, RELATING TO LICENSING OF CONTRACTORS. AN UNLICENSED CONTRACTOR SHALL NOT INSTALL INSULATION WITH THE CUSTOMER MISUNDERSTANDING THAT THE CREDIT IS AVAILABLE. THIS SUBSECTION SHALL NOT AFFECT THE INSTALLATION OF INSULATION BY THE OWNER OF THE RESIDENCE.

Sec. 6. Expiration date

The provisions of section 42-1312.01, subsection A, paragraph 9, the provisions of section 42-1409, subsection B, paragraph 9, the provisions of section 43-123.37, the provisions of section 43-128.03 and

the provisions of section 43-128.04, Arizona Revised Statutes, as amended by this act, shall expire with the taxable year beginning from and after December 31, 1984.

Sec. 7. Effective date; retroactivity

The provisions of this act shall become effective retroactive to the tax year beginning from and after December 31, 1977.

Approved by the Governor - June 1, 1978

Filed in the Office of the Secretary of State - June 1, 1978



HOUSE BILL NO. 1019. BY REPRESENTATIVES Zakhem, Tancredo, Brown, DeMoulin, DeNier, Eckelberry, Frank, Hefley, Hilsmeier, Kirscht, Knox, McCroskey, Orten, Schaefer, Valdez, and Witherspoon; also SENATORS Schieffelin, Holme, Bishop, L. Fowler, Gallagher, Groff, Hatcher, Kogovsek, McCormick, Phelps, P. Sandoval, Soash, Stewart, and Strickland.

PROVIDING AN INCOME TAX DEDUCTION FOR TAXPAYERS WHO CAUSE ALTERNATIVE ENERGY DEVICES TO BE INSTALLED IN BUILDINGS OWNED BY THEM.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 39-22-110 (3), Colorado Revised Statutes 1973, as amended, and as further amended by Session Laws of Colorado 1977, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

39-22-110. Colorado adjusted gross income of a resident individual. (3) (I) (I) An amount equal to the cost that is properly attributable to the installation, construction, reconstruction, remodeling, or acquisition of an alternative energy device for use in any building located within Colorado and owned by the taxpayer, to the extent such device is completed or acquired and is placed in service by the taxpayer during the taxable year. For the purpose of this section, the alternative energy device is not deemed to be placed into service until the premises are occupied by the owner or tenant.

(II) For the purposes of this paragraph (l), "alternative energy device" means any system or mechanism or series of systems or mechanisms using solar radiation or wind or geothermal resources. "Alternative energy device" includes the use of a fluid-to-air heat pump operating on a fluid reservoir heated by solar radiation or a geothermal resource.

(III) Except as otherwise provided in this article, in the case of taxpayers who jointly own property and who qualify for

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

the modification allowed under the provisions of this paragraph (l), said modification shall be divided between said taxpayers in the same proportion as their ownership interests in said property, or, in the case of a husband and wife who jointly own property and who file separate Colorado returns, the modification allowed by this paragraph (l) may be claimed by either of them or divided between them, as they may elect.

SECTION 2. 39-22-304 (3), Colorado Revised Statutes 1973, as amended by Session Laws of Colorado 1977, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

39-22-304. Net income of corporation. (3) There shall be subtracted from federal taxable income:

(a) The modifications enumerated in section 39-22-110 (3) (a), (3) (b), (3) (d) to (3) (h), and (3) (l); except that, as to section 39-22-110 (3) (f), no subtraction shall be allowed for state income tax refunds from states other than Colorado. If a modification for an alternative energy device is claimed pursuant to section 39-22-110 (3) (l), depreciation on the same alternative energy device shall not be allowed.

(b) Any amount treated as a section 78 dividend under section 78 of the internal revenue code.

SECTION 3. 39-22-112 (1), Colorado Revised Statutes 1973, as amended by chapter 512, Session Laws of Colorado 1977, is amended to read:

39-22-112. Colorado standard deduction of a resident individual. (1) The Colorado standard deduction for a resident individual or a husband and wife whose Colorado taxable income is determined jointly as though one taxpayer shall be the percentage standard deduction or the low-income allowance, whichever is greater, plus the deduction for federal income tax as defined in section 39-22-113 (4) (a). ~~plus a deduction for an alternative energy device pursuant to section 39-22-113 (4) (c).~~

SECTION 4. Repeal. 39-22-112 (8) and 39-22-113 (4) (c), Colorado Revised Statutes 1973, as enacted by Session Laws of Colorado 1977, are repealed.

SECTION 5. Applicability. This act shall apply to taxable periods beginning on or after January 1, 1978, with respect to devices placed into service on or after January 1, 1977.

SECTION 6. Safety clause. The general assembly hereby

finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Ronald H. Strahle
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Fred E. Anderson
PRESIDENT OF
THE SENATE

Lorraine F. Lombardi
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Marjorie L. Rutenbeck
SECRETARY OF
THE SENATE

APPROVED _____

Richard D. Lamm
GOVERNOR OF THE STATE OF COLORADO



HOUSE OF REPRESENTATIVES

129TH GENERAL ASSEMBLY

HOUSE BILL NO. 475 JUL 12 1978 61 512

AS AMENDED BY

HOUSE AMENDMENTS NO. 1 & 2

&

SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 11, TITLE 30, DELAWARE CODE, RELATING TO PERSONAL INCOME TAX CREDITS

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 11, Title 30, Delaware Code, by adding a new section to subchapter II of Chapter 11 to read as follows:

"§1112. Credit for Installation of Solar Energy Device.

(a) A resident individual shall be allowed a credit of taxes due under this chapter of $200 for the requisition cost including installation costs of solar energy devices designed to produce domestic hot water on premises in Delaware which are owned and controlled by the taxpayer at the time of installation, payment for which is made by the taxpayer during the taxable year. This credit only applies towards those solar energy devices used to produce hot water which:

(1) Meet or exceed the "Intermediate Standards for solar domestic hot water systems/HUD Initiative (NBSIR 77-1272).

(2) Are installed in accordance with the installation guidelines prepared by the solar energy application center, Polytechnic Institute of New York for use in the HUD Solar Hot Water Initiative Program 1977.

(b) In the case of a solar energy device purchased by the taxpayer as a unit, the credit provided by this section will only apply to those solar energy devices used to produce hot water which include reasonable warranties. To be considered reasonable the warranty must, at a minimum:

(i) Comply with all applicable provisions of the Magnuson-Moss Warranty Act of 1975 (15 U.S.C. 2301 et seq.) and the regulations published pursuant thereto by the Federal Trade Commission which establish Federal disclosure terms and substantive and enforcement provisions for written warranties on consumer products;

(ii) Include a one-year warranty from the Installer against failure of the solar system, any component, or assembly where such failure is caused by defect in materials, manufacture or installation. The warranty shall cover the full costs of parts, labor, shipping and handling required to remedy the defect, including, if necessary, replacement at the site, and shall run from the initial date of installation completion. The warranty shall also include provision for field inspection within a reasonable time of receipt of the complaint at no charge to the customer, to verify failure, establish probable cause, and determine corrective action required; however, if the inspection reveals no warranty-related defect, then a reasonable charge may be made for the inspection. NOTE: The installer's warranty may include pass-through warranties provided by his supplier or the manufacturer;

(iii) Include a five (5) year manufacturer's warranty which shall include:

(a) A five (5) year collector warranty against defects in materials or manufacture. The warranty shall cover the full costs of parts, labor, shipping and handling required to remedy the defect, including, if necessary, replacement at the site, and shall run from the date of installation completion.

(b) A five (5) year warranty against corrosion of the absorber plate and other coolant passages. This corrosion warranty shall cover, for the first year, full costs of parts, labor, shipping and handling required to remedy the defect, including, if necessary, replacement at the site. For the remainder of the warranty period, the corrosion warranty shall cover the cost of furnishing a new collector, if necessary. The corrosion warranty

shall run from the date of installation completion.

(c) A five (5) year warranty against defects in materials and manufacture of heat exchangers and tanks. This warranty shall include shipping and handling, but need not include removal and reinstallation.

(iv) The manufacturer's warranty shall also include a provision for a field inspection within a reasonable time of the complaint at no charge to the consumer to verify failure establish probable cause, and determine corrective action required; however, if the inspection reveals no warranty-related defect th n a reasonable charge may be made for the inspection.

(v) If the manufacturer has provided the installer with clear and reasonable installation instructions, and the consumer with clear and reasonable maintenance instructions, then the warranties may specify reasonable installation and maintenance procedures for the warranty to be effective. However, no warranty shall be voided or in any way reduced by conditions that may occur in normal operation of the system. All warranties must apply to subsequent owners of installed systems.

SPONSOR Senator McDowell

COMMITTEE _____

DELAWARE STATE SENATE

129TH GENERAL ASSEMBLY

FIRST SESSION - 1977

NOT APPROVED
JUL 14 1977
BY THE GOVERNOR

SENATE BILL NO. 242

AN ACT TO AMEND TITLE 9 AND TITLE 22 OF THE DELAWARE CODE RELATING TO COUNTY AND MUNICIPAL TAXES; AND PROVIDING RESTRICTIONS IN THE ASSESSMENT OF BUILDINGS IMPROVED BY THE INSTALLATION OF ENERGY CONSERVATION IMPROVEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §8301, Chapter 83, Part V, Title 9 of the Delaware Code by designating all of present §8301 as new subsection (a) of that section, and by adding thereto the following:

"(b) In order to encourage the use and installation of solar energy heating and cooling units in existing or newly-constructed buildings, solar energy heating and cooling units in residential or non-residential buildings shall be exempt from assessment for property tax purposes. In order to achieve energy conservation through the reducing of waste or dissipation of energy, or reducing the amount of energy required to accomplish a given amount of work, energy conservation improvements made in existing or newly-constructed buildings and energy conserving materials and equipment installed in a building, or on land, with or without improvements, shall be exempt from assessment for property tax purposes.

(c) For purposes of this section, 'energy conservation improvements' shall mean improvements, materials, and equipment designed and installed for the utilization of solar heating, wind, solid wastes, or the decomposition of organic wastes for capturing energy or converting energy sources into usable sources, or for the production of electric power from solid

wood wastes, or any small system for the utilization of water power by means of an impoundment of not over twenty acres in surface area."

Section 2. Amend Chapter 1, Title 22 of the Delaware Code by adding thereto a new section, designated as §107, which new section shall read as follows:

"§107. Solar Energy Devices

In order to encourage the use and installation of solar energy heating and cooling units in existing or newly-constructed buildings, solar energy heating and cooling units in residential or non-residential buildings shall be exempt from assessment for property tax purposes. In order to achieve energy conservation through the reducing of waste or dissipation of energy or reducing the amount of energy required to accomplish a given amount of work, energy conservation improvements made in existing or newly-constructed buildings and energy conserving materials and equipment installed in a building, or on land, with or without improvements, shall be exempt from assessment for property tax purposes.

For purposes of this section, 'energy conservation improvements' shall mean improvements, materials, and equipment designed and installed for the utilization of solar heating, wind, solid wastes, or the decomposition of organic wastes for capturing energy or converting energy sources into usable sources, or for the production of electric power from solid wood wastes, or any small system for the utilization of water power by means of an impoundment of not over twenty acres in surface area and not for commercial sale.

SYNOPSIS

The development of solar energy devices has been most encouraged by State and local governments, usually in the area of tax incentives, and these incentives generally reduce the tax burden associated with the high initial costs of solar energy systems.

This Act provides that solar heating and cooling units in residential and non-residential buildings be exempt from assessment for property tax purpose.

Author - Senator McDowell

ENROLLMENT

H. B. No. 1286 Act No. 1309

General Assembly

March 16 1978

The Committee of the House on Enrolling, Journals has examined the within and finds the same properly enrolled.

Chairman

Speaker of the House

Clerk of the House

President of the Senate

Secretary of the Senate

Received Secretary, Executive Department

This 16th day of March 1978

Approved

Governor

This 3rd day of April 1978

AN ACT

To amend an Act known as the "Georgia Retailers' and Consumers' Sales and Use Tax Act" so as to change certain provisions relative to refund of tax paid with respect to solar energy machines or equipment; to provide an effective date; and for other purposes.

IN HOUSE

Read 1st time Jan. 10, 1978
Read 2nd time Jan. 11, 1978
Read 3rd time Feb. 10, 1978
And Passed
Ayes 94 Nays 0

Clerk of the House

IN SENATE

Read 1st time Feb. 13, 1978
Read 2nd time Feb. 24, 1978
Read 3rd time Feb. 27, 1978
And Passed
Ayes 50 Nays 2

Secretary of the Senate

By: Rep. Johnson of the 74th.

AN ACT

To amend an Act known as the "Georgia Retailers' and Consumers' Sales and Use Tax Act," approved February 20, 1951 (Ga. Laws 1951, p. 360), as amended, particularly by an Act approved March 24, 1976 (Ga. Laws 1976, p. 672), so as to change certain provisions relative to refund of tax paid with respect to solar energy machines or equipment; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. An Act known as the "Georgia Retailers' and Consumers' Sales and Use Tax Act," approved February 20, 1951 (Ga. Laws 1951, p. 360), as amended, particularly by an Act approved March 24, 1976 (Ga. Laws 1976, p. 672), is hereby amended by redesignating subparagraph (z) of paragraph (2) of subsection (c) of Section 3 thereof, as added by an Act approved March 24, 1976 (Ga. Laws 1976, p. 672), as subparagraph (aa), and by striking from the second sentence of the second unnumbered paragraph thereof the following:

"To obtain the benefits hereof, the purchaser",

and substituting in lieu thereof the following:

"To obtain the benefits hereof, the owner of the property to which the machines or equipment will be attached",

and by inserting after the words "authorized to refund", the words,

"to that property owner",

so that when so amended said subparagraph of paragraph 2 of subsection (c) of Section 3 shall read as follows:

"(aa) Purchases of machines or equipment that will be attached to or become a part of agricultural, including animal and poultry husbandry operations, industrial, commercial or residential property and will be used directly in the conversion of solar energy for heating, or cooling, or drying, or water heating. For the purposes of this subparagraph, machines and equipment shall include all controls, tanks, pumps, heat exchangers, and other equipment used directly and exclusively for the conversion of solar energy for heating, or cooling, or drying, or water heating, but shall not include walls, roofs or equipment that would ordinarily be contained in a similar structure not designed or modified to use solar energy for heating, or cooling, or drying, or water heating.

Notwithstanding the provisions of this subparagraph, any person making a sale for any of the purposes specified herein shall collect the tax imposed thereon by this Act and remit the same to the Commissioner. To obtain the benefits hereof, the owner of the property to which the machines or equipment will be attached shall file a claim for refund with the Commissioner in the manner authorized by the general law, and, if the Commissioner determines that the requirements of this subparagraph have been met, he is hereby authorized to refund to that property owner, without interest thereon, such portion of the tax paid by the purchaser as the Commissioner finds to be due under the provisions of this subparagraph.

For the purposes of this subparagraph, the amount of tax paid by the purchaser shall be the amount paid the seller as tax less the amount the seller is allowed to retain as compensation for accounting for and remitting the tax. The State Revenue Commissioner may adopt rules providing procedures for applying for the refund authorized by this subsection and for certifying whether a particular purchase of such machines or equipment is entitled to the refund. This subparagraph shall be repealed and shall be null and void effective July 1, 1986."

Section 2. This Act shall become effective upon its approval by the Governor or upon its becoming law without his approval.

Section 3. All laws and parts of laws in conflict with this Act are hereby repealed.

SENATE BILL No. 545

AN ACT relating to taxation; concerning reimbursements of property taxes paid on certain property equipped with solar energy systems; amending K.S.A. 79-45a01 and repealing the existing section.

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

Section 1. K.S.A. 79-45a01 is hereby amended to read as follows: 79-45a01. Subject to the limitations provided in this act, any owner of a building equipped with a solar energy system capable of providing seventy percent (70%) of the energy necessary to heat or cool such building on an average annual basis or a building to which is attached an addition equipped with a solar energy system capable of providing seventy percent (70%) of the energy necessary to heat or cool such building addition on an average annual basis, which owner pays the property tax levied on such building or building addition in one (1) or more of the years in which this act is applicable, shall be entitled to be reimbursed thirty-five percent (35%) of the tax paid thereon in the first year in said period that the tax is paid and thirty-five percent (35%) of the tax paid thereon in the next succeeding four (4) years upon the filing of a timely claim with the department of revenue. For the purposes of this act, the term "solar energy system" shall have the meaning ascribed thereto by K.S.A. 79-32,169 and amendments thereto. No claim in respect of property taxes levied in any year shall be paid or allowed unless such claim is actually filed with and in the possession of the department of revenue on or before October 15 of the next succeeding year. The reimbursement provided for herein shall apply only to the tax upon such building or building addition and not to the site upon which such building or building addition is located or to any other improvements made to or located upon such site. The director of taxation shall make available suitable forms with instructions for claimants to all county clerks and county treasurers in sufficient numbers to supply claimants hereunder residing in their respective counties. Every claimant under the provisions of this act shall provide the director of taxation with a statement identifying the property taxes attributable to the building or building addition, stating that said property taxes have been paid in full by the claimant and that there are no delinquent property taxes on the said property and such other information as the director shall require. Beginning in January ~~1978~~ *1979*, the secretary of revenue shall certify at least quarterly to the director of accounts and reports entitlements of taxpayers under this section, and an amount equal thereto shall be transferred by such director from the state general fund to the solar energy property tax refund fund which is hereby created. Such certification shall be based on claims for property tax reimbursements filed, with any adjustments or corrections made by the director of taxation. The director of taxation shall make payments at least quarterly to taxpayers entitled hereunder, with any adjustments or corrections made by the director. The director of accounts and reports shall draw warrants on the state treasurer payable to the taxpayer entitled to payment from the solar energy property tax refund fund upon vouchers approved by the director of taxation.

The provisions of this section shall apply to the taxable years 1978 through 1985, inclusive.

New Sec. 2. In any case in which it is determined that a claim filed pursuant to K.S.A. 79-45a01, as amended, is or was excessive and was filed with fraudulent intent, the claim shall be disallowed in full, and, if the claim has been paid, the amount paid may be recovered by assessment as income taxes are assessed, and such assessment shall bear interest from the date of payment or credit of the claim, until recovered, at the rate of one percent (1%) per month. The claimant in such case, and any person who assisted in the preparation or filing of such excessive claim, or supplied information upon which such excessive claim was prepared, with fraudulent intent, shall be guilty of a class B misdemeanor. In any case in which it is determined that a claim is or was excessive and was negligently prepared, ten percent (10%) of the corrected claim shall be disallowed, and if the claim has been

paid, the proper portion of any amount paid shall be similarly recovered by assessment as income taxes are assessed and such assessment shall bear interest at the rate of one percent (1%) per month from the date of payment until recovered.

Sec. 3. K.S.A. 79-45a01 is hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body.

_____

_____
President of the Senate.

_____
Secretary of the Senate.

Passed the HOUSE _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

APPROVED _____

_____
Governor.

ENROLLED

Regular Session, 1978

HOUSE BILL NO. 834

BY MESSRS. BEL AND FAUCHEUX

ACT NO 591

AN ACT

To amend Title 47 of the Louisiana Revised Statutes of 1950 by adding thereto a new Section to be designated as Section 1706, to provide an exemption from ad valorem taxes for certain solar energy systems; to define those systems as personal property for the purposes of the exemption, and otherwise to provide with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 1706 of Title 47 of the Louisiana Revised Statutes of 1950 is hereby enacted to read as follows:

§1706. Exemptions, solar energy systems; equipment attached to residential buildings or swimming pools

A. Notwithstanding the definitions of "real estate" and "personal property" in Section 1702, any equipment attached to any owner occupied residential building or swimming pool as part of a solar energy system is hereby declared to be personal property and shall be exempt from ad valorem taxation, and assessors shall not consider the value of such equipment in assessing the value of such buildings or swimming pools.

B. For the purposes of this Section, solar energy system means any device that uses the heat of the sun as its primary energy source and is used to heat or cool the interior of a structure or swimming pool or to heat water for use within a structure or swimming pool. Solar energy systems include but are not limited to systems utilizing solar collectors, solar cells, and passive roof ponds.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

S E N A T E O F M A R Y L A N D

81r3346 No. 858

By: Senators Bozick and Conroy
Introduced and read first time: February 10, 1978
Assigned to: Budget and Taxation

Committee report: Favorable
Senate action: Adopted
Read second time: March 7, 1978

CHAPTER 509

AN ACT concerning

Assessments - Solar Energy

FOR the purpose of providing that solar energy heating and cooling units in buildings, in combination with conventional heating and cooling units, shall be assessed at no more than the value of a conventional unit.

BY repealing and reenacting, with amendments,

Article 81 - Revenue and Taxes
Section 14(b)(4)
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 81 - Revenue and Taxes

14.

(b) Except as hereinafter provided:

(4) In order to encourage the use and installation of solar energy heating and cooling units in existing or newly constructed buildings, solar energy heating and cooling units in residential or nonresidential buildings shall be assessed at no more than the value of a conventional heating and cooling unit necessary to serve the building. IF A BUILDING HAS BOTH CONVENTIONAL AND SOLAR HEATING AND COOLING UNITS, THE COMBINED UNITS SHALL BE

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

ASSESSED AT NO MORE THAN THE VALUE OF A CONVENTIONAL HEATING AND COOLING UNIT NECESSARY TO SERVE THE BUILDING.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
President of the Senate.

_____
Speaker of the House of Delegates.

THE COMMONWEALTH OF MASSACHUSETTS

Advance Copy 1978 Acts and Resolves

PAUL GUZZI, Secretary of the Commonwealth

Chap. 388. AN ACT EXTENDING THE PERIOD FOR A REAL ESTATE TAX EXEMPTION FOR THE UTILIZATION OF SOLAR OR WIND POWERED SYSTEMS.

Be it enacted, etc., as follows:

Clause Forty-fifth of section 5 of chapter 59 of the General Laws, added by section 2 of chapter 734 of the acts of 1975, is hereby amended by striking out, in line 6, the word "ten" and inserting in place thereof the word:- twenty.

Approved July 12, 1978

LEGISLATIVE BILL 323

Approved by the Governor April 17, 1978

Introduced by Mills, 44

AN ACT for submission to the electors of an amendment to Article VIII, section 2, of the Constitution of Nebraska, relating to revenue; to exempt from taxation or allow as a credit against tax the value or cost of direct alternate energy systems; to provide for the time and manner of submission and form of ballot; and to provide the effective date thereof.

Be it enacted by the people of the State of Nebraska,

Section 1. That at the general election in November, 1978, there shall be submitted to the electors of the State of Nebraska for approval the following amendment to Article VIII, section 2, of the Constitution of Nebraska, which is hereby proposed by the Legislature:

"Sec. 2. The property of the state and its governmental subdivisions shall be exempt from taxation. The Legislature by general law may exempt property owned by and used exclusively for agricultural and horticultural societies, and property owned and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not owned or used for financial gain or profit to either the owner or user. Household goods and personal effects, as defined by law, may be exempted from taxation in whole or in part, as may be provided by general law, and the Legislature may prescribe a formula for the determination of value of household goods and personal effects. The Legislature by general law may provide that the increased value of land or improvements to real property by reason of shade or ornamental trees planted along the highway, or by reason of the installation of direct alternate energy systems, including direct solar energy systems, direct wind-generated energy systems, solid waste conversion systems, and water powered systems designed primarily for and utilized on either residential, commercial, or industrial buildings by the collection, conversion, transfer, and use of alternate energy for providing heat, refrigeration, or electricity shall not be taken into account in the assessment of such land. The value of a home substantially contributed by the Veterans' Administration of the United States for a paraplegic veteran or multiple amputee shall be exempt from taxation during the life of such veteran or until

the death of his widow or her remarriage. The Legislature may exempt from ad intangible property tax life insurance and life insurance annuity contracts and any payment connected therewith and any right to pension or retirement payments. The Legislature may classify personal property in such manner as it sees fit, and may exempt any of such classes, or may exempt all personal property from taxation. No property shall be exempt from taxation except as provided in the Constitution. The Legislature may by general law provide that a portion of the value of any residence actually occupied as a homestead by any classification of owners as determined by the Legislature shall be exempt from taxation."

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by Article XVI, section 1, of the Constitution of Nebraska. The proposition for the submission of the proposed amendment shall be placed upon the ballot in the following form:

"Constitutional amendment to allow tax exemptions or tax credits for installation of direct alternate energy systems.
For
Against"

Sec. 3. That the proposed amendment, if adopted, shall be in force and take effect immediately upon the completion of the canvass of the votes, at which time it shall be the duty of the Governor to proclaim it as a part of the Constitution of Nebraska.

CHAPTER NO. 837

HOUSE BILL NO. 329

By Bissell, Murphy (Davidson), Elkins

AN ACT to amend Tennessee Code Annotated, Section 67-511, to provide an exemption for solar or wind powered heating, cooling, or electrical generation systems.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-511, is amended by adding the following paragraph at the end of the Section:

There shall be exempt from property taxation all appliances, equipment, machinery, structures or other such property or portion thereof used primarily and necessarily for heating, cooling, or electrical generation by solar or wind power. When property containing such solar or wind powered systems is appraised, the presence of the system and the value of its component parts shall not be taken into consideration in determining the value of the property. Any question arising over the qualifications of a particular system for this exemption shall be determined by the assessor of property in the county where the property is located based on standards and specifications developed by the Tennessee energy office, but his determination may be appealed to the local and state boards of equalization.

SECTION 2. This Act, and the exemption provided for therein shall terminate on January 1, 1988 and shall have no effect on taxation or assessment made after such date.

SECTION 3. This Act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: March 30, 1978

Ned R. McWherter,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

John S. Wilder,
SPEAKER OF THE SENATE

APPROVED: April 11, 1978

Ray Blanton,
GOVERNOR

STATE OF WISCONSIN

1977 Assembly Bill 1019 Date published*: May 13, 1978

CHAPTER 313 , LAWS OF 1977

Vetoed in Part

AN ACT to create 20.835 (2) (e), 71.04 (16), 71.09 (12), 73.03 (14) and 79.25 (8m) of the statutes, relating to tax credits and deductions for alternative energy systems, making an appropriation and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. **Declaration of policy.** The legislature finds that it is in the interest of the state to use renewable, in-state sources of energy which do not pollute the environment and which diversify the supplies of energy now used in this state. Furthermore, since the long-term advantages to society of many alternative sources of energy are often not reflected in the costs of these sources, the legislature declares that the expedient development of alternative sources of energy not now economically competitive should be fostered by providing temporary state financial incentives, supplementary to federal incentives, which encourage the use of such sources.

SECTION 2. 20.835 (2) (e) of the statutes is created to read:

20.835 (2) (e) *Alternative energy system tax credit.* A sum sufficient to pay the aggregate claims approved under s. 71.09 (12).

SECTION 3. 71.04 (16) of the statutes is created to read:

71.04 (16) (a) All expenses for designing, constructing and installing an alternative energy system, as defined in s. 71.09 (12) (i), which are incurred after April 20, 1977, may be deducted in the year paid, may be depreciated or may be amortized over a period of 5 years. Only an alternative energy system which is installed and which is certified in accordance with the procedure specified in s. 71.09 (12) (c) is eligible for this election. The election, once made, may not be changed.

(b) Expenses ~~incurred and~~ paid between April 20, 1977, and December 31, 1978, may be deducted in either the taxable year in which ~~incurred and~~ paid or the next taxable year. **Vetoed in Part**

(c) No expenses incurred after December 31, 1984, may be deducted, depreciated or amortized under par. (a).

SECTION 4. 71.09 (12) of the statutes is created to read:

71.09 (12) (a) Beginning with calendar year 1977 and corresponding fiscal years and thereafter, any natural person owning an alternative energy system installed on the person's property in this state may credit against income taxes due the following percentage of the total cost of the design, construction, equipment and installation of the alternative energy system, but not exceeding $10,000 of such costs, incurred during the taxable year if such costs exceed $500 in a single year and the system is certified under par. (c):

1. If the real property improvements on which the system is installed appeared on the local tax roll prior to April 20, 1977:

a. For 1977 and 1978, 30%.

b. For 1979 and 1980, 24%.

c. For 1981 and 1982, 18%.

* Section 990.05, *1975 Wisconsin Statutes*: **Laws and acts; time of going into force.** "Every law or act which does not expressly prescribe the time it takes effect shall take effect on the day after its publication."

d. For 1983 and 1984, 12%.

2. If the real property improvements on which the system is installed appeared on the local tax roll on or after April 20, 1977:

a. For 1977 and 1978, 20%.

b. For 1979 and 1980, 16%.

c. For 1981 and 1982, 12%.

d. For 1983 and 1984, 8%.

(b) Applications for credit under this subsection shall be made on a form prescribed by the department of revenue and attached to the applicant's state income tax return. If the allowable amount of claim under this subsection exceeds the income taxes otherwise due on the claimant's income or if there are no Wisconsin income taxes due on the claimant's income, the amount of the claim not used as an offset against income taxes shall be certified to the department of administration for payment to the claimant by check from the appropriation under s. 20.835 (2) (e). No interest shall be allowed on any payment made to a claimant under this paragraph.

(c) The department of revenue shall approve the credit in par. (a) if:

1. The alternative energy system is a specified model which has been certified by the department of industry, labor and human relations as meeting the standards specified in par. (d); or

2. Based on design calculations or other appropriate documentation, specified by the department of industry, labor and human relations by rule, and submitted by the owner of an alternative energy system, the system has been certified by the department of industry, labor and human relations as meeting the standards specified in par. (d).

(d) The department of industry, labor and human relations, in consultation with the departments of administration ~~and revenue~~, shall establish by rule performance standards for alternative energy systems. The standards shall be established to: **Vetoed in Part**

1. Produce the maximum practical amount of energy.

2. Conform, where feasible, with national performance standards promulgated or recognized by the federal government for alternative energy systems.

3. Produce present value benefits in terms of saved energy costs in an amount not less than the total present value cost of designing, constructing and installing the alternative energy system within 25 years after installation of the system.

4. Not hamper individual development of innovative alternative energy systems.

(e) If more than one person owns an alternative energy system eligible for the credit under this subsection, such persons may divide the credit among themselves as desired. Once credit is claimed for an alternative energy system under this section, subsequent owners of the system are not eligible for credit under this subsection for the same system.

(f) No credit may be granted under this subsection if tax credit has been granted for the alternative energy system as an improvement under s. 79.25.

(g) Expenses incurred between April 20, 1977, and December 31, 1978, may be used to compute the credit in either the taxable year in which incurred or the next taxable year.

(h) No person may claim the credit under this subsection for expenses incurred before April 20, 1977, or after December 31, 1984.

(i) In this subsection:

1. "Alternative energy system" means a solar energy system, a waste conversion energy system or a wind energy system, but does not include any equipment which would be present as part of a conventional energy system.

2. "Solar energy system" means equipment which converts and then transfers or stores solar energy into usable forms of energy for space heating or cooling, crop drying, electricity generation or hot water heating.

3. "Waste conversion energy system" means equipment which converts wastes into usable forms of energy but does not include solid fuel-consuming devices used for residential purposes.

4. "Wind energy system" means equipment which converts and then transfers or stores energy from the wind into usable forms of energy.

(j) *Approval of rules.* This paragraph does not apply to emergency rules adopted under s. 227.027.

1. "Role of legislative council." Prior to any public hearing on a proposed rule under this subsection, or if no public hearing is required, prior to notification of the standing committees, the department of industry, labor and human relations or the department of revenue shall submit the proposed rule to the legislative council for review. The legislative council shall act as a clearing house for rule drafting and cooperate with the departments and the revisor to:

a. Review the statutory authority under which the department intends to adopt the rule. The legislative council shall notify the department, the joint committee for the review of administrative rules and the appropriate standing committee when the statutory authority is eliminated or significantly changed by repeal, amendment, court decision or for any other reason.

b. Ensure that the procedures for the promulgation of a rule required by this chapter are followed.

c. Review proposed rules for form, style and placement in the administrative code.

d. Review proposed rules to avoid conflict with or duplication of existing rules.

e. Review proposed rules to provide adequate references to relevant statutes, related rules and forms.

f. Streamline and simplify the rule-making process.

g. Review proposed rules for clarity, grammar and punctuation and to ensure plain language.

h. Review proposed rules to determine potential conflicts and to make comparisons with federal regulations.

2. "Legislative council to assist standing committees." The legislative council shall work with and assist the appropriate standing committees throughout the rule-making process. The legislative council may issue recommendations concerning any proposed rule which the department submits under this section.

3. "Notification of standing committees." The department shall notify appropriate standing committees when proposed rules under this subsection are in final draft form by submitting a notice to the presiding officer in each house. Each presiding officer shall refer the notice to one standing committee. The department may withdraw a proposed rule by notifying the presiding officer in each house of the legislature of its intention not to promulgate the rule.

4. "Form of notice." The notice shall include the proposed rule in a form complying with s. 227.024 (1).

5. "Standing committee review." a. A committee may be convened upon the call of its chairperson or a majority of its members to review a proposed rule. A committee may meet separately or jointly with the other committee to which the notice is referred, direct the department to attend the meeting and hold public hearings to review the proposed rule.

b. The standing committee review period lasts for 30 days after the notice is submitted and if within the 30-day period a standing committee directs the department to meet with it to review the proposed rule, the standing committee review period is extended for 30 days from the date of that request.

c. The department may not promulgate a proposed rule during the standing committee review period unless both committees approve the rule prior to the expiration of that period.

d. Either standing committee may disapprove the proposed rule or part of a proposed rule by taking action in executive session to disapprove the rule within the standing committee review period. If both committees fail to take this action, the proposed rule is not disapproved and the department may promulgate the rule.

6. "Joint committee for the review of administrative rules." a. If either standing committee disapproves a proposed rule or part of a proposed rule, the proposed rule or its part shall be referred to the joint committee for the review of administrative rules.

b. The joint committee review period lasts for 30 days after the proposed rule is referred and the joint committee shall meet and take action in executive session during that period.

c. The department may not promulgate a proposed rule or its part which is disapproved by a standing committee unless the proposed rule is approved by the joint committee for the review of

administrative rules or until the bill in subd. 6. e fails of enactment. The department may promulgate portions of the rule which were not suspended, if the committee disapproved only parts of the rules.

d. The joint committee for the review of administrative rules may reverse the standing committee disapproval by taking action to approve the rule within the joint committee review period. The joint committee may uphold the standing committee disapproval by taking action to disapprove the rule within the joint committee review period. The joint committee may remand the proposed rule to the department for further consideration or public hearings or both. If the joint committee disapproves a proposed rule, the department may not promulgate the proposed rule until the bill in subd. 6. e fails of enactment.

e. When the joint committee for the review of administrative rules disapproves a proposed rule or portion of the proposed rule, the committee shall as soon as possible place before the legislature, a bill to support the disapproval. If such bill is defeated, or fails of enactment in any other manner, the proposed rule or portion of the proposed rule may be promulgated. If the bill becomes law, the proposed rule or portion of the proposed rule, may not be promulgated unless a properly enacted law specifically authorizes the adoption of that rule.

SECTION 5. 73.03 (14) of the statutes is created to read:

73.03 (14) (a) In cooperation with the department of administration and the university of Wisconsin system-extension, to develop materials to inform the public of the income tax credits and deductions for alternative energy systems available under ss. 71.04 (16) and 71.09 (12). Such material shall include information on the calculation of the life-cycle costs of alternative energy systems.

(b) To annually prepare a summary of the number of claims under ss. 71.04 (16) and 71.09 (12), including but not limited to information concerning the cost, size and type of each alternative energy system for which a deduction or credit is claimed.

SECTION 6. 79.25 (8m) of the statutes is created to read:

79.25 (8m) Improvements for which credit has been granted under s. 71.09 (12) are not eligible for credit under this section.

SECTION 7. **Program responsibilities.** (1) In the list of program responsibilities specified for the department of industry, labor and human relations in section 15.221 (intro.) of the statutes, reference to sections "71.04 (16)" and "71.09 (12)" is inserted.

(2) In the list of program responsibilities specified for the department of administration in section 15.101 (intro.), references to sections "71.04 (16)"; "71.09 (12)" and "73.03 (14)" are inserted.

SECTION 8. **Rules.** The department of industry, labor and human relations shall promulgate the rules required by section 71.09 (12) (d) of the statutes, as created by this act, no later than January 1, 1979.

State of Arizona
House of Representatives
Thirty-third Legislature
Second Regular Session
1978

CHAPTER 195

HOUSE BILL 2377

AN ACT

RELATING TO TRANSPORTATION; PRESCRIBING CONTENTS OF MOBILE HOME DELINQUENT UNSECURED PERSONAL PROPERTY TAX LIST; PROVIDING THAT EXPENDITURES FROM MOBILE HOME ADMINISTRATION REVOLVING FUND SHALL BE APPROVED BY JOINT LEGISLATIVE BUDGET COMMITTEE; PRESCRIBING CERTAIN CONTENTS FOR REPORTS BY DEALERS; PROHIBITING THE MOVING OR SELLING OF A MOBILE HOME ON WHICH THE AD VALOREM TAX IS DELINQUENT; PRESCRIBING PENALTY AND PROVIDING FOR DISPOSITION OF FINES; PROVIDING FOR USE OF CERTAIN METHOD AND PROCEDURES FOR IDENTIFYING MOBILE HOMES; PROVIDING EXEMPTION FOR CERTAIN PUBLIC MASS TRANSPORTATION FROM REGULATION AS A MOTOR CARRIER AND FROM GROSS RECEIPTS LICENSE TAX AND TRANSACTION PRIVILEGE TAX; AMENDING SECTION 28-304.02, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 1977, CHAPTER 174, SECTION 3; AMENDING SECTIONS 28-304.03, 32-1197, 40-641, 40-1152, 42-610 AND 42-1312.01, ARIZONA REVISED STATUTES; AMENDING SECTION 42-646, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 1968, CHAPTER 124, SECTION 2; AMENDING SECTION 42-646, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1977, CHAPTER 174, SECTION 6, AND AMENDING LAWS 1977, CHAPTER 174, SECTION 10.

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

Section 1. Section 28-304.02, Arizona Revised Statutes, as added by Laws 1977, chapter 174, section 3, is amended to read:

28-304.02. Mobile home delinquent unsecured personal property tax list

A. The department shall prepare and maintain a listing ~~of all~~ IDENTIFYING EACH PRIOR YEAR FOR WHICH OUTSTANDING delinquent unsecured personal property taxes ~~outstanding~~ on mobile homes, as defined by section 42-641, REMAIN UNPAID. Such listing shall contain:

1. The complete manufacturer's serial number, THE BRAND NAME OR MODEL and the name of the manufacturer of each such mobile home.

2. The name and address of the current owners.

~~3.--The current location of the mobile home.~~

~~4.--The date of the last transfer of title.~~

5. 3. A listing of all outstanding delinquent unsecured personal property taxes THE YEAR OF LEVY, ASSESSING COUNTY AND TAX ROLL IDENTIFICATION NUMBER OF THE OUTSTANDING DELINQUENT TAXES for each such mobile home.

6. 4. Such other information as the department may find necessary.

B. The department shall provide each county assessor who acts as a licensing agent of the department with copies or access to the listing prepared pursuant to subsection A of this section.

Sec. 2. Section 28-304.03, Arizona Revised Statutes, is amended to read:

28-304.03. Mobile home administration revolving fund; contents; exemption

A. There is established a permanent department of transportation mobile home administration revolving fund which shall consist of:

1. Money appropriated to such fund by the legislature.

2. Money deposited pursuant to section 28-205, paragraph 2.

3. Money received from private grants or donations when so designated by the grantor or donor.

B. Monies of the mobile home administration revolving fund shall be used by the department to carry out the provisions of section 28-304.02 and related functions involving title transfers of mobile homes as defined by section 42-641. Expenditures from the fund shall be as prescribed by rules and regulations of the director of the department of administration, AND SHALL BE APPROVED BY THE JOINT LEGISLATIVE BUDGET COMMITTEE. THE DEPARTMENT MAY USE MONIES FROM THE FUND FOR PERSONNEL, PROFESSIONAL AND OUTSIDE SERVICES, TRAVEL AND OTHER EXPENSES NECESSARY TO CARRY OUT THE PROVISIONS OF SECTION 28-304.02.

C. The mobile home administration revolving fund shall be established as a separate account on the books of the department and a full accounting of its use shall be made to the director of the department of administration annually or as required by the director of the department of administration.

D. The mobile home administration revolving fund is exempt from the provisions of section 35-190, relating to lapsing of appropriations. Any amounts in excess of fifty thousand dollars in the revolving fund at the close of the EACH fiscal year, beginning with the fiscal year ending on June 30, 1979, shall revert to the general fund.

E. The department of revenue, each county assessor and each county treasurer shall provide such cooperation and information as the department may require in the preparation and maintenance of the listing required by subsection A of section 28-304.02.

Sec. 3. Section 32-1197, Arizona Revised Statutes, is amended to read:

32-1197. Reports by dealers to department of revenue and county assessor

Every dealer, as defined in section 44-1712, who acquires or sells a previously titled mobile home, as defined in section 42-641, shall submit a written report of all such acquisitions and sales to the department of transportation REVENUE and to the county assessor of the

county where such dealer is located. Such report shall be submitted by the fifteenth day of each month for the period of the previous calendar month and shall include:

1. The manufacturer, BRAND NAME OR MODEL, SIZE, FACTORY LIST PRICE, TOTAL SELLING PRICE and serial number of such mobile home.

2. The name and address of the person from whom such mobile home was acquired and the last previous location of such mobile home.

3. The name and address of the person to whom such mobile home was sold.

4. THE NEW LOCATION OF SUCH MOBILE HOME IF SUCH LOCATION IS KNOWN TO THE DEALER.

Sec. 4. Section 40-641, Arizona Revised Statutes, is amended to read:

40-641. License tax upon motor carriers; collection; disposition

A. In addition to all other taxes and fees:

1. Every common motor carrier of property and every contract motor carrier of property shall pay to the state, on or before the twenty-fifth day of each month, a license tax of two and one-half per cent of the gross receipts from the carrier's operations within the state for the preceding calendar month, excluding receipts from property transported under a star route contract with the federal government. The gross receipts from the operation for hire by a common motor carrier of property or a contract motor carrier of property of a farm tractor or implements of husbandry exempt from registration, whether incidental to the operations as such motor carrier or otherwise, shall not be subject to the tax imposed by, or other provisions of, this article.

2. Every common motor carrier of passengers and every contract motor carrier of passengers shall pay to the state, on or before the twenty-fifth day of each month, a license tax of two and one-quarter per cent of the gross receipts from his operations within the state for the preceding calendar month. THE GROSS RECEIPTS FROM OPERATION OF PUBLIC SERVICE CORPORATIONS PROVIDING URBAN MASS TRANSPORTATION SERVICE WITHIN URBAN AREAS AND PUBLIC TRANSPORTATION SYSTEMS OR SERVICES PROVIDED BY COUNTIES, CITIES AND TOWNS OR THEIR CONTRACTORS AS AUTHORIZED BY CHAPTER 6, ARTICLE 5 OF THIS TITLE SHALL NOT BE SUBJECT TO THE TAX IMPOSED BY, OR OTHER PROVISIONS OF, THIS ARTICLE. THE ONLY GROSS RECEIPTS OF A PUBLIC SERVICE CORPORATION PROVIDING URBAN MASS TRANSPORTATION SERVICE WITHIN URBAN AREAS THAT SHALL NOT BE SUBJECT TO THE TAX IMPOSED BY THIS ARTICLE SHALL BE THOSE GROSS RECEIPTS OBTAINED FROM PROVIDING PASSENGER URBAN MASS TRANSPORTATION WITHIN THE URBAN AREA.

B. When any carrier operates partly within and partly without the state, the gross receipts of the carrier within the state shall be deemed to be all receipts of business beginning and ending within the state, and a proportion based upon the proportion of the mileage within the state to the entire mileage over which business is done, of receipts on all business passing through, into or out of the state.

C. Upon receipt of the taxes the department of transportation shall forthwith transmit them to the state treasurer, who shall credit them to the Arizona highway user revenue fund.

Sec. 5. Section 40-1152, Arizona Revised Statutes, is amended to read:

40-1152. Public transportation services; contracts and agreements; fares and service charges; budget expenditure and levy exception; educational institutions; financial grants

A. In addition to other authority granted pursuant to titles 9, 11 and 40, or city charter, any county or incorporated city or town may provide public transportation services directly or by contract with a private party, common or contract carrier or public service corporation, within or without the corporate limits, within or without the county boundaries, or to any portion thereof as determined by the board of supervisors or the mayor and council and may expend public funds for such purposes. COUNTIES, CITIES AND TOWNS AND CONTRACTORS FURNISHING PUBLIC TRANSPORTATION SERVICES SOLELY AT THE DIRECTION OF AND IN ACCORDANCE WITH A SYSTEM ADOPTED BY THE GOVERNING BODY OF SUCH COUNTY, CITY OR TOWN SHALL NOT BE SUBJECT TO THE PROVISIONS OF CHAPTER 3 OF THIS TITLE.

B. Any county, city or town may, by resolution, provide for a system of fares or service charges to defray all or part of the costs of providing public transportation services. Any levy or expenditures for such services shall be exempt from the provisions of title 42, chapter 2, article 4.

C. Any county, city or town may enter into contracts or agreements pursuant to title 11, chapter 7, article 3, to provide public transportation services on a cooperative or contract basis with one another, or may jointly form a nonprofit corporation to carry out public transportation services in their behalf directly or by contract with a private party, contract or common carrier or public service corporation.

D. In addition to other provisions of law, school districts, universities or colleges may enter into contracts or agreements with cities, towns, counties, any combination thereof, or a nonprofit corporation created by such units of government to provide public transportation services directly or by contract with a private party, contract or common carrier or public service corporation. Such agreements may include provisions for the sale of school buses to such entities for the purpose of providing joint school and public transportation and for reasonable charges for transportation of the general public by school districts, universities or colleges provided adequate liability insurance has been obtained.

E. Any county, city or town or a nonprofit corporation created by such units of government may accept grants, contributions, or loans from this state or the United States, or any instrumentality thereof, for the purpose of financing the acquisition, construction, improvement, operation and maintenance of a public transportation service system directly or by contract with a private party, contract or common carrier or public service corporation.

F. Nothing contained in this article shall permit or be construed to permit a regional council of governments or a regional planning

agency created pursuant to a joint exercise of powers agreement or pursuant to nonprofit corporation statutes to provide public transportation services nor to operate such services contrary to the provisions of section 9-519.

Sec. 6. Section 42-610, Arizona Revised Statutes, is amended to read:

42-610. Unlawful sale, transfer or removal of personal property or a mobile home

A. It is unlawful for the owner, lien holder, conditional vendor or any other person to sell or transfer personal property or remove it from its location until the taxes ~~thereon~~ ON SUCH PROPERTY are paid.

B. IT IS UNLAWFUL FOR ANY PERSON TO MOVE OR SELL A MOBILE HOME, AS DEFINED IN SECTION 42-641, WHICH AD VALOREM TAXES APPLICABLE TO THE MOBILE HOME PURSUANT TO TITLE 42, CHAPTER 3, ARTICLE 3 HAVE NOT BEEN PAID AND ARE DELINQUENT.

C. A PERSON VIOLATING THE PROVISIONS OF THIS SECTION IS GUILTY OF A PETTY OFFENSE. ANY FINE COLLECTED UNDER THIS SUBSECTION SHALL BE DEPOSITED IN THE STATE GENERAL FUND.

Sec. 7. Section 42-646, Arizona Revised Statutes, as amended by Laws 1968, chapter 124, section 2, is amended to read:

42-646. Collection of delinquent tax

When a person who is liable for payment of tax under the provisions of this article evades payment of such tax, or is delinquent in the payment of such tax, the tax shall be collected in the same manner and by the same officers as provided in article 1, chapter 3 of this title for collection of delinquent taxes on unsecured personal property. FOR DELINQUENT TAX REPORT PURPOSES, SUCH OFFICERS SHALL USE THE METHOD AND PROCEDURES OF IDENTIFYING MOBILE HOMES AS PRESCRIBED BY THE MOTOR VEHICLE DIVISION.

Sec. 8. Section 42-646, Arizona Revised Statutes, as amended by Laws 1977, chapter 174, section 6, is amended to read:

42-646. Collection of delinquent tax

A. When a person who is liable for payment of tax under the provisions of this article evades payment of such tax, or is delinquent in the payment of such tax, the tax shall be collected in the same manner and by the same officers as provided in article 1, chapter 3 of this title for collection of delinquent taxes on unsecured personal property. FOR DELINQUENT TAX REPORT PURPOSES, SUCH OFFICERS SHALL USE THE METHOD AND PROCEDURES OF IDENTIFYING MOBILE HOMES AS PRESCRIBED BY THE MOTOR VEHICLE DIVISION.

B. A purchaser of a mobile home who subsequently pays taxes imposed by this article on such mobile home that were levied and became delinquent when such mobile home was the property of a previous owner may bring an action against such previous owner for the amount of such delinquent taxes paid. If the purchaser prevails, such purchaser shall recover damages including reasonable attorney's fees and treble the amount of delinquent taxes paid. The provisions of this subsection shall not apply where such purchaser has specifically assumed in writing, signed by the purchaser and seller, such delinquent tax liability and the delinquent taxes assumed are correctly stated by year and amount due.

Sec. 9. Section 42-1312.01, Arizona Revised Statutes, is amended to read:

42-1312.01. Exemptions

A. In addition to the exemptions prescribed by the terms of section 42-1312, the following categories shall also be exempt:

1. Manufacturing or processing. Machinery or equipment, used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining" and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.

2. Mining. Machinery or equipment used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and the handling, loading or transportation of such extracted material to the surface. "Mining" includes underground, surface and open-pit operations for the extraction of ores and minerals.

3. Telephone and telegraph companies. Tangible personal property consisting of central office switching equipment, switchboards, private branch exchange equipment, microwave radio and carrier equipment and coaxial cable.

4. Electric power production and transmission. Tangible personal property consisting of machinery, equipment or transmission lines used directly in the production or transmission of electrical power, but not including distribution and, in addition, transformers and control equipment used at transmission substation sites.

5. Pipelines. Pipes or valves four inches in diameter or larger used for transporting oil, natural gas, artificial gas, water or coal slurry.

6. Air transportation. Tangible personal property consisting of airplanes, navigational and communication instruments and other accessories and related equipment sold to:

(a) Airlines holding a federal or state certificate of public convenience and necessity or foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used in transportation of persons, property or United States mail in intrastate, interstate or foreign commerce.

(b) Any foreign government for use by such government outside of this state, or sold to persons who are not residents of this state and who will not use such property in this state other than in the removal of such property from this state.

7. Railroads. Tangible personal property consisting of rolling stock, rails, ties, signal control equipment used directly in the transportation of persons or property in intrastate or interstate transportation for hire.

8. Oil or gas. Machinery or equipment used directly in the drilling for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

9. Solar energy devices. A system or series of devices designed primarily to provide heating or cooling or both, or to produce electrical or mechanical power or both, or to pump irrigation water by means of collecting and transferring solar generated energy including devices having the capacity for storing solar energy.

10. Bus companies. Bus companies holding a federal or state certificate of convenience and necessity OR OPERATED BY A CITY, TOWN OR OTHER GOVERNMENTAL ENTITY OR BY ANY PERSON CONTRACTING WITH SUCH GOVERNMENTAL ENTITY AS PART OF A GOVERNMENTALLY ADOPTED AND CONTROLLED PROGRAM TO PROVIDE URBAN MASS TRANSPORTATION. Tangible personal property consisting of buses OR OTHER URBAN MASS TRANSIT VEHICLES used directly in the transportation of persons or property ~~in interstate or intrastate transportation~~ for hire OR PURSUANT TO A GOVERNMENTALLY ADOPTED AND CONTROLLED URBAN MASS TRANSPORTATION PROGRAM.

B. The exemptions provided in subsection A of this section shall not include:

1. Expendable materials.

2. Janitorial equipment and hand tools.

3. Office equipment, furniture and supplies.

4. Tangible personal property used in selling or distributing activities.

5. Tangible personal property used in research.

6. Motor vehicles required to be licensed by this state, except buses OR OTHER URBAN MASS TRANSIT VEHICLES specifically exempted pursuant to paragraph 10 of subsection A of this section, without regard to the use of such motor vehicles.

7. Shops, buildings, docks, depots and all other materials of whatever kind or character not specifically included as exempt.

Sec. 10. Laws 1977, chapter 174, section 10, Arizona Revised Statutes, is amended to read:

Sec. 10. Effective date

The provisions of sections 2, 3, 6 and 7 of this act shall become effective from and after December 31, ~~1978~~ 1979.

Sec. 11. Effective dates

A. The provisions of sections 1 and 8 of this act shall become effective from and after December 31, 1979.

B. The provisions of section 6 of this act shall become effective on October 1, 1978.

Approved by the Governor - June 7, 1978

Filed in the Office of the Secretary of State - June 8, 1978



HOUSE BILL NO. 1135. BY REPRESENTATIVES Burns, Younglund, Waldow, Babitz, Barnhill, Baca Barragan, Bledsoe, Boley, Brinton, Brown, Cantrell, Castro, DeHerrera, DeMoulin, DeNier, Dick, Dittemore, Gustafson, Hamlin, Hayes, Herzberger, Hilsmeier, Hinman, Kirscht, Kramer, Lillpop, Lloyd, Lucero, Neale, Orten, Reeves, Schaefer, Shoemaker, Showalter, Smith, Strahle, Tancredo, Taylor, Trimble, Valdez, Wayland, Winkler, Yost, and Zakhem; also SENATORS Kinnie, Anderson, Wunsch, Soash, Hatcher, Allshouse, Bishop, Comer, Cooper, Decker, Gallagher, Groff, Holme, Hughes, Kadlecek, Kogovsek, MacManus, McCormick, Meiklejohn, Phelps, Plock, D. Sandoval, Schieffelin, Stewart, Stockton, Strickland, Wham, and Woodard.

REDUCING THE EXCISE TAX ON MOTOR FUEL BLENDS CONTAINING ALCOHOL DERIVED FROM AGRICULTURAL COMMODITIES AND FOREST PRODUCTS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 39-27-102 (1) (a), Colorado Revised Statutes 1973, is amended to read:

39-27-102. Tax imposed - special licenses - deposits - penalties. (1) (a) (I) OTHER THAN AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), an excise tax of seven cents per gallon or fraction thereof is imposed and shall be collected on all motor fuel, except aviation fuel used for aviation purposes, sold, offered for sale, or used in this state for any purpose whatsoever, but only one tax of seven cents per gallon or fraction thereof shall be paid upon the same motor fuel in this state. The distributor first receiving the motor fuel in this state after it has left the refinery of its origin or a tank farm at or appurtenant to such refinery, either within or without this state, shall be primarily liable for payment of the tax imposed, unless the distributor shall also be the refiner, in which case the refiner shall be primarily liable. The tax imposed shall be computed upon the total amount of motor fuel, measured in gallons, received by each distributor in this state, and shall be

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

paid in the manner provided in this section.

(II) NOTWITHSTANDING OTHER PROVISIONS OF THIS ARTICLE, THE AMOUNT OF EXCISE TAX ON MOTOR FUEL WHICH CONTAINS A MINIMUM OF TEN PERCENT BLEND BY VOLUME OF ALCOHOL DERIVED FROM AGRICULTURAL COMMODITIES AND FOREST PRODUCTS WITH PURITY OF AT LEAST NINETY-NINE PERCENT ALCOHOL MANUFACTURED IN COLORADO AND SOLD IN COUNTIES OF TWO HUNDRED THOUSAND PERSONS OR MORE IN POPULATION SHALL BE FIVE CENTS PER GALLON LESS THAN MOTOR FUEL WHICH DOES NOT CONTAIN SUCH A BLEND. ALL VEHICLES USED BY STATE AGENCIES AND UNITS OF LOCAL GOVERNMENTS SHALL USE THE BLENDED FUEL OR SUCH OTHER FUEL HAVING LESS POLLUTION EMISSION WITHIN COUNTIES WITH A POPULATION OF TWO HUNDRED THOUSAND PERSONS OR MORE WHEN THE BLENDED FUEL BECOMES AVAILABLE. WHEN THE SALE OF MOTOR FUEL CONTAINING SUCH A BLEND EXCEEDS TWENTY MILLION GALLONS PER YEAR, AN ADJUSTMENT IN THE TAX MAY BE CONSIDERED BY THE GENERAL ASSEMBLY. SAID TAX SHALL CONTINUE TO BE A MOTOR FUEL TAX IN ALL RESPECTS UNDER THE PROVISIONS OF THIS ARTICLE AND THE RULES AND REGULATIONS ADOPTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE THEREUNDER, AND THE AUTHORITY OF SAID EXECUTIVE DIRECTOR TO PROMULGATE RULES AND REGULATIONS SHALL APPLY WITH LIKE FORCE AND EFFECT TO THE TAX IMPOSED UNDER THIS SUBPARAGRAPH (II).

SECTION 2. Effective date. This act shall take effect July 1, 1978.

SECTION 3. Safety clause. The general assembly hereby

finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Ronald H. Strahle SPEAKER OF THE HOUSE OF REPRESENTATIVES	Fred E. Anderson PRESIDENT OF THE SENATE
Lorraine F. Lombardi CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES	Marjorie L. Rutenbeck SECRETARY OF THE SENATE

APPROVED_____

Richard D. Lamm
GOVERNOR OF THE STATE OF COLORADO

House Bill No. 5021

PUBLIC ACT NO. 78-322

AN ACT CONCERNING MOTOR FUEL TAX ON FUEL USED IN CERTAIN VEHICLES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 12-460 of the general statutes is repealed and the following is substituted in lieu thereof:

The payment of the tax provided for by section 12-458 shall be subject to refund in accordance with the provisions of section 12-459 when such fuel has been sold for use by any of the following: (1) Fuel sold to a municipality for use by school bus contractors exclusively for the purpose of transporting children to and from school; (2) fuel sold to a municipality and used in vehicles owned and operated or leased and operated by such municipality or the state of Connecticut for governmental purposes; (3) ambulances owned by hospitals; (4) ambulances owned by any nonprofit civic organization approved by the commissioner; (5) motor vehicles registered exclusively for farming purposes; (6) vehicles designed and constructed primarily for purposes other than for highway use and which do not have the essential characteristics of a motor vehicle as determined and approved by the commissioner; (7) motor vehicles owned and operated or leased and operated by a transit district formed under the provisions of chapter 103a or any special act, for the purposes of such transit district; (8) ANY HIGH-OCCUPANCY COMMUTER VEHICLE MANUFACTURED AND EQUIPPED IN SUCH A MANNER AS TO PROVIDE A SEATING CAPACITY OF AT LEAST TEN BUT NOT MORE THAN FIFTEEN PASSENGERS, THE PRIMARY PURPOSE OF WHICH SHALL BE THE TRANSPORT OF PERSONS BETWEEN HOME AND WORK ON A DAILY BASIS, WHICH IS OWNED BY OR LEASED TO A CORPORATION, AN EMPLOYEE OF A CORPORATION OR AN EMPLOYEE OF ANY LOCAL, STATE OR FEDERAL GOVERNMENT UNIT OR AGENCY LOCATED IN CONNECTICUT, PROVIDED SUCH VEHICLE HAS A MINIMUM AVERAGE DAILY PASSENGER USAGE OF NINE PERSONS TO AND FROM WORK, AND SUCH REFUND OF TAX SHALL BE RELATED EXCLUSIVELY TO THE USE OF SUCH VEHICLE IN TRANSPORTING SUCH PERSONS BETWEEN HOME AND WORK.

Sec. 2. Section 12-459 of the general statutes, as amended by public act 77-542, is repealed and the following is substituted in lieu thereof:

(a) Any person, other than one engaged in the business of farming, who buys any fuel and uses the same otherwise than in motor vehicles licensed or required to be licensed to operate upon the public highways of this state shall be entitled to receive a refund to the extent of the Connecticut tax paid on such fuel, except that there shall be no refund of tax paid on fuel taken out of this state in a fuel tank connected with the engine of a motor vehicle and consumed outside this state; provided application for such refund shall be filed with the commissioner within one year from the date of such purchase. The United States government shall be entitled to receive a refund to the amount of state tax paid on any purchase of motor fuel. Any Connecticut motor bus company engaged in the business of carrying passengers for hire [over the town and city roads] in this state in common carrier motor vehicles and any person, association or corporation engaged in the business of operating taxicabs in this state pursuant to a certificate under chapter 287 shall be entitled to receive a refund to the amount of fifty per cent of state tax paid on any purchase of motor fuel or special fuel applicable to mileage on [town and city] ANY roads in this state, provided application for such refund shall be filed with the commissioner within one year from the date of such purchase. ANY PERSON, ASSOCIATION OR CORPORATION ENGAGED IN THE BUSINESS OF OPERATING A MOTOR VEHICLE IN LIVERY SERVICE UNDER THE AUTHORITY OF A PERMIT ISSUED IN ACCORDANCE WITH CHAPTER 288 OR A MOTOR BUS OVER HIGHWAYS WITHIN THIS STATE AND BETWEEN POINTS WITHIN AND OUTSIDE THIS STATE UNDER THE AUTHORITY OF A PERMIT ISSUED IN ACCORDANCE WITH CHAPTER 286, WHICH MOTOR VEHICLE OR MOTOR BUS IS USED FOR THE TRANSPORTATION OF PASSENGERS FOR HIRE TO OR FROM AIRPORT FACILITIES, SHALL BE ENTITLED TO RECEIVE A REFUND IN THE AMOUNT OF FIFTY PER CENT OF THE STATE TAX PAID ON ANY PURCHASE OF MOTOR FUEL OR SPECIAL FUEL USED ON ROADS IN THIS STATE EXCLUSIVELY IN SUCH TRANSPORTATION OF PASSENGERS TO OR FROM AIRPORT FACILITIES, PROVIDED APPLICATION FOR SUCH REFUND SHALL BE FILED WITH THE COMMISSIONER WITHIN ONE YEAR FROM THE DATE OF SUCH PURCHASE. All claims for such refunds shall be accompanied by original invoices or sales receipts or other statements of fact satisfactory to the commissioner showing that the tax of this state has been paid on such gasoline involved in

such refund and other such information as he deems necessary for the determination of such claims.

(b) Any person engaged in the business of farming who purchases fuel and uses the same for farming purposes other than in motor vehicles licensed or required to be licensed to operate upon the highways of this state shall be entitled to receive a refund to the extent of the amount of the Connecticut tax paid on such fuel, except that there shall be no refund of tax paid on fuel taken out of this state in a fuel tank connected with the engine of a motor vehicle and consumed outside this state; provided any claim for refund of said tax for fuel used during a twelve-month period ending on December thirty-first of any year shall be filed with the commissioner on or before March thirty-first of the succeeding year; except that the initial claim may include fuel used from July 1, 1969, to December 31, 1969, and shall be filed on or before March 31, 1970. Such claim shall be on a form prescribed by the commissioner which shall contain such information as he deems necessary for the determination of such claim.

(c) Each claim for refund filed under subsection (a) or (b) of this section must pertain to at least one hundred gallons of gasoline eligible for tax refund.

(d) The commissioner shall, within forty-five days after receipt of any claims under the provisions of subsection (a) or (b) of this section, transmit all claims approved by him to the comptroller, who shall draw his order upon the treasurer for payment.

(e) Any person who makes a false or fraudulent claim for refund under the provisions of subsection (a) or (b) of this section shall be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned not less than six months nor more than one year.

Sec. 3. Section 12-458 of the general statutes is repealed and the following is substituted in lieu thereof:

Each distributor shall, on or before the twenty-fifth day of each month, render a report to the commissioner, which shall state the number of gallons of fuel sold or used by him during the preceding calendar month, on forms to be furnished by the commissioner, and such report shall contain such further information as the commissioner shall prescribe. The commissioner may make public the number of gallons of fuel sold or used by the

distributor, as contained in such report, notwithstanding the provisions of section 12-15 or any other section. For purposes of this section fuel sold shall include but not be limited to the transfer of fuel by a distributor into a receptacle from which fuel is supplied or intended to be supplied to other than such distributor's motor vehicles. On said date and coincident with the filing of such report each distributor shall pay to the commissioner for the account of the purchaser or consumer a tax of eleven cents on each gallon of such fuels sold or used in this state during the preceding calendar month, except such fuel as may have been sold to the United States government, or sold to a municipality, for use by [school bus contractors] ANY CONTRACTOR PERFORMING A SERVICE FOR SUCH MUNICIPALITY IN ACCORDANCE WITH A CONTRACT, provided such fuel is used by such [contractors exclusively for the purpose of transporting children to and from school] CONTRACTOR EXCLUSIVELY FOR THE PURPOSES OF AND IN ACCORDANCE WITH SUCH CONTRACT, or sold to a municipality, a transit district or the state of Connecticut, at other than a retail outlet, for governmental purposes and used in vehicles owned and operated or leased and operated by such municipality, such transit district or the state, or sold by one licensed distributor to another licensed distributor, or transferred from storage within this state to some point outside of this state, or sold to the holder of a permit under the provisions of section 12-458a, for sale or use outside of this state. Any distributor failing to pay said tax when due shall be liable for interest at the rate of twelve per cent per annum on the amount of tax from the time when the tax becomes payable until the same is paid.

Sec. 4. Section 12-466 of the general statutes is repealed and the following is substituted in lieu thereof:

An excise tax of eleven cents per gallon, to be computed in the manner hereinafter set forth, is imposed upon all persons using special fuel within this state in a motor vehicle licensed, or required to be licensed, to operate upon the public highways of this state. No such tax is imposed upon any special fuel used by the United States or any of its agencies or sold to a municipality of this state for use [in school busses contracted for the transportation of school children to and from school pursuant to the

provisions of section 10-220] BY ANY CONTRACTOR PERFORMING A SERVICE FOR SUCH MUNICIPALITY IN ACCORDANCE WITH A CONTRACT, PROVIDED SUCH FUEL IS USED BY SUCH CONTRACTOR EXCLUSIVELY FOR THE PURPOSES OF AND IN ACCORDANCE WITH SUCH CONTRACT, or sold to a municipality, or the state, at other than a retail outlet, for governmental purposes and used in vehicles owned and operated or leased and operated by such municipality or said state or used in any of the vehicles enumerated in section 12-460.

Sec. 5. This act shall take effect July 1, 1978 and shall be applicable to motor fuel or special fuel purchased for use on or after said date, except that any provisions concerning refund of tax with respect to motor fuel or special fuel used in taxicabs shall be applicable to such fuel purchased for such use on or after July 1, 1977.

Certified as correct by

_____

Legislative Commissioner.

_____

Clerk of the Senate.

_____

Clerk of the House.

Approved _____, 1978

_____

Governor.

An Act

ENROLLED HOUSE
BILL NO. 1681

BY: WINN, DUNN, HENRY and WEICHEL of the HOUSE

and

BERRONG, GILES and TALIAFERRO of the SENATE

Correctly Enrolled ____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING 68 O.S. 1971, SECTIONS 701 AND 709; DEFINING TERMS; PROVIDING FOR LICENSING PROCEDURES; INCREASING THE AMOUNT OF SURETY BOND; PROVIDING FOR SPECIAL FUEL DEALERS' LICENSES AND SPECIAL FUEL USERS' LICENSES; PROVIDING FOR DUPLICATE LICENSES; SETTING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. 68 O.S. 1971, Section 701, is amended to read as follows:

Section 701. The following words and phrases when us- act are hereby defined as follows:

(a) The term "motor vehicle" or "vehicle" means and automobile, truck, truck tractor, bus, vehicle or mecha- contrivance which is propelled by an internal combustion motor and not used in the air or upon fixed rails or tracks.

(b) The term "person" means and includes every natural person, fiduciary, individual, partnership, firm, association, corporation, business trust, or combination acting as a unit, or any receiver appointed by any state or federal court, and the use of the singular number shall include the plural. Whenever used in any clause prescribing and imposing a fine or imprisonment or both, the term "person" as applied to an association means and includes the parties

Correctly Enrolled for ____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

or members thereof, and as applied to corporations, the officers thereof.

(c) "Commission" or "Tax Commission" means the Oklahoma Tax Commission.

(d) The term "special fuel" or "fuel" means and includes all combustible gases and liquids, including liquefied gases, which exist in the gaseous state at a temperature of sixty degrees (60°) Fahrenheit and at a pressure of 14.7 pounds per square inch absolute, and any liquid petroleum product or substitute therefor, including diesel fuel, kerosene, distillate, condensate, or similar products that may be used as fuel to generate power for the propulsion of motor vehicles upon the public highways of this state, except such fuels as are subject to the tax imposed by the Gasoline or Motor Fuel Excise Tax Act.

(e) The term "use" shall mean and include the following: (1) the delivery or placing of special fuel into the fuel supply tank or tanks of any motor vehicle in this state for use in whole or in part to propel such vehicle on the public highways of this state; (2) the consumption on the public highways of Oklahoma of any special fuel imported into this state in the fuel supply tank or tanks of any motor vehicle using the public highways of this state for commercial purposes; (3) the consumption of special fuel in any type of motor vehicle on the public highways of this state for any purpose by any person who refuses to divulge the source of such fuel.

(f) The term "public highway" means and includes every road, highway, street, way or place within this state, of whatever nature, generally open to the use of the public as a matter of right for the purposes of vehicular travel, including a toll highway, and including streets and alleys of any town or city, notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.

Correctly Enrolled, Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

(g) The term "gallon" means one (1) United States standard gallon at a temperature of sixty degrees (60°) Fahrenheit.

(h) The term "special fuel dealer" shall mean any person engaged in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of any motor vehicle.

(i) The term "special fuel user" shall mean and include any person other than a special fuel dealer, who uses special fuel in this state, within the meanings of the word "use" as defined in this act, and shall include any person who consumes special fuel to propel a motor vehicle upon the public highways of this state when such special fuel has been purchased or obtained from any source free from the payment to this state of the tax levied by this act.

(j) The term "retail outlet" means every person who offers for sale, sells or causes to be sold all grades of diesel fuel, purchasing diesel fuel and delivering diesel fuel into the fuel supply tank or tanks of any motor vehicle.

SECTION 2. 68 O.S. 1971, Section 709, is amended to read as follows:

Section 709. (a) Before any person uses any special fuel in this state, within the meanings of the word "use" as defined herein, such person shall file an application for and obtain the license (a special fuel dealer's license or a special fuel user's license) required herein to cover such use. Provided, however, that persons exempted from the payment of the tax herein imposed shall not be required to obtain a license. The application required by this section shall be verified by affidavit and filed on a form prescribed and furnished by the Tax Commission showing the name and address and kind of business of the applicant, the type of license desired, a designation of the principal place of business and such other information as the Tax Commission may require. Such application must also contain as a condition to the issuance of the license, an

agreement by the applicant to comply with the requirements of this act and the rules and regulations of the Tax Commission.

(b) Before any such application may be approved by the Tax Commission, the applicant must file a bond payable to the State of Oklahoma conditioned upon compliance with the provisions of this act and the rules and regulations of the Tax Commission in the sum of not more than Twenty-five Thousand Dollars ($25,000.00), the amount thereof to be fixed by an order of the Tax Commission. The amount of any such bond required may be increased or reduced by the Tax Commission at any time. Provided, however, that one bond in an amount fixed by the Tax Commission of not more than Fifty Thousand Dollars ($50,000.00) may be made to secure the payment of the tax due the State of Oklahoma under the provisions of this Act, and the other motor fuel tax laws.

(c) Upon approval of such application and bond, the Tax Commission shall issue to the applicant a nontransferable special fuel dealer's license or special fuel user's license, as the case may be, bearing a distinctive number. Such license shall remain in full force until surrendered, suspended or cancelled in the manner provided by law. The license of each special fuel dealer shall be valid only for the use of special fuel by the person to whom it is issued and shall be displayed conspicuously in the principal place of business of the holder thereof. The license issued to a special fuel user shall be valid only for the use of special fuel in the operation of motor vehicles on the highways of this state by the person to whom it is issued, including motor vehicles, transporting persons or property in furtherance of the business of said licensee under a lease, a contract or any other arrangement, whether permanent or temporary in nature.

(d) Each special fuel dealer or special fuel user must make application for and secure a duplicate of his license for each station or location operated by such dealer or user at which special

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fuel is placed into the fuel tanks of motor vehicles. The application must be made on a form prescribed and furnished by the Tax Commission, showing the name, address and license number of the applicant, the location of the station or storage for which the duplicate is applied, and such other information as the Tax Commission may require. Upon approval of such application, the Tax Commission shall issue to the applicant a nontransferable duplicate of such special fuel dealer's or special fuel user's license. Each duplicate license shall continue in full force and effect until surrendered by the person holding such license, or until cancelled by the Tax Commission. There shall be displayed at each station or location, where special fuel is placed into fuel supply tanks of motor vehicles, the duplicate special fuel dealer's or special fuel user's license under which it is operated. Such license shall be clearly visible from the driver's seat of any vehicle being serviced.

(e) It shall be unlawful for any person, notwithstanding that such person holds a valid license as a distributor or importer-user of motor fuel or gasoline, to act or carry on any operation as a special fuel dealer or a special fuel user in this state unless such person is the holder of an uncancelled special fuel dealer's license or a special fuel user's license, as the case may be, as herein required, issued to him by the Oklahoma Tax Commission. A license issued under the provisions of other motor fuel or gasoline tax laws shall not authorize the holder thereof to use special fuel. Any retail outlet as defined herein may, at its option, pay to the supplier, for the benefit of the state, all taxes due on all special fuels purchased from suppliers or may report all special fuels sales and make payment of all taxes due as provided in Section 710 of this act.

SECTION 3. This act shall become effective July 1, 1978.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

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declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 22nd day of March, 1978.

Wm P. Willis
Speaker of the House of Representatives.

Passed the Senate the 20th day of March, 1978.

Robert M Murphy
President of the Senate.

OFFICE OF THE GOVERNOR

Received by the Governor this 23rd day of March, 1978, at 3:40 o'clock P M.

By: Robert H. Smith

Approved by the Governor of the State of Oklahoma the 29th day of March, 1978, at 10:3[illegible] o'clock A M.

David Boren
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 29th day of March, 1978, at 2:45 o'clock P M.

Jerome W. Byrd

By:

Correctly Enrolled

Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

ENR. H. B. NO. 1681
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Page 6

CHAPTER 71

An Act to amend and reenact § 58-744 of the Code of Virginia, relating to the levy of tax on special motor fuels and exemptions thereto.

[H 583]

Approved MAR 9 1978

Be it enacted by the General Assembly of Virginia:

1. That § 58-744 of the Code of Virginia is amended and reenacted as follows:

§ 58-744. Levy of tax and exemptions.– *A.* A tax at the rate of nine cents per gallon is hereby imposed upon all fuel sold or delivered by any supplier to any licensed user-seller, or used by any such supplier in any motor vehicle owned, leased, or operated by him, or delivered by such supplier directly into the fuel supply tank of a motor vehicle, or imported by a user-seller into, or acquired tax free by a user-seller or user in this State for resale or use for the propulsion of a motor vehicle.

Except that (1) fuel sold to the United States or any of the governmental agencies thereof, (2) fuel sold to the State of Virginia or any political subdivision thereof, (3) fuel sold to any volunteer fire-fighting company or volunteer rescue squad within the State for use in equipment used for fire-fighting and rescue purposes ~~or~~ , (4) aviation fuel sold to aviation consumers *or (5) liquid petroleum gas, commonly referred to as "LP gas" or "propane gas," sold or delivered to any licensed user-seller that does not own or operate a motor vehicle propelled by liquified petroleum gas or maintain storage facilities for resale or delivery of such fuel for highway consumption* shall not be subject to the tax ~~hereunder~~ *imposed by this subsection A* .

B. A tax at the rate of four cents per gallon is hereby imposed upon all aviation fuel sold or delivered by any supplier, other than an aviation consumer, to any licensed user-seller or used by any such supplier, other than an aviation consumer, in any aircraft owned, leased or operated by him or delivered by such supplier directly into the fuel supply tank of an aircraft, other than an aircraft owned, leased or operated by a licensed aviation consumer, or imported by a user-seller into, or acquired tax free by a user-seller or user in this State for resale or use for the propulsion of an aircraft and a tax at the rate of four cents per gallon is hereby imposed upon the first one hundred thousand gallons of aviation fuel, excluding bonded aviation fuel, purchased or acquired for use by any aviation consumer in any fiscal year, and a tax at the rate of one quarter of one cent per gallon on all aviation fuel, excluding bonded aviation fuel, purchased or acquired for use in excess of one hundred thousand gallons by an aviation consumer in any fiscal year. Aviation consumers shall be allowed credit for aviation fuels purchased tax paid not to exceed the amount due and not to be carried forward to the next fiscal year. Any person, who shall, while licensed or unlicensed under this chapter, use, acquire for use, sell or deliver for use in highway vehicles any aviation fuel taxable under this chapter shall be liable for the tax imposed at the

rate of nine cents per gallon under this section, along with any penalties and interest which may accrue.

C. The tax levied under this chapter on fuel sold to any corporation, partnership or other entity performing transportation under contract or lease with any transportation district when such special fuels or other like products of petroleum are used in a motor vehicle controlled by a transportation district created under the Transportation District Act of 1964 which motor vehicle is used in providing transit service by the transportation district by contract or lease shall be refunded to such corporation, partnership or other entity upon application in the manner provided for in §§ 58-753 and 58-753.1.

President of the Senate

Speaker of the House of Delegates

Approved:

Governor

CHAPTER 663

An Act to amend and reenact § 58-757.01 of the Code of Virginia, relating to refunds of fuel taxes to certain carriers of passengers.

[H 916]

Approved APR 8 1978

Be it enacted by the General Assembly of Virginia:

1. That § 58-757.01 of the Code of Virginia is amended and reenacted as follows:

§ 58-757.01. Who entitled to refund; applications; time for filing; records to be kept; applicability of other laws as to refunds; conditions to be shown by taxicab services.—Notwithstanding any other provisions of law, any person, firm or corporation who purchases motor fuel for consumption in motor vehicles used in operating urban or suburban bus lines or taxicab services in this State, upon which motor fuel taxes imposed by the laws of this State have been paid, shall be entitled to a refund of such motor fuel taxes upon presentation to the Commissioner of an application for such refund setting forth the fact that such motor fuel was consumed in motor vehicles while being used in operating urban or suburban bus lines or taxicab services in this State, which are hereby defined as bus lines or taxicab services the majority of whose passengers use the buses or taxicabs for traveling a distance of not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools.

Appropriate records and books shall be kept and accurately maintained by the applicant, showing the quantity and cost of the fuel purchased, the date of purchase, the dealer or retailer from whom such fuel was purchased and how such fuel was used by the applicant, so as to satisfy the Commissioner of the correctness of any refund applied for. Such books and records shall be available for inspection by the Commissioner at all reasonable times.

Any consumer entitled to such refund shall file with the Commissioner an application in writing duly signed by the applicant, accompanied by a paid ticket or invoice from the dealer or retailer showing such purchase. Such application shall set forth the total amount of such fuel so purchased and used by such consumer in operating urban or suburban bus lines or taxicab services upon any of the public highways, streets or alleys of this State, and how used. The Commissioner, upon the presentation of such application and such paid ticket, invoice or other document, shall pay to such consumer from the taxes collected on motor fuels a refund of such motor fuel taxes paid on fuels sold, delivered and used as aforesaid. But the application for refund as provided herein, must be filed with the Commissioner within three months from the date of the sale or invoice on forms prepared and furnished by the Commissioner.

Except as otherwise provided in this chapter, all provisions of law applicable to the refund of gasoline taxes and other motor fuel taxes by the Commissioner shall apply to the refunds authorized by

this chapter. Provided, however, that cities and towns and any county having withdrawn its roads from the secondary system of State highways under the provisions of § 11 of Chapter 415 of the Acts of 1932 shall receive their proportionate share of such special funds as is now provided by law with respect to other motor fuel tax receipts.

No refund shall be granted for motor vehicle fuel taxes paid on taxicab services unless the applicant ~~shall demonstrate~~ *is the holder of the certificate of authority from the State Corporation Commission, and demonstrates* that the refund is necessary to the continued provision of such services and in the public interest under honest, economical and efficient management; provided, however, that the showing of an operating deficit for any continuous six-month period ending during the immediately preceding two-year period prior to the date of application shall be deemed prima facie evidence of the necessity for such refund. ~~Provided further, that~~ *No such applicant shall be denied a refund by reason of the fee arrangement between the holder of the certificate and the driver or drivers, if all other conditions of this section have been met.* Any refunds made hereunder shall be deducted from the urban highway funds allocated to the highway construction district in which the Consumer has its principal place of business.

President of the Senate

Speaker of the House of Delegates

Approved:

Governor

CHAPTER 721-H.F.No.2250

[Coded in Part]

An act relating to taxation; increasing income tax credits for certain taxpayers; removing sales tax from residential heating fuels; providing income tax credits for homemakers and members of the national guard; repealing the employers excise tax; reducing certain income tax rates; excluding certain retirement benefits from income taxation; providing for retroactive carryforward of feedlot pollution control credit; increasing the size of a homestead qualifying for property tax refund; providing for distribution of taconite production tax to the range association of municipalities and schools; providing funds for taconite property tax relief account; appropriating money; amending Minnesota Statutes 1976, Sections 290.06, Subdivision 3d, and by adding subdivisions; 290A.03, Subdivision 6; 297A.25, Subdivision 1; and Minnesota Statutes, 1977 Supplement, Sections 290.01, Subdivision 20; 290.06, Subdivisions 2c, 3c and 9a; 290.37, Subdivision 1; 298.28, Subdivision 1; and 298.293; repealing Minnesota Statutes 1976, Sections 290.031, Subdivisions 1, 2, 3, 5 and 6; 290.921; 290.922; and Minnesota Statutes, 1977 Supplement, Sections 290.031, Subdivision 4; 290.08, Subdivision 6.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

ARTICLE I: HOME HEATING SALES TAX

Section 1. Minnesota Statutes 1976, Section 297A.25, Subdivision 1, is amended to read:

297A.25 **EXEMPTIONS.** Subdivision 1. The following are specifically exempted from the taxes imposed by sections 297A.01 to 297A.44:

Changes or additions indicated by underline deletions by ~~strike-out~~

(a) The gross receipts from the sale of food products including but not limited to cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products;

(b) The gross receipts from the sale of prescribed drugs and medicine intended for use, internal or external, in the cure, mitigation, treatment or prevention of illness or disease in human beings and products consumed by humans for the preservation of health, including prescription glasses, therapeutic and prosthetic devices, but not including cosmetics or toilet articles notwithstanding the presence of medicinal ingredients therein;

(c) The gross receipts from the sale of and the storage, use or other consumption in Minnesota of tangible personal property, tickets, or admissions, electricity, gas, or local exchange telephone service, which under the Constitution or laws of the United States or under the Constitution of Minnesota, the state of Minnesota is prohibited from taxing;

(d) The gross receipts from the sale of tangible personal property (i) which, without intermediate use, is shipped or transported outside Minnesota and thereafter used in a trade or business or is stored, processed, fabricated or manufactured into, attached to or incorporated into other tangible personal property transported or shipped outside Minnesota and thereafter used in a trade or business outside Minnesota, and which is not thereafter returned to a point within Minnesota, except in the course of interstate commerce (storage shall not constitute intermediate use); or (ii) which the seller delivers to a common carrier for delivery outside Minnesota, places in the United States mail or parcel post directed to the purchaser outside Minnesota, or delivers to the purchaser outside Minnesota by means of the seller's own delivery vehicles, and which is not thereafter returned to a point within Minnesota, except in the course of interstate commerce;

(e) The gross receipts from the sale of packing materials used to pack and ship household goods, the ultimate destination of which is outside the state of Minnesota and which are not thereafter returned to a point within Minnesota, except in the course of interstate commerce;

(f) The gross receipts from the sale of and storage, use or consumption of petroleum products upon which a tax has been imposed under the provisions of chapter 296, whether or not any part of said tax may be subsequently refunded;

(g) The gross receipts from the sale of clothing and wearing apparel except the following:

(i) all articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semi-precious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with precious metals or imitations thereof; watches; clocks; cases and movements for watches and clocks, gold, gold-plated, silver, or sterling flatware or hollow ware and silver-plated hollow ware; opera glasses; lorgnettes; marine glasses; field glasses and binoculars.

Changes or additions indicated by underline deletions by ~~strikeout~~

(ii) articles made of fur on the hide or pelt, and articles of which such fur is the component material or chief value, but only if such value is more than three times the value of the next most valuable component material.

(iii) perfume, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous and toilet powders. The tax imposed by this act shall not apply to lotion, oil, powder, or other article intended to be used or applied only in the case of babies.

(iv) trunks, valises, traveling bags, suitcases, satchels, overnight bags, hat boxes for use by travelers, beach bags, bathing suit bags, brief cases made of leather or imitation leather, salesmen's sample and display cases, purses, handbags, pocketbooks, wallets, billfolds, card, pass, and key cases and toilet cases.

(h) The gross receipts from the sale of and the storage, use, or consumption of all materials, including chemicals, fuels, petroleum products, lubricants, packaging materials, including returnable containers used in packaging food and beverage products, feeds, seeds, fertilizers, electricity, gas and steam, used or consumed in agricultural or industrial production of personal property intended to be sold ultimately at retail, whether or not the item so used becomes an ingredient or constituent part of the property produced. Such production shall include, but is not limited to, research, development, design or production of any tangible personal property, manufacturing, processing (other than by restaurants and consumers) of agricultural products whether vegetable or animal, commercial fishing, refining, smelting, reducing, brewing, distilling, printing, mining, quarrying, lumbering, generating electricity and the production of road building materials. Such production shall not include painting, cleaning, repairing or similar processing of property except as part of the original manufacturing process. Machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture and fixtures, used in such production and fuel, electricity, gas or steam used for space heating or lighting, are not included within this exemption; however, accessory tools, equipment and other short lived items, which are separate detachable units used in producing a direct effect upon the product, where such items have an ordinary useful life of less than 12 months, are included within the exemption provided herein;

(i) The gross receipts from the sale of and storage, use or other consumption in Minnesota of tangible personal property (except as provided in section 297A.14) which is used or consumed in producing any publication regularly issued at average intervals not exceeding three months, and any such publication. For purposes of this subsection, "publication" as used herein shall include, without limiting the foregoing, a legal newspaper as defined by Minnesota Statutes 1965, Section 331.02, and any supplements or enclosures with or part of said newspaper; and the gross receipts of any advertising contained therein or therewith shall be exempt. For this purpose, advertising in any such publication shall be deemed to be a service and not tangible personal property, and persons or their agents who publish or sell such newspapers shall be deemed to be engaging in a service with respect to gross receipts realized from such newsgathering or publishing activities by them, including the sale of advertising. Machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture and fixtures used in such publication and fuel, electricity, gas or steam used for space heating or lighting, are

not exempt:

(j) The gross receipts from all sales of tangible personal property to, and all storage, use or consumption of such property by, the United States and its agencies and instrumentalities or a state and its agencies, instrumentalities and political subdivisions;

(k) The gross receipts from the isolated or occasional sale of tangible personal property in Minnesota not made in the normal course of business of selling that kind of property, and the storage, use, or consumption of property acquired as a result of such a sale;

(l) The gross receipts from sales of rolling stock and the storage, use or other consumption of such property by railroads, freight line companies, sleeping car companies and express companies taxed on the gross earnings basis in lieu of ad valorem taxes. For purposes of this clause "rolling stock" is defined as the portable or moving apparatus and machinery of any such company which moves on the road, and includes, but is not limited to, engines, cars, tenders, coaches, sleeping cars and parts necessary for the repair and maintenance of such rolling stock.

(m) The gross receipts from sales of airflight equipment and the storage, use or other consumption of such property by airline companies taxed under the provisions of sections 270.071 to 270.079. For purposes of this clause, "airflight equipment" includes airplanes and parts necessary for the repair and maintenance of such airflight equipment, and flight simulators.

(n) The gross receipts from the sale of telephone central office telephone equipment used in furnishing intrastate and interstate telephone service to the public.

(o) The gross receipts from the sale of and the storage, use or other consumption by persons taxed under the in lieu provisions of chapter 298, of mill liners, grinding rods and grinding balls which are substantially consumed in the production of taconite, the material of which primarily is added to and becomes a part of the material being processed.

(p) The gross receipts from the sale of tangible personal property to, and the storage, use or other consumption of such property by, any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious or educational purposes if the property purchased is to be used in the performance of charitable, religious or educational functions, or any senior citizen group organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any private shareholders;

(q) The gross receipts from the sale of caskets and burial vaults;

(r) The gross receipts from the sale of cigarettes.

(s) The gross receipts from the sale of an automobile or other conveyance if the purchaser is assisted by a grant from the United States in accordance with 38 United

States Code, Section 1901, as amended.

(t) The gross receipts from the sale to the licensed aircraft dealer of an aircraft for which a commercial use permit has been issued pursuant to section 360.654, if the aircraft is resold while the permit is in effect.

(u) The gross receipts from the sale of building materials to be used in the construction or remodeling of a residence when the construction or remodeling is financed in whole or in part by the United States in accordance with 38 United States Code, Sections 801 to 805, as amended. This exemption shall not be effective at time of sale of the materials to contractors, subcontractors, builders or owners, but shall be applicable only upon a claim for refund to the commissioner of revenue filed by recipients of the benefits provided in Title 38 United States Code, Chapter 21, as amended. The commissioner shall provide by regulation for the refund of taxes paid on sales exempt in accordance with this paragraph.

(v) The gross receipts from the sale of textbooks which are prescribed for use in conjunction with a course of study in a public or private school, college, university and business or trade school to students who are regularly enrolled at such institutions. For purposes of this clause a "public school" is defined as one that furnishes course of study, enrollment and staff that meets standards of the state board of education and a private school is one which under the standards of the state board of education, provides an education substantially equivalent to that furnished at a public school. Business and trade schools shall mean such schools licensed pursuant to section 141.25.

(w) The gross receipts from the sale of and the storage of material designed to advertise and promote the sale of merchandise or services, which material is purchased and stored for the purpose of subsequently shipping or otherwise transferring outside the state by the purchaser for use thereafter solely outside the state of Minnesota.

(x) The gross receipt from the sale of residential heating fuels in the following manner:

(i) all fuel oil, coal, wood, steam, propane gas, and L.P. gas sold to residential customers for residential use;

(ii) natural gas sold for residential use to customers who are metered and billed as residential users and who use natural gas for their primary source of residential heat, for the billing months of November, December, January, February, March and April;

(iii) electricity sold for residential use to customers who are metered and billed as residential users and who use electricity for their primary source of residential heat, for the billing months of November, December, January, February, March and April.

Sec. 2. **EFFECTIVE DATE.** Section 1 is effective the day following final enactment.

ARTICLE II: PERSONAL CREDITS

Section 1. Minnesota Statutes, 1977 Supplement, Section 290.06, Subdivision 3c, is amended to read:

Subd. 3c. **CREDITS AGAINST TAX.** Notwithstanding the provisions of subdivision 2a for taxable years which begin after December 31, 1977, the taxes due under the computation in accordance with section 290.06 shall be credited with the following amounts:

(1) In the case of an unmarried individual, and, except as provided in paragraph 6, in the case of the estate of a decedent, ~~$30~~ $40, and in the case of a trust, $5;

(2) In the case of a married individual, living with husband or wife, and in the case of a head of a household, ~~$60~~ $80. If such husband and wife make separate returns the personal exemption may be taken by either or divided between them;

(3) In the case of an individual, ~~$30~~ $40 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer. One taxpayer only shall be allowed this credit with respect to any given dependent. In the case of the head of a household, a credit for one dependent shall be disallowed. A payment to a divorced or separated wife, other than a payment of the kind referred to in section 290.072, subdivision 3, shall not be considered a payment by the husband for the support of any dependent.

(4) (a) In the case of an unmarried individual who has attained the age of 65 before the close of his taxable year, an additional ~~$30~~ $20;

(b) In the case of an unmarried individual who is blind at the close of the taxable year, an additional ~~$30~~ $20;

(c) In the case of a married individual, living with husband or wife, an additional ~~$30~~ $20 for each spouse who has attained the age of 65 before the close of the individual's taxable year, and an additional ~~$30~~ $20 for each spouse who is blind at the close of the individual's taxable year. If such husband and wife make separate returns, these credits may be taken by either or divided between them;

(d) For the purposes of sub-paragraphs (b) and (c) of paragraph (4), an individual is blind if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(e) In the case of an unmarried individual who is deaf at the close of the taxable year, an additional ~~$30~~ $20;

(f) In the case of a married individual, an additional ~~$30~~ $20 for each spouse who is deaf at the close of the taxable year. If the husband and wife make separate returns, these credits may be taken by either or divided between them.

HOUSE
SPECIAL PRINTING
As Enrolled

H.B. No. 1

AN ACT

relating to exemptions from the state inheritance tax for certain Class A beneficiaries and providing for certain exempt transfers; relating to the taxation or exemption from taxation of the receipts from the sale, production, distribution, lease or rental of, and the storage, use, or other consumption of gas and electricity for residential uses under state and local sales and use taxes; amending Articles 14.015 and 14.02, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended; amending various provisions of Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended; and amending the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Article 1

SECTION 1. Article 14.02, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

Art. 14.02. CLASS A. (1) For taxable property ~~[If]~~ passing to or for the use of husband or wife, or any direct lineal descendant of husband or wife, or any direct lineal descendant or ascendant of the decedent, or to legally adopted child or children, or any direct lineal descendant of adopted child or children of the decedent, or to the husband of a daughter, or the wife of a son,

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the tax shall be one (1) per cent on any value [~~in excess of Twenty-five Thousand Dollars ($25,000) and~~] not exceeding Fifty Thousand Dollars ($50,000); two (2) per cent on any value in excess of Fifty Thousand Dollars ($50,000), and not exceeding One Hundred Thousand Dollars ($100,000); three (3) per cent on any value in excess of One Hundred Thousand Dollars ($100,000), and not exceeding Two Hundred Thousand Dollars ($200,000); four (4) per cent on any value in excess of Two Hundred Thousand Dollars ($200,000), and not exceeding Five Hundred Thousand Dollars ($500,000); five (5) per cent on any value in excess of Five Hundred Thousand Dollars ($500,000), and not exceeding One Million Dollars ($1,000,000); and six (6) per cent on any value in excess of One Million Dollars ($1,000,000).

(2) An amount, as determined by Section (3) of this Article, of property transferred to a beneficiary or beneficiaries receiving property under this Article is exempt from taxation under this Article. When more than one beneficiary described in this Article receives property, and when the total amount passing under this Article exceeds the amount of the exemption applicable under Section (3) of this Article, the amount of the exemption shall be divided among the beneficiaries in a manner proportional to the amount passed under this Article to each beneficiary.

(3) The amount of the exemption under Section (2) of this Article is Two Hundred Thousand Dollars ($200,000) for the period beginning on September 1, 1978, and extending through August 31, 1982, Two Hundred Fifty Thousand Dollars ($250,000) for the period beginning on September 1, 1982, and extending through August 31,

1985, and Three Hundred Thousand Dollars ($300,000) beginning on September 1, 1985.

(4) In no event shall a Class A beneficiary receive an exemption less than Twenty-five Thousand Dollars ($25,000).

SECTION 2. Article 14.015, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

Art. 14.015. EXEMPT TRANSFERS. The inheritance tax imposed by Article 14.01 shall not apply to the following transfers of property:

(1) Exemption for Non-Residents. Money on deposit in any bank doing business in Texas or to shares or share accounts in any savings and loan association doing business in Texas owned by non-residents of Texas who are citizens of a foreign country and who are not engaged in business in Texas, or owned by non-resident citizens of the United States who reside in a foreign country and who are not engaged in business in Texas.

(2) Religious, Charitable and Educational Organizations. Property passing to or for the use of charitable, educational, or religious societies or institutions, incorporated, unincorporated, or in the form of a trust, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

For the purposes of this Subsection, a religious, educational, or charitable organization shall include, but not be limited to, a program of physical fitness, character development, and citizenship training or like program.

(3) Public Use. Property transferred to or for the use of this state or any town therein for public purposes.

(4) The value of an annuity or other payment received by any beneficiary (other than a personal representative of the decedent) which qualifies for exemption from the Federal Estate Tax under Subsection (c), (d), or (e) of Section 2039 of the Internal Revenue Code of 1954, as now or hereafter amended, said Subsection (c), (d), and (e) being codified as 26 United States Code Annotated Sections 2039(c), (d), (e).

(5) Members of the Armed Forces Dying in a Combat Zone. Any military pay or other military allowances paid to the beneficiaries of a Texas resident who, while in active service of the armed forces of the United States, was killed in action in a combat zone or was legally declared dead following being classified by the armed forces as missing in action. For purposes of this Subsection, "combat zone" means any area which the President of the United States by executive order designates as an area in which the armed forces are or have engaged in combat.

SECTION 3. This article takes effect on September 1, 1978, and applies to the estates of persons who died on or after September 1, 1978.

Article 2

SECTION 1. Section (R), Article 20.04, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

(R) GAS AND ELECTRICITY. (1) There are exempted from the taxes imposed by this Chapter, but not from the taxes imposed by a

city under the Local Sales and Use Tax Act, the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of gas and electricity except when sold for [~~residential use or~~] commercial use.

(2) There are exempted from the taxes imposed by a city under the Local Sales and Use Tax Act the sale, production, distribution, lease or rental of and the storage, use or other consumption in this State of gas and electricity except when sold for residential use or commercial use, unless sales for residential use are further exempted by the city as provided in the Local Sales and Use Tax Act.

(3) For the purpose of this subsection, the terms "residential use" and "commercial use" shall have the following meanings:

"Residential use" means use in a family dwelling or in a multi-family apartment or housing complex or building or portion thereof occupied as a [~~the~~] home[~~,~~] or residence[~~, or sleeping place of one or more persons~~].

"Commercial use" means use by persons engaged in selling, warehousing or distributing a commodity or service, either professional or personal.

The term "commercial use" specifically does not include use by persons engaged in: (1) processing tangible personal property for sale as tangible personal property; (2) exploration for or production and transportation of a material extracted from the earth; (3) agriculture, including dairy or poultry operations and pumping water for farm and ranch irrigation; or, (4) electrical

processes such as electroplating, electrolysis and cathodic protection.

SECTION 2. Article 20.01, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding Section (AA) to read as follows:

(AA) The definitions and other provisions of this Chapter relating to the collection, administration, and enforcement of the taxes imposed by this Chapter, including requirements for sales tax permits, apply to sellers and purchasers whose sales and purchases are exempt from the taxes imposed by this Chapter, but who are subject to the taxes imposed by a city under the Local Sales and Use Tax Act.

SECTION 3. Subsection B, Section 2, the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

B. The sales tax portion of any local sales and use tax adopted under this Section is hereby imposed at the rate of one percent (1%) on the receipts from the sale at retail of all taxable items within any city adopting such tax which items are subject to taxation by the State of Texas under the provisions of the Limited Sales, Excise and Use Tax Act, as enacted, and as heretofore or hereafter amended, and at the rate of one percent (1%) on the receipts from the sale at retail within the city of gas and electricity for residential use as defined by the State Limited Sales, Excise and Use Tax Act.

SECTION 4. Section 2, the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), is amended

by adding Subsection L to read as follows:

L. In each city in which a local sales and use tax has been imposed in the manner provided by this Act, every retailer selling gas or electricity for residential use shall add the tax imposed by this Act to his sales price and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. The amount of the tax on the sale at retail of gas and electricity for residential use shall be calculated by multiplying the amount of the tax by the sales price. Any fraction of one cent ($.01) which is less than one-half of one cent ($.005) shall not be collected. Any fraction of one cent ($.01) of tax equal to one-half of one cent ($.005) or more shall be collected by the retailer as a whole cent ($.01) of tax. The Comptroller may publish a schedule based on the above formula for cities imposing a tax on the sale at retail of gas and electricity for residential use.

SECTION 5. Section 4, the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. A. Except as provided in Subsection D of this Section, in [~~In~~] every city where the local sales and use tax has been adopted pursuant to the provisions of this Act, there is hereby imposed an excise tax on the storage, use, or other consumption within such city of tangible personal property purchased, leased, or rented from any retailer on or after the effective date for collection of the sales tax portion of the local

sales and use tax for storage, use or other consumption in such city at the rate of one percent (1%) of the sales price of the property or, in the case of leases or rentals, of said lease or rental price; provided, that if no excise tax on the storage, use or other consumption of any article or item of tangible personal property is owed to or collected by the State of Texas under the State Limited Sales, Excise and Use Tax Act, then the tax imposed by this Section shall not be owed to and shall not be collected by, for or in behalf of such city for storage or other consumption of such article or item of tangible personal property within such city.

B. Except as provided in Subsection D of this Section, in ~~(+)~~ each city where the local sales and use tax has been imposed as provided in Section 2 of this Act, the excise tax imposed under the State Limited Sales, Excise and Use Tax Act on the storage, use, or other consumption of tangible personal property and the excise tax imposed by this Section of this Act shall be added together to form a combined rate of excise tax which is equal to the sum of the two taxes. The tax imposed by this Section of this Act shall be collected by the Comptroller on behalf of and for the benefit of such city. The bracket system formula prescribed in Subsection K of Section 2 of this Act shall be applicable to the collection of the excise tax imposed under this Section.

C. The provisions of Article 20.031, Title 122A, shall be applicable to the collection of the tax imposed by this Section, provided that the name of the city where the local sales and use tax has been adopted shall be substituted for that of the State

where the words "this State" are used to designate the taxing authority or to delimit the tax imposed; and provided further that the effective date for commencing the collection of the sales tax portion of the tax imposed by this Act in any city shall be substituted for the phrase "the effective date of this Chapter."

D. In every city where the local sales and use tax has been adopted under this Act, there is imposed an excise tax on the storage, use or other consumption within the city of gas and electricity for residential use purchased, leased or rented from any retailer on or after the effective date for collection of the sales tax portion of the local sales and use tax for storage, use or other consumption within the city at the rate of one percent (1%) of the sales price of the gas and electricity for residential use, or in the case of leases or rentals, of the lease or rental price. In every city where the local sales and use tax has been adopted under this Act, the excise tax imposed by this Section shall be calculated as provided in Subsection L, Section 2 of this Act and shall be collected by the Comptroller on behalf of and for the benefit of the city in the same manner as if the use, storage or other consumption of gas and electricity for residential use were not exempt under the Limited Sales, Excise and Use Tax Act.

SECTION 6. The Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), is amended by adding Section 4A to read as follows:

Sec. 4A. Effective October 1, 1979, there are exempted from the taxes imposed by this Act the receipts from the sale, production, distribution, lease or rental of, and the use, storage,

or other consumption within the city of gas and electricity for residential use within a city adopting the taxes imposed by this Act unless prior to May 1, 1979, the governing body of the city, by a majority vote of the membership of the governing body, votes to continue the taxes authorized by this Act on the sale, production, distribution, lease or rental of, and the use, storage, or other consumption of gas and electricity for residential use. At any time before or after October 1, 1979, the governing body of a city that has adopted the tax authorized by this Act may, by a majority vote of the membership of the governing body, exempt from the taxes imposed by this Act the receipts from the sale, production, distribution, lease or rental of, and the use, storage, or other consumption within the city of gas and electricity for residential use. The governing body of a city that has adopted the tax authorized by this Act and provided for the exemption authorized or required by this section may, by a majority vote of the governing body, reimpose the taxes on the sale, production, distribution, lease or rental of, and the use, storage, or other consumption in the city of gas and electricity for residential use. If a majority of the governing body votes for the exemption authorized by this section or for the reimposition of the tax under this section, the results of the vote must be entered in the minutes of the city. Thereafter the city secretary shall forward to the comptroller by United States Registered or Certified Mail a copy of the ordinance. On actual receipt by the comptroller of the notification, there shall elapse one whole calendar quarter prior to the exemption or reimposition becoming effective. The exemption or reimposition

shall take effect beginning on the first day of the calendar quarter next succeeding the elapsed quarter. If the governing body of a city, by a majority vote of the governing body, votes to exempt from the taxes authorized by this Act the receipts from the sale, production, distribution, lease, or rental of, and the use, storage, or other consumption of gas and electricity for residential use and forwards to the comptroller by United States Registered or Certified Mail postmarked on or before September 10, 1978, a certified copy of the ordinance, the exemption is effective on October 1, 1978, except that the exemption does not apply to sales of gas and electricity for residential use made during a retailer's regular monthly billing period for a consumer if the regular monthly billing period for the consumer begins before October 1, 1978, but shall apply to each regular monthly billing period beginning on or after October 1, 1978.

SECTION 7. Subsection (a), Section 5, the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) On and after the effective date of any tax imposed under the provisions of this Act, the Comptroller shall perform all functions incident to the administration, collection, enforcement, and operation of the tax, and the Comptroller shall collect, in addition to the Limited Sales, Excise and Use Tax for the State of Texas, an additional tax under the authority of this Act of one percent (1%) on the receipts from the sale at retail or on the sale price or lease or rental price on the storage, use, or other consumption of all taxable items within such city which property is

subject to the State Limited Sales, Excise and Use Tax Act, and an additional tax of one percent (1%) on the receipts on the sale at retail or on the sale price or lease or rental price on the storage, use, or other consumption of gas and electricity for residential use within the city as provided in this Act unless exempted as provided in Section 4A of this Act. The tax imposed hereunder and the tax imposed under the Limited Sales, Excise and Use Tax Act shall be collected together, if both are imposed, and reported upon such forms and under such administrative rules and regulations as may be prescribed by the Comptroller not inconsistent with the provisions of this Act. On and after the effective date of any proposition to abolish such local sales and use tax in any city, the Comptroller shall comply therewith as provided in this Act.

SECTION 8. Paragraph (1), Subsection C, Section 6, the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) All exemptions granted to agencies of government, organizations, persons, and to the sale, storage, use, and other consumption of certain articles and items taxable under the provisions of Article 20.04, Chapter 20, Title 122A, are hereby made applicable to the imposition and collection of the tax imposed by this Act, except as specifically provided in Section (3) of Article 20.04, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended.

SECTION 9. (a) Except as provided by Subsections (b) and (c) of this section, this article takes effect on October 1, 1978.

(b) The additional exemptions on the residential use of gas and electricity provided in this article do not apply to sales of gas and electricity for residential use made during a retailer's regular monthly billing period for a consumer if the regular monthly billing period for the consumer begins before October 1, 1978, but shall apply to each regular monthly billing period beginning on or after October 1, 1978.

(c) Section 6 of this article takes effect immediately.

Article 3

SECTION 1. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force as provided by each article of this Act, and it is so enacted.

-END-

President of the Senate

Speaker of the House

I certify that H.B. No. 1 was passed by the House on July 12, 1978, by 137 yeas, 0 nays, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1 on July 20, 1978, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1 on August 3, 1978, by 128 yeas, 2 nays, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1 was passed by the Senate, with amendments, on July 19, 1978, by 30 yeas, 0 nays; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1 on August 3, 1978, by 28 yeas, 0 nays.

_____

Secretary of the Senate

APPROVED: _____

Date

_____

Governor

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

August 3, 1978

Honorable Bill Clayton
Speaker of the House
House Chamber
Austin, Texas

In Re: Conference Committee Report on
House Bill No. 1
Second Called Session,
65th Legislature

Sir:

In response to your request pursuant to House Rule V, Section 28, this office finds the fiscal implications of Conference Committee Report on House Bill No. 1, Second Called Session, 65th Legislature (relating to exemptions from the state inheritance tax for certain Class A beneficiaries and to the taxation or exemption from taxation of the receipts from the sale, production, distribution, lease or rental of, and the storage, use, or other consumption of gas and electricity for residential use under state and local sales and use taxes) to be as follows:

The probable revenue loss from implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

	Revenue Loss to the General Revenue Fund		
Fiscal Year	Inheritance Tax	Sales Tax	Total
1979	$ 15,200,000	$115,298,333	$130,498,333
1980	16,900,000	149,570,000	166,470,000
1981	18,800,000	175,590,000	194,390,000
1982	20,900,000	207,200,000	228,100,000
1983	25,600,000	244,500,000	270,100,000

Similar annual revenue losses would continue as long as the provisions of the bill are in effect.

The potential revenue loss to units of local government attributable to the bill cannot be ascertained because the individual cities that would exempt residential gas and electricity from the cities sales tax is not known. However, the projected local impact that would occur if all applicable cities should choose to exempt utilities from the local sales tax base would be $25,730,000 in fiscal year 1979, $31,780,000 in fiscal year 1980, $37,310,000 in fiscal year 1981, $44,030,000 in fiscal year 1982, and $52,000,000 in fiscal year 1983.

Thomas M. Keel
Director

Source: State Comptroller of Public Accounts;
LBB Staff

An Act

ENROLLED HOUSE
BILL NO. 1312

BY: HARPER of the House

and

BOATNER of the Senate

Correctly Enrolled ... Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING SECTION 1, CHAPTER 360, O.S.L. 1975 (68 O.S. SUPP. 1977, SECTION 723); PROVIDING FOR CERTAIN FEES FOR VEHICLES USING LIQUEFIED PETROLEUM GAS; INCLUDING CERTAIN ADDITIONAL VEHICLES; PROVIDING CERTAIN PRORATED FEES; ESTABLISHING NEW PROCEDURES FOR OBTAINING SPECIAL DECALS AND PROVIDING FOR TRANSFER OF DECAL; EXEMPTING CERTAIN VEHICLES FROM SPECIAL FUEL USE TAX; PROVIDING PENALTIES; CHANGING CERTAIN ASPECTS OF PENALTIES; PROVIDING FOR AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. Section 1, Chapter 360, O.S.L. 1975 (68 O.S. Supp. 1977, Section 723), is amended to read as follows:

Section 723. In lieu of the special fuel tax imposed by Sections 703 and 705 of this title, there is hereby levied a flat fee of Fifty Dollars ($50.00) on each passenger automobile, and on each pickup truck or van not exceeding one (1) ton in capacity, using liquefied petroleum gas as fuel. Provided that, should the passenger automobile, pickup truck or van have been acquired or should the liquefied petroleum gas system be installed on or after July 1, the flat fee shall be Twenty-five Dollars ($25.00) for the remainder of the calendar year, except as hereinafter provided.

Every person operating a passenger automobile and pickup truck or van not exceeding one (1) ton in capacity using liquefied petroleum gas as fuel may make application for and obtain a decal to be issued

Correctly Enrolled: Jeffrey Hickman Jr. Vice Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

on a yearly basis by the Oklahoma Tax Commission on forms prescribed and furnished by the Tax Commission.

Every person required to make application for and receive a decal under this act shall, at the time of making said application, remit to the Tax Commission the total amount of the fee due.

Each decal issued by the Tax Commission pursuant to the provisions of this act, shall expire on December 31 of every year, and in addition thereto said decals shall be displayed in the lower right hand corner of the front windshield of said passenger automobile, pickup truck or van. Upon receipt of satisfactory proof by the Tax Commission that it has become necessary to replace the windshield of the vehicle for which the decal was issued, another decal shall be issued by the Tax Commission as a replacement for a fee of One Dollar ($1.00).

When any passenger car or pickup truck or van, using liquefied petroleum gas as fuel and displaying a current decal as provided in this section, is sold, such decal shall remain with the vehicle sold, unless the equipment installed to enable the vehicle to use liquefied petroleum gas has been removed from the vehicle before the sale.

When the aforementioned equipment has been removed before the sale, the seller of the vehicle shall also remove the decal required of vehicles using liquefied petroleum gas. The removed decal, a receipt from the Oklahoma Tax Commission showing that the fee required has been paid for the current year, and the payment of a One Dollar ($1.00) duplicate decal fee shall entitle the seller to make application for and obtain a new decal to be used for the remainder of the year on any vehicle using liquefied petroleum gas in accordance with the provisions of this section.

Provisions contained in Sections 702, 703 and 705 of this title requiring the collecting of the Special Fuel Use Tax by the supplier on any fuel delivered into the fuel supply tanks of motor vehicles in Oklahoma shall not apply when the purchaser has obtained and there is

displayed on said vehicle a current decal as provided in this act. The supplier is to enter the decal number assigned by the Tax Commission on the invoice required by Section 716 of this title covering each such delivery of liquefied petroleum gas.

All funds derived from the fee imposed by this act shall be deposited annually in the General Revenue Fund of the State Treasury by the Tax Commission. When any person fails to obtain a current decal within thirty (30) days of the date said decal is required as provided in this act, there shall become due and payable a penalty of twenty percent (20%) in addition to the fee. Said penalty to be deposited in the same manner as fee.

SECTION 2. This act shall become effective on July 1, 1978.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Correctly Enrolled: ..... Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Passed the House of Representatives the 20th day of April, 1978.

Wm P. Willis
Speaker of the House of Representatives.

Passed the Senate the 20th day of April, 1978.

acting Judith L. Wadley
President of the Senate.

OFFICE OF THE GOVERNOR

Received by the Governor this 24th
day of April, 1978,
at 3:15, o'clock P M.

By: Bettina Smith

Approved by the Governor of the State of Oklahoma the 29th day of
April, 1978, at 10:33 o'clock A m.

David Boren
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 1st
day of May, 1978,
at 10:45, o'clock A. M.

Jessie W. Boyd
By:

Correctly Enrolled
Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

An Act

ENROLLED SENATE
BILL NO. 618

BY: LUTON of the SENATE

and

BARKER of the HOUSE

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING 68 O.S. 1971, SECTIONS 501, 503, 505, 506 THROUGH 514, 515, AS AMENDED BY SECTION 1, CHAPTER 70, O.S.L. 1977 (68 O.S. SUPP. 1977, SECTION 515), 516 THROUGH 519, 522, 523, 526, 601, 604 THROUGH 615, AND 701; LEVYING A TAX ON DIESEL FUELS USED TO PROPEL MOTOR VEHICLES ON PUBLIC HIGHWAYS AND APPORTIONING THE REVENUE; LEVYING A TAX ON DIESEL FUELS IMPORTED IN VEHICLE FUEL SUPPLY TANKS USED TO PROPEL MOTOR VEHICLES ON THE PUBLIC HIGHWAYS AND APPORTIONING THE REVENUE; ESTABLISHING THE MOTOR FUEL/DIESEL FUEL IMPORTER FOR USE TAX CODE; DEFINING CERTAIN TERMS; PRESCRIBING PROCEDURES, REMEDIES, LIENS, REQUIRING REPORTS AND FIXING PENALTIES; REQUIRING LICENSES OR PERMITS; DIRECTING CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. 68 O.S. 1971, Section 501, is amended to read as follows:

Section 501. For the purposes of this article:

A. The term "gasoline" means the same as "motor fuel," and "motor fuel" means every liquid petroleum product, or any combination thereof, other than "solvents" as herein defined, having an A.P.I. gravity of forty-six degrees (46°) or above at a temperature of sixty degrees (60°) Fahrenheit and at atmospheric pressure, and includes drip, casinghead or natural gasoline. The term "gasoline" also includes any liquid of less than forty-six degrees (46°) A.P.I. gravity at a temperature of sixty degrees (60°) Fahrenheit compounded, blended, manufactured or otherwise produced by mixing or blending gasoline or "solvents" with any blending materials, as herein

Carried by Enrolled ____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

defined, when the blended product can be used for generating power in internal combustion engines, regardless of how such liquid is made, compounded, manufactured or recovered and regardless of the name by which such liquid may be known or sold.

B. The term "diesel fuel" means diesel engine fuel, kerosene, and all other liquids suitable for the generation of power for the propulsion of motor vehicles except those products subject to the tax imposed by Sections 502, 516, 520 and 522 of Title 68 of the Oklahoma Statutes.

C. The term "storage" means gasoline or diesel fuel stored at the plant where it is manufactured or at a bulk storage station owned by the manufacturer or by some other licensed distributor to which no retail outlets are connected.

If no bulk storage is operated by the distributor, the number of gallons of gasoline or blending material received for the purpose of ascertaining the amount of tax payable by any such distributor, shall be considered as the number of gallons sold. All motor fuel, diesel fuel or blending material withdrawn from bulk storage for delivery to retail filling stations operated by the distributor, or consigned, shall be considered sold.

Nothing in this section shall require a distributor, dealer or retailer to collect taxes levied by this act or remit taxes to the state on diesel fuel used exclusively for purposes other than to propel motor vehicles over the public highways of this state as provided in Section 509 of this act.

D. The term "person" means natural persons, individuals, partnerships, firms, associations, corporations, estates, trustees, business trusts, syndicates, this state, any county, city, municipality, school district or other political subdivision of the state, or any corporation or combination acting as a unit or any receiver appointed by any state or federal court; and the use of the singular number shall include the plural number.

E. The term "Tax Commission" means the Oklahoma Tax Commission.

Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Correctly Enrolled:

F. The term "distributor" means:

1. Every person importing or causing to be imported into this state any motor fuel, diesel fuel or blending material for use, distribution, or sale and distribution, or sale and delivery after the same reaches this state. "Distributor" does not mean persons importing motor fuel only in the supply tank of a vehicle originally provided by the manufacturer of the motor vehicle as a container for motor fuel or diesel fuel to propel such motor vehicle, nor does "distributor" mean persons only importing motor fuel, diesel fuel or blending material into the state under circumstances requiring that they be licensed as "Motor Fuel/Diesel Fuel Importers for Use" as defined in Section 601(g) of this title and who are actually so licensed.

2. Any person producing, refining, preparing, distilling, blending, manufacturing, or compounding motor fuel or blending material in this state for use, distribution or sale and delivery in this state.

3. Any person within this state producing or collecting what is commonly known as drip, casinghead or natural gasoline.

4. Any person who has in his possession or buys for sale or use motor fuel, diesel fuel or blending material from any person other than a licensed distributor, retailer or dealer.

5. Any person other than a retailer or dealer who sells motor fuel, diesel fuel or blending material to anyone except a licensed distributor.

6. Any person who makes bulk sales of motor fuel, diesel fuel or blending material.

7. Provided that any other person, including a retailer or dealer, may file application for and procure a distributor's license in the manner herein provided.

G. The term "licensed distributor" means a person defined as a distributor who is the holder of a valid distributor license issued by the Tax Commission.

Correctly Enrolled. Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

H. The term "bulk sales" means any delivery to any person of motor fuel, diesel fuel or blending material which is not directly placed in the vehicle fuel tank.

I. The term "gallon" means the quantity of fluid or liquid at a temperature of sixty degrees (60°) Fahrenheit necessary to completely fill a United States standard gallon liquid measure.

J. The term "blending material" means ethyl alcohol, kerosene, distillate, tractor fuel and any other fluid or liquid irrespective of its trade name, of less than forty-six degrees (46°) A.P.I. gravity at sixty degrees (60°) Fahrenheit, but not less than forty degrees (40°), at a temperature of sixty degrees (60°) Fahrenheit, minimum flash test of one hundred twenty degrees (120°) Fahrenheit and a maximum end point of five hundred thirty-five degrees (535°) Fahrenheit, used or capable of being used for blending with gasoline or "solvents" of more than forty-six degrees (46°) A.P.I. gravity at sixty degrees (60°) Fahrenheit, and thereby making a fuel capable of being used to generate power in internal combustion engines. "Blending material" does not, however, include "solvents."

K. The term "retailer" means every person, who offers for sale, sells or causes to be sold motor fuel or diesel fuel in this state, purchasing his entire supply of motor fuel, diesel fuel or blending material from one licensed distributor and delivering said motor fuel or diesel fuel into the fuel tanks of motor vehicles. Any retailer doing business in Oklahoma, who buys motor fuel or diesel fuel for sale or use from any person other than a licensed distributor is a distributor and must comply with all of the provisions of this article applicable to distributors.

L. The term "dealer" means every person who offers for sale, sells or causes to be sold motor fuel or diesel fuel, purchasing motor fuel, diesel fuel or blending material from more than one licensed distributor and delivering said motor fuel or diesel fuel into the supply tank of a motor vehicle. Every dealer doing business in Oklahoma who buys motor fuel, diesel fuel and blending material

Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Correctly Enrolled:

for sale or use from any person except a licensed distributor is a distributor and must comply with all provisions of this article applicable to distributors.

M. The term "public highways" means every road, toll road, highway, street way or place generally open to the use of the public as a matter of right for the purposes of vehicular travel, including streets and alleys of any town or city notwithstanding that the same may be temporarily closed for construction, reconstruction, maintenance, or repair.

N. The term "solvents" means especially prepared commercial and industrial solvents, cleaners' and painters' naphthas, and raw petroleum materials or petrochemical intermediates when used as or sold for use in production or manufacture of plastics, detergents, synthetic rubber, herbicides, insecticides and other chemicals or products which are not prepared, advertised, offered for sale or sold for use or suitable for use as fuel for generating power in internal combustion engines.

O. No person may be licensed as a distributor, retailer or dealer who has no fixed and designated public place of business in the state for the sale of motor fuel, diesel fuel or blending material and at which records are kept as required by this article.

SECTION 2. 68 O.S. 1971, Section 503, is amended to read as follows:

Section 503. No city, town, county, or other political subdivision of the state shall levy any excise tax on the sale, manufacture, distribution, consumption or use of motor fuel or diesel fuel as hereinbefore defined.

SECTION 3. There is hereby levied an excise tax of five and one-half cents (5 1/2¢) per gallon upon the sale of each and every gallon of diesel fuel sold, or stored and distributed, or withdrawn from storage, within the state, for sale or use, to be reported and collected as provided by law; provided, that ninety-seven and one-half percent (97 1/2%) of the net gallonage reported for taxation,

Correctly Enrolled ..... Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

after all deductions allowed by law have been made, shall be the basis used in the computation of the amount of tax due; provided, further, no diesel fuel shall be the basis more than once of the tax imposed by this section.

The tax shall be payable upon diesel fuel sold and delivered to, or used by the state or any political subdivision thereof.

SECTION 4. This act is to provide revenue for general governmental functions of state government and for the construction and maintenance of state and county highways and bridges. The tax, including penalties and interest collected under the levy in Section 3 of this act, shall be apportioned monthly for use as follows:

1. An amount equal to the revenue, including penalties and interest thereon, accruing from four cents (4¢) per gallon of the five and one-half cents (5 1/2¢) per gallon collected of the tax levied by Section 3 of this act, shall be apportioned monthly and used for the following purposes:

(a) Three percent (3%) shall be paid by the Tax Commission to the State Treasurer and by him placed to the credit of the Oklahoma Tax Commission Fund to be paid out of said fund pursuant to appropriations therefrom made by the State Legislature.

(b) Seventy-two and three-fourths percent (72 3/4%) shall be deposited in the State Depository to the credit of the State Highway Construction and Maintenance Fund and expended for the construction, repair and maintenance of state highways.

(c) Twenty-four and one-fourth percent (24 1/4%) shall be transmitted by the Tax Commission to various counties of the state, in the percentage which the population and area of each county bears to the population and area of the entire state. The funds so transmitted shall be sent to the respective county treasurers, and by them deposited in the county highway fund of their

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respective counties to be used by the county commissioners for the purpose of constructing and maintaining county or township highways and permanent bridges in such counties. No part of such fund shall be used for any purpose other than the construction and maintenance of county or township highways and permanent bridges in the county receiving the fund. The said funds received by any county shall not thereafter be diverted to any other county of the state, but such funds shall be expended only under the direction and control of the board of county commissioners in the county to which said funds are apportioned. If any part of said funds is diverted for any purpose other than is provided herein, the county commissioners shall be liable on their bond for double the amount of money so diverted. Provided that where any state or county highway has been laid out over a road already constructed in any county by the use of money raised from county or township bond issued for the purpose either alone or by the use of federal or state aid, or both, the county commissioners may set aside out of the funds apportioned to that county, as provided herein, an amount of money equal to the value of any part thereof, of the interest of such county or township or both, in and to such highway or highways, bridge or bridges so constituting a part of the state highway system, which amount of money shall be considered by the excise board in reducing the levy for the purpose of retiring the bonded indebtedness and interest thereon of the county or township, and shall be used for investment or deposit in the same manner as provided by law for the disposition of other sinking fund money.

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2. An amount equal to the revenue, including penalties and interest thereon, accruing from one cent (1¢) per gallon of the five and one-half cents (5 1/2¢) per gallon collected of the tax levied by Section 3 of this act, shall be apportioned monthly and shall be deposited in the State Treasury to the credit of the State Highway Construction and Maintenance Fund and used by the State Department of Transportation for the purpose of constructing and maintaining Farm-to-Market roads on the state highway system and other rural Farm-to-Market roads and bridges. The State Department of Transportation is authorized to enter into any arrangement or contract agreement with the federal government for the participation by the federal government in the cost of any such project.

3. An amount equal to the revenue, including penalties and interest thereon, accruing from one-half cent (1/2¢) per gallon of the five and one-half cent (5 1/2¢) per gallon collected of the tax levied by Section 3 of this act, shall be apportioned monthly and distributed as follows:

Forty percent (40%) of such sum shall be distributed to the various counties in that proportion which the county road mileage of each county bears to the entire state road mileage as certified by the Transportation Commission, and the remaining sixty percent (60%) of such sum shall be distributed to the various counties on the basis which the population and area of each county bears to the total population and area of the state. The funds so transmitted shall be sent to the respective county treasurers and by them deposited in the county highway fund of the respective counties, to be used by the board of county commissioners exclusively and directly for the construction and maintenance of county and township highways and permanent bridges on United States rural free delivery and contract mail routes, and school district bus routes, which have been officially designated and mapped by the respective school districts of the respective counties of the state. Provided, however, that the board of county commissioners of any county of this state shall not

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expend any of the funds received under the provisions of this act on any school district bus route in any district of the state receiving state aid, until such bus route has been approved by the State Board of Education unless said bus route be the same as a United States mail route, and provided further that in all counties where the county excise board of any county may find it necessary, because of insufficient revenue to maintain city and county government of such county out of the general fund, after a levy of ten (10) mills has been made for any fiscal year, the county excise board may appropriate out of any funds apportioned to such county under this act, an amount sufficient to pay the salaries of the county commissioners of such county for such fiscal year.

It shall be unlawful for the board of county commissioners to use such funds for any other purpose, and any commissioner violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed Five Hundred Dollars ($500.00) and imprisonment in the county jail not to exceed six (6) months, and said commissioner shall be liable on his official bond for any of said funds expended in violation of the provisions of this act.

SECTION 5. There is hereby levied an excise tax of one cent (1¢) per gallon upon the sale of each and every gallon of diesel fuel sold, or stored and distributed, or withdrawn from storage, within the state, for sale or use, to be reported and collected as provided by law; provided, that ninety-seven and one-half percent (97 1/2%) of the net gallonage reported for taxation, after all deductions allowed by law have been made, shall be the basis used in the computation of the amount of tax due; provided, further, no diesel fuel shall be the basis more than once of the tax imposed by this section.

The tax shall be payable upon diesel fuel sold and delivered to, or used by the state or any political subdivision thereof.

SECTION 6. It is hereby declared to be the purpose of the levy in Section 5 of this act to provide funds for the construction of

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permanent bridges and culverts located on school bus routes and mail routes, and for the surfacing and resurfacing of rural roads consisting of school bus routes and mail routes, and for these purposes it is hereby expressly provided that the special fuel use tax levied by Section 5 hereof shall be apportioned monthly by the Oklahoma Tax Commission and paid to the various county treasurers of the State of Oklahoma, and by them deposited in a Special County Highway Fund separate and apart from the county highway and construction fund of the several counties as hereinafter provided, to be used exclusively by the boards of county commissioners of said counties for the purpose of constructing permanent bridges and culverts located on school bus routes and mail routes, and for the surfacing and resurfacing of school bus routes and mail routes in the several counties, as hereinafter provided. Provided further that the portion of such funds used for surfacing and resurfacing of such roads shall be used only for gravel and graveling, or some other forms of surfacing materials to be approved by the State Department of Transportation. None of these funds may be used for the lease, rental, or purchase of machinery or equipment, except as hereinafter provided. One gravel loader may be purchased by each county, if said county does not possess a gravel loader; provided further that the counties may hire trucks for hauling gravel. The funds herein provided for construction of permanent bridges and culverts and for the surfacing and resurfacing of county rural roads consisting of school bus routes and mail routes shall be distributed to the several counties in the following manner: one-third on area, one-third on rural population (defined as including the population of all municipalities with a population of less than five thousand (5,000) according to the latest Federal Census), and one-third on county road mileage, as last certified by the State Department of Transportation, as each county bears to the entire area, rural population and road mileage of the state. When federal funds are available for assistance in constructing county roads, the funds herein provided,

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when distributed and deposited in the Special County Highway Funds, are authorized to be used by the boards of county commissioners, by majority action thereof, in matching such federal funds on any county highway notwithstanding any other limitation of this act as to the type or class of roads on which funds shall be used and, for the purpose of securing such federal assistance, the boards of county commissioners, by majority action thereof, are authorized to enter into agreements with the federal government through the State Department of Transportation and deposit, from the proceeds of the tax levied herein, cash with the State Department of Transportation necessary to fulfill said agreement for the extension of the present Federal Aid Farm-to-Market System, or for the creation of new federal systems, and to enter into such other contracts and agreements as may be necessary to secure federal assistance in the construction or improvement of any county road.

SECTION 7. 68 O.S. 1971, Section 505, is amended to read as follows:

Section 505. (a) The tax levied by Section 502 of this Code and Sections 3 and 5 of this act are due and payable on the first day of each month for the preceding calendar month, and if not paid on or before the twentieth day of each month shall thereafter be delinquent.

(b) Every distributor shall make and transmit to the Tax Commission on or before the twentieth day of each calendar month, upon a form prescribed or furnished by the Tax Commission, an itemized and verified report showing the quantity of motor fuel, diesel fuel or blending material imported, produced, refined, manufactured, or compounded within this state, the number of gallons of motor fuel, diesel fuel or blending material received, as shown by the shipper's invoice thereof, by such distributor in this state, from any source during the preceding month, the number of gallons of motor fuel, diesel fuel or blending material purchased, received or accepted in this state in the original package or container in which

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same was imported into this state, the amount purchased, the date of each purchase, the name of the person from whom purchased, the manifest, bill of lading or delivery invoice number of each shipment, which number shall be the number used by the original supplier as shown on the basic shipping records which accompany the shipment, the date of receipt of such shipment of motor fuel, diesel fuel or blending material, the point of origin, point of destination of each shipment, the quantity of each of said purchases or shipments, the tank car number and initials of the car, if shipped by rail, or the name or the O.T.C. license number of the transporter if shipped by truck. The report must also include the number of gallons of motor fuel, diesel fuel or blending material sold or withdrawn from storage for sale or use in this state during the preceding month, the date of each such sale, or use or withdrawal for the sale, the quantity of each sale, or amount used, the name and address of each purchaser, the manifest, bill of lading, or delivery invoice number, which number shall be the number as shown on the basic shipping or delivery records which accompany the delivery, the tank car initial and number of the car in which same was shipped, if transported by rail, or the name or the O.T.C. license number of the transporter, if shipped by truck. Provided that, if it is determined by the Tax Commission that a detailed record including delivery invoice of each and every sale of motor fuel, diesel fuel or blending material is being kept in accordance with the provisions of this article, the Tax Commission may require in lieu of the detailed schedule of sales, a report of the total gallons of motor fuel, diesel fuel or blending material sold or used by each bulk station, together with a detailed listing of all sales on which exemption is claimed showing the date, seller's invoice number, exemption invoice number, name and address or exemption permit number of the purchaser and number of gallons of each sale. Provided, however, that all persons engaged in producing, refining, preparing, distilling, blending, manufacturing, or compounding motor fuel, diesel fuel or blending material, must

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include the required detailed schedule of withdrawals from storage for sale or use in the monthly reports covering such producing, refining, preparing, distilling, blending, manufacturing, or compounding operations. The report must also include the amount of motor fuel, diesel fuel or blending material on hand at the beginning and close of the month as shown by the physical inventory taken on those dates, and such other information pertaining to such production, receipts, sales, or use of motor fuel, diesel fuel or blending material ordered as the Tax Commission may require.

(c) Every distributor, at the time of making the monthly reports required by this section, shall remit to the Tax Commission the amount of tax due.

It shall be unlawful for any distributor, retailer or dealer to sell or offer for sale in this state, motor fuel or diesel fuel while delinquent in the payment of any excise tax due the state.

(d) Reports and remittances as required herein, which are received by the Tax Commission subsequent to the twentieth of the month but which were mailed on or before the twentieth of the month in which payable, shall be deemed to have been received by the Tax Commission before becoming delinquent. Postmark or registry receipt showing deposit in the U. S. mails shall be conclusive evidence of the date of mailing.

The time for filing returns and paying the tax levied by this article shall not be extended.

(e) Any retailer or dealer as defined in Section 501 of this act shall, at its option, pay to the distributor, for the benefit of the state, all taxes due on all diesel fuel purchased from distributors or may procure a distributor's license as provided in Section 510 of this act and be subject to the reporting requirements of this section.

SECTION 3. 68 O.S. 1971, Section 506, is amended to read as follows:

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Section 506. (a) Every licensed distributor, or any other person coming within the meaning of the definition of a distributor, is hereby made an agent of the state for the collection of the excise tax on gasoline or motor fuel or diesel fuel. The consideration for the services of the distributor as such agent is hereby declared to be included in and paid to such agent by the state as a part of the deduction allowed to the distributor by Section 502 of this Code and Sections 3 and 5 of this act. The acceptance of a distributor license by any distributor or the engaging in the gasoline or motor fuel or diesel fuel business by any person coming within the meaning of the definition of distributor, whether licensed or not, shall constitute an acceptance of such agency of the state by such distributor or person. In the collection of such excise tax by the distributor as such agent, such distributor or agent shall collect and receive such tax, at the rate required by law, as money, property and funds of and belonging to the state, to be held in trust by such agent as funds and property of the state to be reported and paid over to the state as provided by law.

(b) If any such distributor, as such agent of the state, fails to pay the same over to the state when due and appropriates any of such money or funds to his own use and benefit or the use and benefit of any other person in any manner not in the due and lawful execution of his trust as such distributor and agent, such distributor or person shall be guilty of the crime of embezzlement.

SECTION 9. 68 O.S. 1971, Section 507, is amended to read as follows:

Section 507. (a) Any licensed distributor may sell motor fuel or diesel fuel to any other licensed distributor and such other distributor must assume the excise tax levied by Section 502 of this Code and Sections 3 and 5 of this act on any such motor fuel or diesel fuel; provided, however, the selling licensed distributor must report each such sale to the Tax Commission currently, giving full details of such sale, including the date of shipment, manifest, bill

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of lading or invoice number, which number shall be the number used by the original supplier as shown on the basic shipping records which accompany the shipment, quantity, tank car initial and number, or the name or the O.T.C. license number of transporter if delivered by truck, name and address of consignee; and provided, further, the distributor receiving such motor fuel or diesel fuel must separately show in his report to the Tax Commission all such receipts from each distributor, giving full details, including manifest, bill of lading or invoice number and number of gallons of each shipment.

(b) Gasoline or diesel fuel produced, refined, manufactured, compounded, or imported or withdrawn from storage and sold for exportation and exported by a licensed distributor or a licensed transporter for hire shall not be subject to the gasoline or diesel fuel excise tax hereby levied; provided, however, gasoline or diesel fuel produced, refined, manufactured or compounded in this state and transported out of this state and brought back into this state, shall be subject to the tax hereby levied.

(c) In support of any exemption from tax claimed under this section on account of the exportation of motor fuel or diesel fuel, every distributor must execute and file with his regular report an export certificate on a form prescribed and furnished by the Tax Commission, containing a verified statement made by a person having actual knowledge of the facts of such exportation that the motor fuel or diesel fuel was exported from the state. The export certificate shall include the date of the export, manifest, bill of lading or invoice number, which number shall be the number shown on the basic shipping records which accompany the shipment, tank car initial and number, the name or the O.T.C. license number of the transporter if exported by truck or the name of the pipeline, if exported by pipeline, consignee, and final destination, and such other information as the Tax Commission requires.

(d) When any motor fuel or diesel fuel is sold by a distributor, retailer, or dealer to the United States of America, the distributor,

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retailer or dealer shall execute on each invoice, certification by the seller that the purchaser represented to the seller that the motor fuel or diesel fuel was to be used and paid for by the United States of America.

SECTION 10. 68 O.S. 1971, Section 508, is amended to read as follows:

Section 508. (a) Every licensed distributor of motor fuel or diesel fuel within Oklahoma selling, to be used exclusively, or using, motor fuel or diesel fuel in aircraft or in aircraft engines used and operated on test stands for training, testing or research purposes, shall be entitled to sell or use such motor fuel or diesel fuel the same shall not be subject to the excise tax levied by Sections 502, 516 and 522 of this Code and Sections 3 and 5 of this act, and the gross receipts from the sale of, and the use of, all chemicals and petroleum products used as fuel to generate power in aircraft engines shall also be exempt from all state and local sales and use taxes levied by the Sales and Use Tax Codes, upon complying with the invoice requirements of this section.

(b) Every distributor shall show on the monthly report required by Section 505 of the Motor Fuel Tax Code the number of gallons of motor fuel or diesel fuel used or sold for which exemption is claimed under this section and such other information as the Tax Commission requires. An invoice shall be prepared covering each delivery of motor fuel, diesel fuel or other chemicals or petroleum products used as such aircraft fuel, for which exemption is claimed under this section, such invoice to be signed by the seller of the motor fuel, diesel fuel or other such fuels or products, to show the date of sale, the name of the seller, the name and address of the purchaser, the amount of motor fuel, diesel fuel or other such products delivered, and the place of delivery. Each such invoice shall contain a certification by the seller that the purchaser declared that it was his intention to use the motor fuel, diesel fuel or other such fuels or products for one of the purposes described in paragraph

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(a) of this section. A copy of the invoice shall be delivered to the purchaser or user.

(c) Any distributor selling or using motor fuel or diesel fuel that is exempt from motor fuel or diesel fuel taxes under this section may deduct the number of gallons of such motor fuel or diesel fuel from the total gallonage used, sold or distributed, only if copies of all invoices meeting the requirements of this section, covering sales or use of such motor fuel or diesel fuel are retained by such distributor for a period of three (3) years from date of invoice. The deduction shall be made before computing the amount of motor fuel or diesel fuel excise tax due upon the basis of ninety-seven and one-half percent (97 1/2%) of the net gallonage subject to tax. Such invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. A distributor shall not deduct from his report invoices covering the sale of motor fuel or diesel fuel made by any other distributor. All such invoices and records of the distributor shall be open to inspection and audit by the Tax Commission. The failure of any distributor to file a report within ninety (90) days from the date due as provided in the Oklahoma Motor Fuel Tax Code may cause the deduction provided by this section to be disallowed by the Tax Commission.

(d) If any person uses any motor fuel, diesel fuel or other products exempt from motor fuel or diesel fuel excise tax or sales and use tax under paragraph (a) that was purchased under an invoice as described in this section in any manner other than for one of the uses set out in paragraphs (a) and (b) of this section such person shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00), or shall be imprisoned not more than one (1) year in the county jail.

(e) If upon investigation it is determined by the Tax Commission that any deduction claimed by any distributor has been supported by any invoice fraudulently or falsely made or altered in any manner by such distributor, the Tax Commission shall disallow the deduction and

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cancel the distributor license of such person in the manner provided by law. Any distributor or agent of a distributor violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

SECTION 11. 68 O.S. 1971, Section 509, is amended to read as follows:

Section 509. (a) The tax levied by this act shall not apply to diesel fuel used exclusively for purposes other than to propel motor vehicles over the public highways of this state. Provided that distributors shall execute on monthly reports, certification that the purchasers represented to the seller that the diesel fuel was to be used exclusively for purposes other than to propel motor vehicles over the public highways. Provided this exemption shall be allowed only when supported by a certificate executed by such users on forms prescribed or furnished by the Oklahoma Tax Commission.

(b) Every person actually engaged in farming in Oklahoma and buying motor fuel to be used as fuel for farm tractors or stationary engines owned and operated by him and used exclusively for agricultural purposes within the state, who has obtained an agricultural exemption permit, as provided in this article, may purchase such motor fuel without paying the tax levied by Section 502 of this Code and one-half cent (1/2¢) per gallon of the tax levied by Section 516 of this Code.

Provided, that motor fuel or diesel fuel shall be deemed to be used exclusively for agricultural purposes when used in farm tractors or stationary engines used for any of the hereinafter enumerated purposes or related purposes and the term "agricultural purposes," as herein used, is hereby defined to include: clearing, terracing or otherwise preparing ground on a farm; preparing soil for planting and fertilizing, cultivating, raising and harvesting crops; raising and feeding livestock and poultry and building fences; pumping water for

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any and all uses on the farm, including irrigation; building roads upon any farm by the owner or person farming same; operating milking machines; sawing wood for use on farm; producing electricity for use on farm; movement of tractors, farm implements and equipment from one field to another and use of farm tractors to move farm products from farm to market. The term "farm tractor," as used herein, shall include all tractor-type, motorized farm implements and equipment but shall not include motor vehicles of the truck-type, pickup truck-type, automobiles, and other motor vehicles required to be registered and licensed each year under the provisions of the motor vehicle license and registration laws.

(c) Every person, firm or corporation claiming an exemption under the provisions of this section shall first obtain an annual Fuel Tax Exemption permit from the Tax Commission by filing a verified application on a form furnished by the Tax Commission. Each Fuel Tax Exemption Permit holder must furnish a copy of the permit to a supplier prior to purchasing diesel fuel. Suppliers selling to permit holders must maintain a record of each sale to a permit holder and shall report the total gallons of tax exempt diesel fuel sold during a calendar month on a form prescribed by the Tax Commission. Said form will include a listing of the total gallons sold to each permit holder, by name and exemption number. The supplier shall furnish each permit holder a copy of its tax exempt sales for the calendar month, which must be signed by both the seller or seller's agent and purchaser or purchaser's agent, certifying that such diesel fuel was received. The supplier and permit holder shall maintain these records for three (3) years. Any supplier selling diesel fuel that is exempt under this section may deduct the number of gallons of such diesel fuel from the total gallonage required to be reported to the Tax Commission only if a record of the tax exempt sales is attached to the report required by the Tax Commission. A supplier shall not deduct from his report the sale of diesel fuel made by any other distributor. All fuel tax exemption permits expire on the 31st

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day of December of each year and no exemption shall be allowed to the holder thereof after March 31 of the following year.

(d) Every person claiming an exemption under the provisions of this section shall first obtain an annual agricultural exemption permit from the Tax Commission by filing a verified application on a form furnished by the Tax Commission, which application shall contain the name, address and occupation of the applicant and such other information as the Tax Commission requires. Upon approval of the application by the Tax Commission an agricultural exemption permit shall be issued bearing a distinctive number. Subsequent annual agricultural exemption permits shall be issued on receipt of a certificate of current assessment provided for in Section 2423 of this title. The Tax Commission shall keep a permanent record of all permits issued and a cumulative record of the amount of exemptions claimed under each permit. All such permits expire on the 31st day of December of each year and no agricultural exemption shall be allowed to the holder thereof after March 31 of the following year.

(e) Agricultural exemption permit holders shall furnish a copy of the permit to a distributor prior to purchasing motor fuel. Distributors selling to permit holders shall maintain a record of each sale to a permit holder and shall report the total gallons of tax exempt motor fuel sold during a calendar month on a form prescribed by the Tax Commission. Said form shall include a listing of the total gallons sold to each permit holder, by name and exemption number. The supplier shall furnish each permit holder a copy of its tax exempt sales for the calendar month, which shall be signed by both seller and purchaser, certifying that motor fuel was received. The distributor and permit holder shall maintain these records for three (3) years.

(f) Any distributor selling motor fuel that is exempt under this section may deduct the number of gallons of such motor fuel from the total gallonage required to be reported to the Tax Commission only if copies of all agricultural exemption monthly report forms required by

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this section, covering sales of such motor fuel are attached to the report in which the exemption is claimed under this section. The deduction shall be made before computing the amount of tax due upon the basis of ninety-seven and one-half percent (97 1/2%) of the net gallons subject to the tax. Such monthly report forms shall be legibly written and shall be void if any corrections or erasures appear on the face thereof. A distributor shall not deduct from his report or attach agricultural exemption monthly report forms covering the sale of motor fuel made by any other distributor. All agricultural exemption monthly report forms must be received by the Tax Commission within ninety (90) days following the last day of the calendar month in which sales were made.

(g) Tractors or stationary engines used for agricultural purposes must be registered by the owners thereof with the Tax Commission on forms prescribed and furnished by the Tax Commission before any exemption of the tax shall be allowed for motor fuel used in such tractors or stationary engines.

(h) If any person uses motor fuel that was purchased under an agricultural exemption invoice in any manner other than for agricultural purposes, the Tax Commission shall cancel his agricultural exemption permit and shall not issue a new agricultural exemption permit to him for a period of at least one (1) year. Such person shall also be guilty of a misdemeanor and shall, upon conviction, be fined not more than One Thousand Dollars ($1,000.00), or shall be sentenced to a term of not more than one (1) year in the county jail.

Provided, that within a reasonable time after the Tax Commission shall have made a field audit or investigation of the uses for which the holder of an agricultural exemption permit has made of motor fuel acquired by him under his permit, the Tax Commission shall advise the permit holder as to the period covered and the results of such audit.

(i) If upon investigation it is determined by the Tax Commission that any deduction claimed by any distributor has been supported by

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any agricultural exemption monthly report form fraudulently or falsely made or altered in any manner by such distributor, the Tax Commission shall disallow the deduction and shall cancel the distributor license of such person in the manner provided by law. Any distributor or agent of a distributor violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

(j) If any person whose agricultural exemption permit has been cancelled purchases motor fuel from any distributor and obtains an exemption by representing to the distributor that his agricultural exemption permit is in force or by furnishing the distributor with the number of a permit which has been cancelled, such person shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than Five Hundred Dollars ($500.00), or shall be sentenced to a term of not more than six (6) months in the county jail.

(k) Diesel fuel used exclusively in road machinery and equipment built for and being used on location in the construction, repair or maintenance of public highways, roads and bridges by road contractors and by counties, cities and towns of this state, provided, however, this exemption shall not apply to automobiles nor to truck-type vehicles such as dump trucks, flatbed trucks and pickup trucks.

(l) Diesel fuel used exclusively in passenger motor buses or coaches, having a seating capacity of ten (10) or more persons, when such fuel is purchased by and used exclusively in public transit systems operated by any county, city, or town of this state, or by any public trust created under the laws of this state of which a county, city, or town of this state is the sole beneficiary thereof. Provided this exemption shall be allowed only when supported by a certificate executed by such city or trust on forms prescribed and furnished by the Oklahoma Tax Commission.

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(m) Diesel fuel purchased by any county, city or town for use as fuel to propel motor vehicles on the public roads and highways of this state, when said vehicles are being operated for the sole benefit of said county, city or town; provided that if the diesel fuel is placed directly into the fuel supply tank or tanks of the motor vehicle by the supplier, an exemption certificate must be furnished to the supplier on forms prescribed and furnished by the Oklahoma Tax Commission.

SECTION 12. 68 O.S. 1971, Section 510, is amended to read as follows:

Section 510. (a) Every person defined as a distributor by this article must procure a distributor license before commencing business as a distributor.

(b) Any person desiring to procure a distributor license must file a verified application with the Tax Commissioner on a form furnished by the Tax Commission showing the name under which he intends to transact business within this state, the location and address of each place of business, a designation of his principal place of business, the name and address of each person constituting the organization if the applicant is not a corporation, or, if the applicant is a corporation, the names and addresses of the principal officers and such other information as the Tax Commission requires. No person shall be licensed as a distributor, retailer or dealer who has no fixed place of business for the sale of motor fuel or diesel fuel and keeping of records required by this article.

(c) Before an application for a distributor license may be approved, the applicant must file a bond in the penal sum of not less than Two Hundred Fifty Dollars ($250.00) or more than Fifty Thousand Dollars ($50,000.00), the amount thereof to be fixed by order of the Tax Commission, payable to the State of Oklahoma, conditioned upon compliance with the provisions of this article and the Rules and Regulations of the Tax Commission.

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—— If a distributor (a) becomes delinquent in the payment of the tax herein levied or (b) tenders a check in payment of the tax herein levied that is returned because of insufficient funds or (c) is unable to furnish a financial statement that, in the judgment of the Tax Commission, indicates ability to properly discharge his liability for the tax herein imposed or (d) may not, in the judgment of the Tax Commission based upon an examination of his records and measurement of his inventories, be able to properly discharge his liability for the tax herein imposed, then in any of such events, the Tax Commission shall demand an additional bond of such distributor in an amount necessary, in the judgment of the Tax Commission, to protect the revenue of the state. Provided, that the penal sum of the additional bond and the bond furnished under the provisions of the preceding paragraph may not, in total, exceed three (3) months' tax liability.

—— (d) Upon approval of such application and bond or bonds the Tax Commission shall issue to the applicant a nontransferable distributor license bearing a distinctive number, such license to remain in full force and effect until surrendered, suspended or cancelled in the manner provided by law.

—— (e) Upon cancellation of the bond of any distributor, all tax, penalties and interest shall become due and payable and the distributor shall forthwith make a report and pay all such tax and penalties and interest including the tax on stocks of motor fuel on hand at the time of such cancellation unless a new bond has been furnished and approved.

—— (f) When a licensed distributor ceases to carry on business as such for any reason whatsoever he shall forthwith notify the Tax Commission the date of discontinuance, and in the event of the sale or transfer of such business, the name and address of the purchaser or transferee, and shall forthwith report and pay all tax, interest and penalties due and shall surrender all licenses, permits and

duplicate licenses theretofore issued by the Tax Commission to him under this article.

SECTION 13. 68 O.S. 1971, Section 511, is amended to read as follows:

Section 511. (a) Each distributor must make application for and secure a duplicate of his license for each wholesale and retail station operated by him and by each retailer which said distributor supplies with motor fuel or diesel fuel or blending material, except stations the operator of which has been issued a dealer license as provided by this section. The application must be made on a form furnished by the Tax Commission showing the name, address and distributor license number of the applicant, the name of the operator, the location of the station and such other information as the Tax Commission requires. Upon approval of the application, the Tax Commission shall issue a nontransferable duplicate of the distributor license. Every person defined as a dealer by this article must obtain a license by making a verified application on a form furnished by the Tax Commission showing his name and address, location of the station and such other information as the Tax Commission requires. Upon approval of the application, the Tax Commission shall issue to the applicant a nontransferable dealer license for each station operated by him. Each retailer and dealer license shall continue in full force and effect until surrendered by the person that applied for such license or until it is cancelled by the Tax Commission. Every person to whom a dealer license has been issued must keep a record of all purchases or receipts and retail sales of motor fuel, diesel fuel or blending material for a period of at least three (3) years. There shall be displayed in each retail station in a conspicuous place, clearly visible from the driver's seat of a vehicle being serviced, the duplicate retailer or dealer license under which such station is operated. Each retail station must display either a duplicate retailer or dealer license. Any person required to secure any such license who carries on any such

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business without having obtained a proper license or after the license issued to such person has been cancelled shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail not to exceed one (1) year, or by both such fine and imprisonment.

(b) Each person to whom a dealer license has been issued shall file with the Tax Commission on or before the twentieth day of each month, upon a form furnished by the Tax Commission, a verified report for the preceding calendar month showing the beginning and closing inventories, the number of gallons of motor fuel, diesel fuel or blending material received, purchased or sold, by such dealer, the person from whom purchased, the point of origin, the date and invoice number of each purchase, the total gallons sold each day and such other information as the Tax Commission requires.

(c) The operator of any retail station dealing in motor fuel, diesel fuel or blending material shall keep in the station for a period of three (3) years a true and correct record of all motor fuel, diesel fuel or blending material received, together with the invoice or copy thereof covering each purchase, showing the quantity of each delivery, the name of the consignor, the owner or driver of the truck, the point of origin and the date of delivery, and also copies of all sales invoices required by this article, and shall also keep a record of the total sales of motor fuel, diesel fuel or blending material for each day and also a record of the inventory at the beginning of business on the first day of each month and such other information as the Tax Commission requires.

(d) The Tax Commission may require any retailer to make the same kind of reports that distributors or dealers are required to make by this article.

SECTION 14. 68 O.S. 1971, Section 512, is amended to read as follows:

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Section 512. (a) Whenever any sale or delivery is made by a distributor or a person importing motor fuel, diesel fuel or blending material and selling it in the original package or container in which it was imported into this state, the seller must deliver to the purchaser an invoice showing the information required on invoices as set out in Section 507 of this Code, including, in addition, a statement of whether or not the seller assumes and agrees to pay the tax on said fuel. The seller of imported gasoline, diesel fuel or blending material must keep a record of each import and a copy of each invoice for a period of at least three (3) years.

(b) It is unlawful for any person to purchase, receive or accept any motor fuel, diesel fuel or blending material from any seller in the original package or container in which the same was imported, or to pay for, or offer for sale such motor fuel, diesel fuel or blending material unless and until the invoice is demanded and received by the purchaser. The purchaser must maintain a record and keep a copy of the invoice for a period of at least three (3) years.

(c) Any person who purchases, receives or accepts any motor fuel, diesel fuel or blending material from any seller in this state in the original package or container in which the same was imported and upon which the seller has not assumed the payment of the tax shall, on or before the twentieth day of the month following the month in which the sale or delivery was made, make a report on a form furnished by the Tax Commission showing the quantity purchased, received or accepted, the name and address of the purchaser and seller, the kind of container in which received, the name of the carrier by whom delivered, and such other information as the Tax Commission requires. Such person must remit to the Tax Commission at the time of making the report the amount of tax due.

(d) For the purpose of determining the number of gallons of motor fuel or diesel fuel on which the tax is to be paid which is imported by persons in auxiliary fuel tanks and withdrawn therefrom for use if the tax can be more accurately determined on a mileage basis based on

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the number of miles traveled in Oklahoma, the Tax Commission is authorized to accept and approve such basis.

SECTION 15. 68 O.S. 1971, Section 513, is amended to read as follows:

Section 513. (a) Every distributor, retailer or dealer shall at the time of the sale or delivery of motor fuel, diesel fuel or blending material, including delivery to any location operated by him, make and deliver to the purchaser or transporter a delivery invoice covering each such delivery showing the date of sale or delivery, the name and location of the seller, the license number of the seller, the point of origin, the quantity delivered, the price per gallon, the total sales price, the A.P.I. gravity, the point or points to which delivery is to be made, the true name of the product, the name of the buyer, the license or exemption permit number of the buyer and transporter, whether the tax is to be paid by the seller or purchaser, the amount of the tax, and such other information as the Tax Commission requires. Every such delivery invoice must be identified by consecutive numbers printed thereon and every distributor, retailer or dealer must account for each invoice and each copy thereof. If for any reason additional delivery invoices are made at any other time covering the same motor fuel, diesel fuel or blending material, the additional delivery invoices must show the number of the original delivery invoice issued at the time of the delivery of the motor fuel, diesel fuel or blending material. Provided, this requirement does not apply to deliveries into the fuel supply tanks of motor vehicles of less than twenty-one (21) gallons by retailers or dealers except as otherwise provided by Section 610 of this Code.

(b) Every distributor, retailer or dealer must retain one copy of each delivery invoice as a part of his permanent records for a period of at least three (3) years.

(c) Every person who transports motor fuel, diesel fuel or blending material in any manner other than in the fuel supply tank of

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a motor vehicle must, at all times while it is in transit, carry in the transporting vehicle a delivery invoice covering the load being transported. Provided, however, this does not apply to any person transporting a quantity of twenty (20) gallons or less from a distributor's place of business to a point at which he will consume the same.

(d) Every person who purchases, or otherwise acquires for himself or any other person, any motor fuel, diesel fuel or blending material must, at the time of the delivery or acquisition, demand and receive a delivery invoice as required by this section. He must retain each such delivery invoice as a part of his permanent records for a period of at least three (3) years.

(e) Any person violating any of the provisions of this section, whether acting for himself or as agent for some other person, is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a term not to exceed one (1) year, or by both such fine and imprisonment. The venue for any prosecution arising under the terms of this section shall be in the county court of the county in which the crime was committed.

SECTION 16. 68 O.S. 1971, Section 514, is amended to read as follows:

Section 514. (a) Every distributor, retailer and dealer must keep a record of all motor fuel, diesel fuel or blending material purchased, received, manufactured, sold, delivered, used, or otherwise disposed of, as to each transaction and the amount on hand as hereinafter in this section provided. Such records must be kept for a period of at least three (3) years and must include the date, manifest, bill of lading or delivery invoice number and the number of gallons. Provided, however, that except as otherwise provided by Section 610 of this Code, retailers or dealers are not required to keep a record of each sale of less than twenty-one (21) gallons to

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consumers, but they must keep a record of the total number of gallons sold each day to consumers.

(b) Every refiner, manufacturer or producer of motor fuel, diesel fuel or blending material within this state must keep an accurate daily record of inventories itemized to reflect all stocks of petroleum products on hand including finished gasoline, gasoline stocks, kerosene, diesel fuel, distillate, casing-head gasoline, drip gasoline, crude oil, benzol, benzene, alcohol and any other product used in or which can be used in compounding, blending or manufacturing motor fuel, diesel fuel or blending material. Such records must also show the amount of crude oil refined, the gravity thereof, the daily yield of each product derived therefrom, the disposition of such products and such other information as the Tax Commission requires.

(c) Every distributor must take an actual physical inventory of all stocks of motor fuel, diesel fuel and blending material on hand on the first day of each month and at subsequent intervals not exceeding one (1) week. The Tax Commission may require the taking of such inventories at more frequent intervals if, in its discretion, that is deemed necessary in the proper enforcement of this article.

(d) When it is determined by the Tax Commission upon audit of any distributor that the records required by this section have not been made or maintained, then all purchases may be presumed to have been sold and the tax may be computed on that basis.

(e) The license of any distributor, retailer or dealer violating any of the provisions of this section may be cancelled by the Tax Commission in the manner provided by law.

SECTION 17. 68 O.S. 1971, Section 515, as amended by Section 1, Chapter 70, O.S.L. 1977 (68 O.S. Supp. 1977, Section 515), is amended to read as follows:

Section 515. (a) Before using any vehicle to transport motor fuel, diesel fuel or blending material on the public highways of this state, the owner or operator of the vehicle must file a verified

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application with the Tax Commission for a motor fuel/diesel fuel transporter license, on a form furnished by the Tax Commission showing the distributor, retailer, dealer or transporter for hire license number of the owner of the vehicle, the make, model, year made, motor number, number and capacity of the tanks or containers of the vehicle and such other information as the Tax Commission requires. The application must be accompanied by the measurement certificate issued under paragraph (c) of this section. Upon approval of the application, the Tax Commission shall issue a motor fuel/diesel fuel transporter license bearing a distinctive number for the vehicle which must be displayed at all times in the cab of the vehicle.

(b) Every tank truck or other conveyance used in the transportation of motor fuel, diesel fuel or blending material must have painted on both the front and rear ends of the vehicle, in a conspicuous position, in at least four-inch letters and figures, the distributor, retailer, dealer or transporter for hire license number preceded by the initials "O.T.C.".

(c) Before using any tank or container in the transportation of motor fuel, diesel fuel or blending material, every person must have the same measured and calibrated by the Tax Commission and a measurement certificate issued for such container or tank. The measurement certificate may be executed only by agents and employees of the Tax Commission after the tank or container has been accurately measured and calibrated according to the standards of the United States Department of Commerce Bureau of Standards. When the tank or container is measured and calibrated a marker approved by the Tax Commission must be installed and sealed therein. The marker shall not be moved, altered or tampered with and the seal thereon shall not be broken by any person other than an agent or employee of the Tax Commission. The measurement and calibration as shown by the certificate must be stenciled or printed on the side of each tank or container in such manner that it will be readily decipherable and

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such markers must at all times correspond with the measurements as shown in the certificate. No person may use any tank or container that has been altered in any manner so as to change the capacity thereof as shown by the measurement certificate therefor without first having the tank or container again measured, calibrated and marked and a new certificate issued therefor by the Tax Commission. The Tax Commission may, however, accept the measurement and calibration performed by any other state of tanks or containers being used to transport motor fuel, diesel fuel or blending material into such other state.

(d) Before any person transports for hire any motor fuel, diesel fuel or blending material on the public highways he must make application for and secure a license to act as a transporter for hire. A verified application must be made on a form furnished by the Tax Commission showing the name and address of the transporter, a description of the equipment to be operated and such other information as the Tax Commission requires. Before the application may be approved he must furnish a bond payable to the State of Oklahoma conditioned on compliance with the provisions of this article and in such amount as may be fixed by the Tax Commission. Upon approval of the application the Tax Commission shall issue a transporter for hire license permitting the applicant to carry on such business. A transporter for hire may transport motor fuel, diesel fuel or blending material only if it has been delivered to him by a person who holds a license as a distributor, retailer or dealer or if it is to be delivered to or for the account of a person holding such a license.

(e) The Tax Commission may require all tanks or other containers in which motor fuel, diesel fuel or blending material is transported to be sealed during such transportation except motor fuel or diesel fuel supply tanks having a capacity not to exceed fifty (50) gallons which are attached as a permanent part of motor vehicles.

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(f) Every person operating a tank truck, tank wagon or other conveyance in which motor fuel, diesel fuel or blending material is transported must have in his possession, at all times during such transportation, a delivery invoice meeting the requirements of Section 513 of this title. Such person must deliver the motor fuel, diesel fuel or blending material being transported only to the person and place designated in the delivery invoice. The invoice is subject to the inspection of the Tax Commission or its representatives and all peace officers at all times during transit. If a person transporting motor fuel, diesel fuel or blending material fails to produce the delivery invoice as herein required upon proper request therefor, or if the delivery invoice does not contain the required information, the motor fuel, diesel fuel or blending material together with the tank wagon, tank truck or other conveyance may be seized and held until a proper delivery invoice is furnished. In the event a proper delivery invoice is not furnished within forty-eight (48) hours and after such seizure, the Tax Commission shall declare the tax due immediately on such motor fuel, diesel fuel or blending material and may assess a penalty equal to the amount of the tax due, and if such tax, penalty and costs are not paid within thirty (30) days, the Tax Commission shall give possession of the property to the sheriff of the county in which the property was seized who shall sell the property in the same manner as is provided for the sale of property seized under execution of a tax warrant.

SECTION 18. 68 O.S. 1971, Section 516, is amended to read as follows:

Section 516. (a) An excise tax of one and one-half cents (1 1/2¢) per gallon is levied upon the sale of each and every gallon of gasoline sold, or stored and distributed, or withdrawn from storage, for sale or use, which tax shall be in addition to the tax of four cents (4¢) per gallon levied by Section 502 of this Code, and which tax shall be in addition to all other taxes herein or hereafter levied upon gasoline; provided, that ninety-seven and one-half

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percent (97 1/2%) of the net gallonage reported for taxation, after all deductions allowed by law have been made, shall be the basis used in the computation of the amount of tax due; and provided, further, that gasoline which is exempt from the tax of four cents (4¢) per gallon under Section 509 of this Code shall also be exempt from one-half cent (1/2¢) per gallon gasoline excise tax of the one and one-half cents (1 1/2¢) per gallon tax levied by this section but shall not be exempt from the remaining one cent (1¢) per gallon gasoline excise tax hereby levied. It is the intent of the Legislature that one-half cent (1/2¢) per gallon of the one and one-half cents (1 1/2¢) tax levied by this section shall not apply to gasoline when used for agricultural purposes as provided by Section 509 of this Code; and provided, further, that gasoline which is exempted from the tax of four cents (4¢) under Section 508 of this Code shall be exempted from the one and one-half cents (1 1/2¢) per gallon tax levied by this section; and provided, further, that no gasoline shall be the subject of the tax hereby levied more than once.

(b) The tax of one and one-half cents (1 1/2¢) per gallon herein levied shall be reported to and collected by the Tax Commission in the same manner, by the same method and at the same time as the tax of four cents (4¢) per gallon levied by Section 502 of this Code.

(c) The tax of one and one-half cents (1 1/2¢) per gallon herein levied shall apply to and be payable on gasoline sold and delivered to or used by the state, city, town, county or any political subdivision thereof.

SECTION 19. 68 O.S. 1971, Section 517, is amended to read as follows:

Section 517. It is hereby declared to be the intent of the Legislature that the provisions of Section 507 of this Code shall apply to the tax of one and one-half cents (1 1/2¢) per gallon herein levied.

SECTION 20. 68 O.S. 1971, Section 518, is amended to read as follows:

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Section 518. It is hereby declared to be the purpose of Section 516 of this Code to provide funds for the construction and maintenance of Farm-to-Market roads on the state highway system, and other rural Farm-to-Market roads and bridges, and for this purpose it is hereby expressly provided that one cent (1¢) of the gasoline excise tax levied by Section 516 of this Code and from which the exemptions provided for in Sections 508 and 509 of this Code have been deducted, and all interest and penalties thereon, when collected by the Tax Commission shall be apportioned monthly and shall be deposited in the State Treasury to the credit of the State Highway Construction and Maintenance Fund and used by the Department of Transportation for the purpose of constructing and maintaining Farm-to-Market roads on the state highway system and other rural Farm-to-Market roads and bridges. The Department of Transportation is authorized to enter into any arrangement of contract agreement with the federal government for the participation by the federal government in the cost of any such project.

SECTION 21. 68 O.S. 1971, Section 519, is amended to read as follows:

Section 519. (a) An amount equal to the revenue, including interest and penalties thereon, accruing from one-half cent (1/2¢) per gallon after the exemptions provided for in Sections 508 and 509 of this Code have been deducted, of the one and one-half cents (1 1/2¢) per gallon gasoline excise tax levied by Section 516 of this Code shall be apportioned monthly and distributed as follows: forty percent (40%) of such sum shall be distributed to the various counties in that proportion, which the county road mileage of each county bears to the entire state road mileage as certified by the Transportation Commission, and the remaining sixty percent (60%) of such sum shall be distributed to the various counties on the basis which the population and area of each county bears to the total population and area of the state. The funds so transmitted shall be sent to the respective county treasurers and by them deposited in the

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county highway fund of the respective counties, to be used by the county commissioners exclusively and directly for the construction and maintenance of county and township highways and permanent bridges on United States rural free delivery and contract mail routes, and school district bus routes, which have been officially designated and mapped by the respective school districts of the respective counties of the state. Provided, however, that the board of county commissioners of any county of this state shall not expend any of such funds on any school district bus route in any district of the state receiving state aid, until such bus route has been approved by the State Board of Education unless said bus route be the same as a United States mail route; and provided, further, that the board of county commissioners of any county in this state shall not expend any of such funds for the purpose of purchasing or renting road machinery or equipment. Provided, further, that in all counties where the county excise board of any county may find it necessary, because of insufficient revenue to maintain city and county government of such county out of the general fund, after a levy of ten (10) mills has been made for any fiscal year, the county excise board may appropriate out of any such funds apportioned to such county an amount sufficient to pay the salaries of the county commissioners of such county for such fiscal year.

(b) It shall be unlawful for the board of county commissioners to use such funds for any other purpose, and any commissioner violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed Five Hundrod Dollars ($500.00) and imprisoned in the county jail not to exceed six (6) months; and said commissioner shall be liable on his official bond for any of said funds expended in violation of the provisions of this section.

SECTION 22. 68 O.S. 1971, Section 522, is amended to read as follows:

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Section 522. (a) There is hereby levied an excise tax of one cent (1¢) per gallon upon the sale of each and every gallon of gasoline sold, or stored and distributed, or withdrawn from storage, for sale or use, which tax shall be in addition to all other taxes levied by this article upon gasoline; provided, that ninety-seven and one-half percent (97 1/2%) of the net gallonage reported for taxation, after all deductions allowed by law have been made, shall be the basis used in the computation of the amount of tax due, and provided, further, that no gasoline shall be the subject of the tax hereby imposed more than once.

(b) The excise tax of one cent (1¢) per gallon levied by this section, including interest and penalties thereon, shall be reported to and collected by the Tax Commission at the same time, in the same manner, and by the same method as the tax imposed by Section 502 of this Code.

(c) On sales of gasoline by a licensed distributor of motor fuel, to any other licensed distributor, the tax levied by this section may be assumed by such other licensed distributor in the same manner and under the same conditions as provided elsewhere herein.

(d) The only exemptions from the tax hereby levied are as follows:

1. Gasoline or motor fuel used exclusively by the United States.
2. Gasoline or motor fuel exported from this state which is exempt under Section 507(b) of this Code.
3. Gasoline or motor fuel used exclusively in aircraft which is exempt under the provisions of Section 508 of this Code.
4. Gasoline or motor fuel purchased by a school district which is exempt under provisions of Section 527 of this Code.

SECTION 23. 68 O.S. 1971, Section 523, is amended to read as follows:

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——Section 523. It is hereby declared to be the purpose of the preceding section to provide funds for the construction of permanent bridges and culverts, located on school bus routes and mail routes, and for the surfacing and resurfacing of rural roads consisting of school bus routes and mail routes, and for these purposes it is hereby expressly provided that the gasoline excise tax levied by the preceding section shall be apportioned monthly by the Tax Commission and paid to the various county treasurers of the State of Oklahoma, and by them deposited in a special fund separate and apart from the county highway construction fund of the several counties as hereinafter provided, to be used exclusively by the board of county commissioners of said counties for the purpose of constructing permanent bridges and culverts, located on school bus routes and mail routes, and for the surfacing and resurfacing of school bus routes and mail routes in the several counties, as hereinafter provided. Provided, that the portion of such funds used for surfacing and resurfacing of such roads shall be used only for gravel and graveling, or some other forms of surfacing materials to be approved by the Transportation Commission. None of such funds may be used for the lease, rental or purchase of machinery or equipment, except as hereinafter provided. One gravel loader may be purchased by each county, if said county does not possess a gravel loader; provided, that the counties may hire trucks for hauling gravel. The funds herein provided for the construction of permanent bridges and culverts, and for the surfacing and resurfacing of county rural roads consisting of school bus routes and mail routes, shall be distributed to the several counties in the following manner: One-third (1/3) on area, one-third (1/3) on rural population (defined as including the population of all municipalities with a population of less than five thousand (5,000) according to the latest Federal Census adjusted by one-half (1/2) the increase or decrease that would result through using the latest Federal Census); one-third (1/3) on county road mileage, as last certified by the Department of Transportation, as

each county bears to the entire area, rural population and road mileage of the state. When federal funds are available for assistance in constructing county roads, the funds herein provided, when distributed and deposited in the special county highway fund, are authorized to be used by the boards of county commissioners, by majority action thereof, in matching such federal funds on any county highway notwithstanding any other limitation of this section as to the type or class of roads on which funds shall be used, and for the purpose of securing such federal assistance the boards of county commissioners, by majority action thereof, are authorized to enter into agreements with the federal government through the Transportation Commission and deposit, from the proceeds of the tax levied by the preceding section, cash with the Transportation Commission necessary to fulfill said agreement, for the extension of the present Federal Aid Farm-to-Market System, or for the creation of new federal systems, and to enter into such other contracts and agreements as may be necessary to secure federal assistance in the construction or improvement of any county road.

SECTION 24. 68 O.S. 1971, Section 526, is amended to read as follows:

Section 526. Any county commissioner violating any of the provisions of Section 523 of this Code by using funds transferred to the special fund of his county, or voting therefor, for any purpose other than that specifically authorized, or by failing to properly publish within the time provided an account of his expenditures and construction, as hereinbefore provided, shall be subject to removal from office by an action instituted by the district attorney or Attorney General, and shall be liable upon his official bond for any such wrongful expenditure, which amount may be recovered as a credit to the special fund, in an action to be brought by the district attorney, Attorney General, or any interested taxpayer of the county involved.

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SECTION 25. Sections 601 through 615 of this title shall be known as the Oklahoma Motor Fuel/Diesel Fuel Importer for Use Tax Code.

SECTION 26. 68 O.S. 1971, Section 601, is amended to read as follows:

Section 601. For the purposes of this article:

(a) The term "motor vehicle" or "vehicle" means and includes any automobile, truck, truck tractor, bus, vehicle, engine, machine, mechanical contrivance, or other conveyance which is propelled by an internal combustion engine or motor and not used in the air or upon fixed rails or tracks.

(b) The term "use" means and includes the consumption of motor fuel by any person in a motor vehicle for the propulsion thereof upon the public highways of this state.

(c) The term "gasoline" is hereby declared to be and to mean the same as the term "motor fuel," and the term "motor fuel" means and includes every petroleum product, fluid, or liquid, or any combination thereof, having an A.P.I. gravity of forty-six degrees (46°) Fahrenheit and at atmospheric pressure, and shall include drip, casinghead or natural gasoline, benzol, naphtha, benzine and solvents, and shall include any liquid or fluid of less than forty-six degrees (46°) A.P.I. gravity at a temperature of sixty degrees (60°) Fahrenheit compounded, blended, manufactured, or otherwise produced by mixing or blending gasoline or naphthas with any blending materials, when the blended product can be used for generating power in internal combustion engines, regardless of how such liquid or fluid is made, compounded, manufactured or recovered, and regardless of the name by which such liquid or fluid may be known or sold.

(d) The term "diesel fuel" means diesel engine fuel, kerosene, and all other liquids suitable for the generation of power for the propulsion of motor vehicles except those products subject to the tax imposed by Sections 502, 516, 520 and 522 of this title.

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(e) The term "person" means and includes natural persons, individuals, partnerships, firms, association, corporations, estate, trustees, business trusts, syndicates, or any corporations or combinations acting as a unit or any receiver appointed by any state or federal court; and the use of the singular number shall include the plural number.

(f) The term "Tax Commission" means the Oklahoma Tax Commission.

(g) The term "Motor Fuel/Diesel Fuel Importer for Use" means and includes any person importing gasoline or motor fuel or diesel fuel into this state in the fuel supply tank or tanks of any motor vehicle or in any other containers for use in propelling said vehicle upon the highways of this state.

(h) The term "gallon" means the quantity of fluid or liquid at a temperature of sixty degrees (60°) Fahrenheit necessary to completely fill a United States standard gallon liquid measure.

(i) The term "public highways" means and includes every road, highway, street, way or place within this state, of whatever nature, generally open to the use of the public as a matter of right for the purposes of vehicular travel, including a toll highway, and including streets and alleys of any town or city notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.

SECTION 27. 68 O.S. 1971, Section 604, is amended to read as follows:

Section 604. In addition to the tax levied by the preceding section and in consideration of the use of the highways of this state, an additional tax is hereby levied upon all persons subject to and liable for the tax levied by the preceding section, to be paid at the rate of one cent (1¢) per gallon on gasoline imported into and actually used on the highways of this state, which tax shall be computed and paid on the same basis, at the same time and in the same manner as the tax levied by the preceding section. The revenue accruing from the tax levied by this section, including interest and

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penalties, thereon, shall be apportioned monthly by the Tax Commission and paid to the various county treasurers of the State of Oklahoma and by them deposited in the county highway construction funds of the several counties of the state, as hereinafter provided, to be used by the boards of commissioners of said counties for the purpose of constructing and maintaining school bus routes and mail routes in the several counties. The funds herein provided for the construction and maintenance of county rural roads consisting of school bus routes and mail routes shall be distributed to the several counties in the following manner: one-third (1/3) on area, one-third (1/3) on county road mileage as last certified by the Department of Transportation, and one-third (1/3) on rural population (defined as including the population of all municipalities with a population of less than five thousand (5,000), according to the latest Federal Census, adjusted by one-half (1/2) the increase or decrease that would result through using the latest Federal Census), as each county bears to the entire area, rural population and road mileage of the state.

SECTION 28. In consideration of the use of the highways of this state, and in addition to all other taxes levied for such purposes, all persons who import diesel fuel into the State of Oklahoma in the fuel supply tank or tanks of motor vehicles or in any other containers for use in propelling said vehicles on said highways for commercial purposes, shall report and pay to the Tax Commission a tax for such use of the highways as hereinafter provided. The tax hereby levied and imposed shall be measured and determined by the number of gallons of diesel fuel so imported and actually used on the highways of this state and shall be at the rate of five and one-half cents (5 1/2¢) per gallon of such diesel fuel; provided, that ninety-seven and one-half percent (97 1/2%) of the net gallonage of such imported diesel fuel reported as used shall be the basis used in the computation of the amount of tax due the state; and provided, further, no diesel fuel on which the tax levied by Article 5 of this

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Code has been paid to the State of Oklahoma shall be used in computing the tax hereby imposed. Provided, that in the event the tax hereby levied can be more accurately determined on a mileage basis, that is, by determining and using the total number of miles traveled in Oklahoma, or in case it is practicable to so determine the tax, the Tax Commission is authorized to accept and approve such basis.

SECTION 29. This act is to provide revenue for general governmental functions of state government and for the construction and maintenance of state and county highways and bridges. The tax, including penalties and interest collected under the levy in Section 3 of this act, shall be apportioned monthly for use as follows:

(1) An amount equal to the revenue, including penalties and interest thereon, accruing from four cents (4¢) per gallon of the five and one-half cents (5 1/2¢) per gallon collected of the tax levied by Section 3 of this act, shall be apportioned monthly and used for the following purposes:

(a) Three percent (3%) shall be paid by the Tax Commission to the State Treasurer and by him placed to the credit of the Oklahoma Tax Commission Fund to be paid out of said fund pursuant to appropriations therefrom made by the State Legislature.

(b) Seventy-two and three-fourths percent (72 3/4%) shall be deposited in the State Depository to the credit of the State Highway Construction and Maintenance Fund and expended for the construction, repair and maintenance of state highways.

(c) Twenty-four and one-fourth percent (24 1/4%) shall be transmitted by the Tax Commission to various counties of the state, in the percentage which the population and area of each county bears to the population and area of the entire state. The funds so transmitted shall be sent to the respective county treasurers, and by them deposited in the county highway fund of their respective counties to be used

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by the county commissioners for the purpose of constructing and maintaining county or township highways and permanent bridges in such counties. No part of such fund shall be used for any purpose other than the construction and maintenance of county or township highways and permanent bridges in the county receiving the fund. The said funds received by any county shall not thereafter be diverted to any other county of the state, but such funds shall be expended only under the direction and control of the board of county commissioners in the county to which said funds are apportioned. If any part of said funds is diverted for any purpose other than is provided herein, the county commissioners shall be liable on their bond for double the amount of money so diverted. Provided that where any state or county highway has been laid out over a road already constructed in any county by the use of money raised from county or township bond issued for the purpose either alone or by the use of federal or state aid, or both, the county commissioners may set aside out of the funds apportioned to that county, as provided herein, an amount of money equal to the value of any part thereof, of the interest of such county or township or both, in and to such highway or highways, bridge or bridges so constituting a part of the state highway system, which amount of money shall be considered by the excise board in reducing the levy for the purpose of retiring the bonded indebtedness and interest thereon of the county or township, and shall be used for investment or deposit in the same manner as provided by law for the disposition of other sinking fund money.

(2) An amount equal to the revenue, including penalties and interest thereon, accruing from one cent (1¢) per gallon of the five and one-half cents (5 1/2¢) per gallon collected of the tax levied by Section 3 of this act, shall be apportioned monthly and shall be

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deposited in the State Treasury to the credit of the State Highway Construction and Maintenance Fund and used by the Department of Transportation for the purpose of constructing and maintaining Farm-to-Market roads on the state highway system and other rural Farm-to-Market roads and bridges. The Department of Transportation is authorized to enter into any arrangement or contract agreement with the federal government for the participation by the federal government in the cost of any such project.

(3) An amount equal to the revenue, including penalties and interest thereon, accruing from one-half cent (1/2¢) per gallon of the five and one-half cent (5 1/2¢) per gallon collected of the tax levied by Section 3 of this act, shall be apportioned monthly and distributed as follows:

Forty percent (40%) of such sum shall be distributed to the various counties in that proportion which the county road mileage of each county bears to the entire state road mileage as certified by the Transportation Commission, and the remaining sixty percent (60%) of such sum shall be distributed to the various counties on the basis which the population and area of each county bears to the total population and area of the state. The funds so transmitted shall be sent to the respective county treasurers and by them deposited in the county highway fund of the respective counties, to be used by the board of county commissioners exclusively and directly for the construction and maintenance of county and township highways and permanent bridges on United States rural free delivery and contract mail routes, and school district bus routes, which have been officially designated and mapped by the respective school districts of the respective counties of the state. Provided, however, that the board of county commissioners of any county of this state shall not expend any of the funds received under the provisions of this act on any school district bus route in any district of the state receiving state aid, until such bus route has been approved by the State Board of Education unless said bus route be the same as a United States

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mail route, and provided further that in all counties where the county excise board of any county may find it necessary, because of insufficient revenue to maintain city and county government of such county out of the general fund, after a levy of ten (10) mills has been made for any fiscal year, the county excise board may appropriate out of any funds apportioned to such county under this act, an amount sufficient to pay the salaries of the county commissioners of such county for such fiscal year.

It shall be unlawful for the board of county commissioners to use such funds for any other purpose, and any commissioner violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not to exceed Five Hundred Dollars ($500.00) and imprisonment in the county jail not to exceed six (6) months, and said commissioner shall be liable on his official bond for any of said funds expended in violation of the provisions of this act.

SECTION 30. In consideration of the use of the highways of this state, and in addition to all other taxes levied for such purposes, all persons who import diesel fuel into the State of Oklahoma in the fuel supply tank or tanks of motor vehicles or in any other containers for use in propelling said vehicles on said highways for commercial purposes, shall report and pay to the Tax Commission a tax for such use of the highways as hereinafter provided. The tax hereby levied and imposed shall be measured and determined by the number of gallons of diesel fuel so imported and actually used on the highways of this state and shall be at the rate of one cent (1¢) per gallon of such diesel fuel; provided, that ninety-seven and one-half percent (97 1/2%) of the net gallonage of such imported diesel fuel reported as used shall be the basis used in the computation of the amount of tax due the state; and provided, further, no diesel fuel on which the tax levied by Article 5 of this Code has been paid to the State of Oklahoma shall be used in computing the tax hereby imposed. Provided, that in the event the tax hereby levied can be more

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accurately determined on a mileage basis, that is, by determining and using the total number of miles traveled in Oklahoma, or in case it is practicable to so determine the tax, the Tax Commission is authorized to accept and approve such basis.

SECTION 31. It is hereby declared to be the purpose of the levy in Section 30 of this act to provide funds for the construction of permanent bridges and culverts located on school bus routes and mail routes, and for the surfacing and resurfacing of rural roads consisting of school bus routes and mail routes, and for these purposes it is hereby expressly provided that the diesel fuel use tax levied by Section 30 hereof shall be apportioned monthly by the Tax Commission and paid to the various county treasurers of the State of Oklahoma, and by them deposited in a special county highway fund separate and apart from the county highway and construction fund of the several counties as hereinafter provided, to be used exclusively by the boards of county commissioners of said counties for the purpose of constructing permanent bridges and culverts located on school bus routes and mail routes, and for the surfacing and resurfacing of school bus routes and mail routes in the several counties, as hereinafter provided. Provided further that the portion of such funds used for surfacing and resurfacing of such roads shall be used only for gravel and graveling, or some other forms of surfacing materials to be approved by the Department of Transportation. None of these funds may be used for the lease, rental, or purchase of machinery or equipment, except as hereinafter provided. One gravel loader may be purchased by each county, if said county does not possess a gravel loader; provided further that the counties may hire trucks for hauling gravel. The funds herein provided for construction of permanent bridges and culverts and for the surfacing and resurfacing of county rural roads consisting of school bus routes and mail routes shall be distributed to the several counties in the following manner: one-third (1/3) on area, one-third (1/3) on rural population (defined as including the population of all

municipalities with a population of less than five thousand (5,000) according to the latest Federal Census), and one-third (1/3) on county road mileage, as last certified by the Department of Transportation, as each county bears to the entire area, rural population and road mileage of the state. When federal funds are available for assistance in constructing county roads, the funds herein provided, when distributed and deposited in the special county highway funds, are authorized to be used by the boards of county commissioners, by majority action thereof, in matching such federal funds on any county highway notwithstanding any other limitation of this act as to the type or class of roads on which funds shall be used and, for the purpose of securing such federal assistance, the boards of county commissioners, by majority action thereof, are authorized to enter into agreements with the federal government through the Department of Transportation and deposit, from the proceeds of the tax levied herein, cash with the Department of Transportation necessary to fulfill said agreement for the extension of the present Federal Aid Farm-to-Market System, or for the creation of new federal systems, and to enter into such other contracts and agreements as may be necessary to secure federal assistance in the construction or improvement of any county road.

SECTION 32. 68 O.S. 1971, Section 605, is amended to read as follows:

Section 605. The tax levied by this article shall not apply to motor fuel or diesel fuel imported into and used on the highways of this state by:

(a) Persons operating motor vehicles commonly designated as automobiles which are constructed for and being used solely for the transportation of persons for purposes other than for hire or compensation.

(b) Any person operating a motor vehicle having a motor fuel or diesel fuel supply tank or tanks, including any additional containers, with an aggregate capacity of not more than twenty-five

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(25) gallons if such vehicle is not being used as a common carrier of persons or property, a contract carrier of persons or property, or as a private commercial carrier of property.

(c) Persons importing livestock and farm products in the raw state, including cotton, whether in the seed or ginned, and including cotton seed and baled hay, when such commodities are moved from farm to market, or from market to farm on a vehicle or on vehicles owned and operated by a bona fide farmer not engaged in motor vehicle transportation on a commercial scale.

(d) Motor fuel or diesel fuel used in vehicles owned by the United States of America.

Provided, no exemption of the tax levied by this article shall be construed as an exemption from the tax levied by Article 5 of this Code.

SECTION 33. 68 O.S. 1971, Section 606, is amended to read as follows:

Section 606. The liability for the tax imposed by this article shall arise and accrue against the person operating a motor vehicle, the operation of which is subject to said tax, at the time and place said motor vehicle shall enter upon the highways of this state. Provided, however, a lessor who is engaged in the business of leasing for compensation motor vehicles and equipment he owns without drivers to carriers or other lessees for interstate operation may be deemed to be the Motor Fuel/Diesel Importer for Use when he supplies or pays for the motor fuel or diesel fuel consumed in such vehicles, and such lessor may be issued Motor Fuel/Diesel Fuel Importer for Use License. Any lessee may exclude motor vehicles of which he is lessee from his reports and liabilities, but only if the motor vehicles in question have been leased from a lessor holding a valid Motor Fuel/Diesel Fuel Importer for Use License.

SECTION 34. 68 O.S. 1971, Section 607, is amended to read as follows:

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Section 607. (a) Before any person imports gasoline or diesel fuel into this state in the fuel supply tank or tanks of any motor vehicle, or in any other container for use on the highways of this state, such person shall file application for and obtain a Motor Fuel/Diesel Fuel Importer for Use License. Such requirement shall be complied with notwithstanding the tax levied by Article 5 of this Code has been paid on such gasoline or diesel fuel. Provided, however, persons exempted by Section 605 of this Code from the tax herein levied shall not be required to obtain such license. The application required by this section shall be verified and filed on a form prescribed and furnished by the Tax Commission showing the name and address and kind of business of the applicant, a designation of the principal place of business and such other information as the Tax Commission may require. Such application must also contain, as a condition to the issuance of the license, an agreement by the applicant to comply with the requirements of this article and the rules and regulations of the Tax Commission.

(b) Before any such application may be approved by the Tax Commission, the applicant must file a bond payable to the State of Oklahoma conditioned upon compliance with the provisions of this article and the rules and regulations of the Tax Commission in a sum of not more than Ten Thousand Dollars ($10,000.00), the amount thereof to be fixed by an order of the Tax Commission. The amount of any such bond required may be increased or reduced by the Tax Commission at any time, and the Tax Commission may in its discretion, waive the filing of a bond by any person who regularly purchases sufficient gasoline or diesel fuel on which the motor fuel or diesel fuel excise tax has been paid to the State of Oklahoma when said tax equals or exceeds the amount of the tax levied against such person under this article.

(c) Upon approval of such application and bond, the Tax Commission shall issue to the applicant a nontransferable Motor Fuel/Diesel Fuel Importer for Use License bearing a distinctive

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number, such license to remain in full force and effect until surrendered, suspended, or cancelled in the manner provided by law. Each such license shall be valid only for the operation of motor vehicles on the highways of this state by the person to whom it is issued including motor vehicles transporting persons or property in furtherance of the business of said licensee under a lease, a contract or any other arrangement, whether permanent or temporary in nature.

SECTION 35. 68 O.S. 1971, Section 608, is amended to read as follows:

(a) Every person operating a motor vehicle on the highways of this state as a Motor Fuel/Diesel Fuel Importer for Use must at all times during such operation have displayed in the cab of such motor vehicle, a photostatic copy of the Motor Fuel/Diesel Fuel Importer for Use License which shall be subject to inspection at all times by representatives of the Tax Commission.

(b) Any person operating a motor vehicle on the highways of this state, the operation of which is subject to the tax levied by this article, without having obtained a Motor Fuel/Diesel Fuel Importer for Use License as required by Section 607 of this title, shall be guilty of a misdemeanor and, upon conviction, punished by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for a period not exceeding one (1) year or both. The venue for prosecutions arising under this section shall be in the district court of any county in which such vehicle is being operated.

SECTION 36. 68 O.S. 1971, Section 609, is amended to read as follows:

Section 609. (a) Every person licensed under this article shall make and transmit to the Tax Commission on or before the twentieth day of April, July, October, and January of each year, upon a form prescribed and furnished by the Tax Commission, a verified quarterly report, showing the total miles traveled, miles traveled in Oklahoma by each motor vehicle, the total gallonage of motor fuel or diesel

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fuel consumed, the number of gallons of motor fuel or diesel fuel purchased or received in this state, the date of each purchase or receipt, the name and address of the seller, the delivery invoice number of each purchase or receipt, and the number of gallons of motor fuel or diesel fuel imported into and used in this state. The report must also include the amount of motor fuel or diesel fuel on hand at the beginning and close of the period as shown by the physical inventory taken on that date (those dates), if storage is maintained, and a complete record of all receipts and withdrawals into and from said storage.

The number of gallons of motor fuel or diesel fuel shown to have been purchased or received in Oklahoma on which the tax levied by Article 5 of this Code has been paid to this state shall be deducted from the total number of gallons of motor fuel or diesel fuel used by such person in Oklahoma to determine the number of gallons of motor fuel or diesel fuel upon which the tax levied by this article is to be computed and paid.

(b) Every person at the time of filing each quarterly report must pay to the Tax Commission the full amount of tax due for the preceding quarter at the rate provided for in this article. Such tax is due and payable on the first day of the succeeding quarter for which the report is filed, and if not paid, is delinquent from and after the twentieth day of such month. When any person shall fail to submit to the Tax Commission any report required hereunder within thirty (30) days from the date it is required to be filed, the Tax Commission shall assess, in addition to the penalties and interest provided for in 68 O.S. 1971, Section 217, a penalty of not less than Five Dollars ($5.00) for the first offense and not less than Five Dollars ($5.00) for each subsequent offense. It is hereby declared that the deduction of two and one-half percent (2 1/2%) of the total gallonage used by such person allowed by Sections 603, 605 and 607 of this Code is in consideration of the expense of obtaining the

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licenses and permits, filing the bond and making the reports required by this article.

(c) The Motor Fuel/Diesel Fuel Importer for Use License of any person who is delinquent in the payment of tax levied by this article may be cancelled by the Tax Commission in the manner provided by law.

SECTION 37. 68 O.S. 1971, Section 610, is amended to read as follows:

Section 610. (a) Each Motor Fuel/Diesel Fuel Importer for Use must maintain and keep for a period of three (3) years such records of motor fuel or diesel fuel used and mileage traveled by each and all motor vehicles on the highways of this state including motor vehicles owned, operated, leased or under any other form of contract, together with inventories, withdrawals, deliveries, purchases supported by invoices, bills of lading and all pertinent records and papers as may be required by the Tax Commission for the administration of this article.

(b) Every retailer or dealer who sells and delivers any motor fuel or diesel fuel into the fuel supply tanks of any motor vehicle of a licensed Motor Fuel/Diesel Fuel Importer for Use must, at the time of the delivery, make and deliver to the person owning or operating such vehicle an invoice covering each such delivery, showing the name of the purchaser, the date, the name and address of the seller printed thereon, the number of gallons delivered, the price per gallon and total sales price, and such other information as the Tax Commission may require. Each invoice must be made in duplicate, be identified by consecutive numbers with at least three digits printed thereon, and each retailer or dealer must furnish said invoices and retain one copy thereof and be able to account for each invoice and each copy thereof.

The invoices required by this section must be demanded by every Motor Fuel/Diesel Fuel Importer for Use covering each purchase.

(c) Any person wilfully violating any of the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction

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thereof, be punished by a fine of not more than One Thousand Dollars ($1,000.00), or be sentenced to imprisonment in the county jail for not more than one (1) year, or both. Venue for prosecution arising under this section shall be in the district court of any county in which such person resides or, if such person is not a resident of this state, any county in which such person uses the highways of this state or maintains an established place of business.

SECTION 38. 68 O.S. 1971, Section 611, is amended to read as follows:

Section 611. (a) Any person importing motor fuel or diesel fuel into this state and liable for the tax levied by this article for the first time who has not obtained a Motor Fuel/Diesel Fuel Importer for Use License, shall, for the purpose of determining the number of gallons of motor fuel or diesel fuel used on the highways of this state, be required to pay to the Tax Commission the tax levied by this article on all motor fuel or diesel fuel contained in the fuel supply tank or tanks, and any other containers for use in propelling said vehicle. Upon obtaining a Motor Fuel/Diesel Fuel Importer for Use License and filing a report showing all of the operations of such person subject to tax by this article, credit shall be allowed on said report for the tax paid under the provisions of this section and any overpayment of tax shall be refunded or credited to a future report. However, this credit shall not be allowed and no refund of such tax shall be made unless the report taking the credit or the claim for the refund is filed within thirty (30) days from the date of payment of said tax.

(b) The second time any person imports motor fuel or diesel fuel into this state and becomes liable for the tax levied by this article, without having obtained a Motor Fuel/Diesel Fuel Importer for Use License, the motor vehicle operated by such person may be seized and held until such person complies with the provisions of this article and pays all taxes determined to be due hereunder.

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However, said motor vehicle may be released upon the making of a bond or furnishing other security for the payment of the tax.

SECTION 39. 68 O.S. 1971, Section 612, is amended to read as follows:

Section 612. Any person coming within the provisions of this article may qualify as a distributor under Article 5 of this Code but this shall in no way relieve such person from the liability of the tax levied by this article. Compliance with Article 5 providing for the obtaining of a distributor license, the filing of a distributor bond, and making of monthly reports, by any such person shall be in lieu of the requirements of the provisions of this article relating to those things.

SECTION 40. 68 O.S. 1971, Section 613, is amended to read as follows:

Section 613. (a) Whenever any person to whom a Motor Fuel/Diesel Fuel Importer for Use License has been issued ceases doing business or discontinues all operations in Oklahoma subject to the tax levied by this article, such person must notify the Tax Commission in writing of said fact within fifteen (15) days after such discontinuance and surrender such license together with all Motor Fuel/Diesel Fuel Importer for Use Licenses issued. All tax, penalties and interest levied by this article due from such person at the time of such discontinuance, shall become due and payable concurrently with such discontinuance, and such person must make a report and pay all such tax, interest and penalties at the time his license is surrendered.

(b) Any person wilfully violating any of the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than One Thousand Dollars ($1,000.00), or be sentenced to imprisonment in the county jail for not more than one (1) year or both. Venue for prosecution arising under this section shall be in the district court of any county in which such person resides, or, if such person is not a resident of

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this state, any county in which such person uses the highways of this state or maintains an established place of business.

SECTION 41. 68 O.S. 1971, Section 614, is amended to read as follows:

Section 614. Nothing in this article shall be construed as requiring interstate carriers to make a showing of "public convenience and necessity" in order to secure any license required by the provisions hereof, and the provisions of this article shall apply to interstate commerce only insofar as such regulation is permitted by the Constitutions of Oklahoma and the United States, and the holding of any part of this article or any section or part thereof to be void or ineffective for any cause by any court shall not affect any other section or part of this article.

SECTION 42. 68 O.S. 1971, Section 615, is amended to read as follows:

Section 615. Any person licensed under the Motor Fuel/Diesel Fuel Importer for Use Law shall be entitled to a credit equivalent to the tax rate per gallon on all gasoline or diesel fuel upon which the Oklahoma gasoline or diesel fuel tax has been paid and which has thereafter been consumed in motor vehicles outside the State of Oklahoma. When the amount of credit herein provided to which the person is entitled for any calendar quarter exceeds the amount of tax for which such person is liable for gasoline or diesel fuel consumed in Oklahoma in such vehicles during the same quarter, such excess shall, under regulations promulgated by the Tax Commission, be allowed as a credit if used within thirteen (13) months from the first day of any calendar quarter against the tax for which such person would be otherwise liable for any of the succeeding quarters; or, upon claim filed with the Tax Commission within thirteen (13) months from the first day of any calendar quarter in which said gasoline or diesel fuel was used, such excess, less two and one-half percent (2 1/2%) allowed to distributors, may be refunded. Application for refund must be supported by evidence of the mileage

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traveled and the gallonage consumed and satisfactory evidence of the tax-paid purchases. Refund vouchers shall be paid from current collections derived from the tax levied under which the tax refund claims have been allowed, and a portion of such current collections as are necessary to pay such refund is hereby appropriated.

SECTION 43. 68 O.S. 1971, Section 701, is amended to read as follows:

Section 701. The following words and phrases when used in this act are hereby defined as follows:

(a) The term "motor vehicle" or "vehicle" means and includes any automobile, truck, truck tractor, bus, vehicle or mechanical contrivance which is propelled by an internal combustion engine or motor and not used in the air or upon fixed rails or tracks.

(b) The term "person" means and includes every natural person, fiduciary, individual, partnership, firm, association, corporation, business trust, or combination acting as a unit, or any receiver appointed by any state or federal court, and the use of the singular number shall include the plural. Whenever used in any clause prescribing and imposing a fine or imprisonment or both, the term "person" as applied to an association means and includes the parties or members thereof, and as applied to corporations, the officers thereof.

(c) "Commission" or "Tax Commission" means the Oklahoma Tax Commission.

(d) The term "special fuel" or "fuel" means and includes all combustible gases and liquids, including liquefied gases, which exist in the gaseous state at a temperature of sixty degrees (60^{o}) Fahrenheit and at a pressure of 14.7 pounds per square inch absolute.

(e) The term "use" shall mean and include the following: (1) the delivery or placing of special fuel into the fuel supply tank or tanks of any motor vehicle in this state for use in whole or in part to propel such vehicle on the public highways of this state; (2) the consumption on the public highways of Oklahoma of any special fuel

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imported into this state in the fuel supply tank or tanks of any motor vehicle using the public highways of this state for commercial purposes; (3) the consumption of special fuel in any type of motor vehicle on the public highways of this state for any purpose by any person who refuses to divulge the source of such fuel.

(f) The term "public highway" means and includes every road, highway, street, way or place within this state, of whatever nature, generally open to the use of the public as a matter of right for the purposes of vehicular travel, including a toll highway, and including streets and alleys of any town or city, notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.

(g) The term "gallon" means one (1) United States standard gallon at a temperature of sixty degrees (60°) Fahrenheit.

(h) The term "special fuel dealer" shall mean any person engaged in the business of handling special fuel who delivers any part thereof into the fuel supply tank or tanks of any motor vehicle.

(i) The term "special fuel user" shall mean and include any person other than a special fuel dealer, who uses special fuel in this state, within the meanings of the word "use" as defined in this act, and shall include any person who consumes special fuel to propel a motor vehicle upon the public highways of this state when such special fuel has been purchased or obtained from any source free from the payment to this state of the tax levied by this act.

SECTION 44. Sections 3 through 6 of this act shall be codified in the Oklahoma Statutes as Sections 502.1, 504.1, 522.1 and 523.1, respectively, of Title 68, unless there is created a duplication in numbering. Sections 28 through 31 of this act shall be codified in the Oklahoma Statutes as Sections 603.1, 602.1, 604.1 and 602.2, respectively, of Title 68, unless there is created a duplication in numbering.

SECTION 45. This act shall become effective January 1, 1979.

Committee Report - Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Passed the Senate the 12th day of April, 1978.

acting President of the Senate

Passed the House of Representatives the 13th day of April, 1978.

Speaker of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 17th

day of April, 1978,

at 4:30 o'clock P M.

By: Preston Hamilton

Approved by the Governor of the State of Oklahoma the 21st day of

April, 1978, at 4:00 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 21st

day of April, 1978,

at 4:35 o'clock P M.

By:

Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Correctly Enrolled

ENR. S. B. NO. 618

STATE OF WISCONSIN

1977 Assembly Bill 714 **Date published*:** May 8, 1978

CHAPTER 289, LAWS OF 1977

AN ACT to repeal 78.83 and subchapter III (title) of chapter 139; to renumber 139.60; to amend 78.68 (1) (a) and (b), chapter 139 (title), 139.08 (3) and 139.33 (3) and (4); to repeal and recreate 78.80 (3); and to create 97.18 (5m), 139.33 (5) and 139.38 (6) of the statutes, relating to the confidentiality of motor and special fuel, cigarette and intoxicating beverage tax information, procedures in demanding tax reports from motor and special fuel nonfilers, cigarette tax enforcement, transferring oleomargarine regulation from the department of revenue to the department of agriculture and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 78.68 (1) (a) and (b) of the statutes are amended to read:

78.68 (1) (a) If any licensee fails, neglects or refuses to file a motor fuel or special fuel tax report for any calendar month when due, the department shall send a written demand to file such report to the licensee by ~~registered~~ certified mail addressed to ~~said~~ the licensee at the address of the licensee's principal place of business ~~of said licensee within 10 days after the due filing date of said report~~. A penalty of $5 is ~~hereby~~ imposed for failure, neglect or refusal to file such report when due ~~and if~~. If such report is not filed and the penalty paid within ~~20~~ 10 days from the date ~~when such report was due~~ the licensee received the department's demand the license of ~~said~~ the licensee shall be automatically revoked.

(b) If any licensee fails, neglects or refuses to make tax payment for any calendar month when due, the department shall send a written demand for payment to the licensee by ~~registered~~ certified mail addressed to ~~said~~ the licensee at the address of the licensee's principal place of business ~~of said licensee~~. A penalty of $10 is ~~hereby~~ imposed for the first failure, neglect or refusal within a calendar year to make such tax payment when due and a penalty of 2% of the ~~amount of~~ tax due but not less than $10 is ~~hereby~~ imposed for each successive failure, neglect or refusal to make such tax payment when due within the same calendar year. If tax remittance was made when due but by a defective bank check, the department may waive the penalty if it appears to the department that the defect was not intentional and the defect is corrected promptly. If such tax and penalty are not paid within ~~20~~ 10 days from the date ~~when due~~ the licensee received the department's demand, the license of ~~said~~ the licensee shall be automatically revoked and the department shall determine the amount of tax due and shall proceed to collect ~~such~~ the motor fuel or special fuel tax and penalty as provided in this chapter.

SECTION 2. 78.80 (3) of the statutes is repealed and recreated to read:

78.80 (3) Section 71.11 (44) (a), (c) and (d), relating to confidentiality of income and gift tax returns, applies to any information obtained from any person on a motor fuel or special fuel tax return, report, schedule, exhibit or other document or from an audit report pertaining to the same.

SECTION 3. 78.83 of the statutes is repealed.

SECTION 3m. 97.18 (5m) of the statutes is created to read:

97.18 (5m) The department of health and social services shall assist the department in the enforcement of this section and, in connection with inspections of food service operations at institutions and establishments under its inspectional jurisdiction, conduct compliance inspections and surveys, and report violations directly to the department.

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* Section 990.05, *1975 Wisconsin Statutes*: **Laws and acts; time of going into force.** "Every law or act which does not expressly prescribe the time it takes effect shall take effect on the day after its publication."

SENATE BILL No. 1023
(81r3636)

Introduced by Senators Wiser, Bonvegna, and Dorman

Read and Examined by Proofreader:

_____
Proofreader.

_____
Proofreader.

Sealed with the Great Seal and presented to the Acting Governor, for his approval this_____day of_____ at_____o'clock,_____M.

_____
President.

CHAPTER 993

AN ACT concerning

Price Discrimination - Distribution of Gasoline Products

FOR the purpose of prohibiting price discrimination by distributors between controlled and noncontrolled outlets ~~and~~; providing a price standard for wholesale distribution of gasoline products to noncontrolled outlets; defining certain terms; and exempting certain persons and farm cooperatives.

BY renumbering

Article - Commercial Law
Section 11-301(b) ~~through 11-301(f), respectively to be Section 11-301(c) through 11-301(g)~~ and 11-301(c), respectively, to be Section 11-301(c) and 11-301(d), respectively, and Section 11-301(d) through 11-301(f), respectively, to be Section 11-301(g) through 11-301(i), respectively
Annotated Code of Maryland
(1975 Volume and 1977 Supplement)

BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken by amendment.

Article - Commercial Law
Section 11-301(b), (e) and (f) and 11-304(1)
Annotated Code of Maryland
(1975 Volume and 1977 Supplement)

Preamble

The General Assembly finds that distributors of gasoline have sold gasoline in the State through retail outlets operated by them at prices below or substantially the same as the wholesale price at which the same distributors have sold gasoline to their retail dealers. Because of this pricing policy, retail dealers have been unable to fairly compete with the retail outlets operated by the distributors, and as a result, some retail dealers have ceased their business operations and a substantial number of retail dealers are faced with unfair competitive pricing practices which may force them out of business, thereby substantially reducing the number of independent retail dealers in this State. While the outlets operated by the distributors are in these cases selling gasoline at their retail outlets for a price less than that of their franchised dealers, the General Assembly is concerned that as these distributor owned operations become greater in number in this state, and acquire a larger number of prime sites, this competition in the sale of gasoline to the public shall be diminished, resulting in a potential decrease in independent competitors, creating the potential for the distributors to take advantage of their then dominant and potentially collective monopolistic position in the retail market to substantially increase the retail price of gasoline to the consuming public in this State. The intent and purpose of this Act is to preserve competition among retail service stations in this State for the benefit of the consuming public and to assure that there will continue to be substantial competition among the several types of retail service stations in this State by providing a basis upon which all competitors shall be on an equal basis insofar as price is concerned.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That Section(s) 11-301(b) through 11-301(f), respectively, of Article - Commercial Law, of the Annotated Code of Maryland be renumbered to be Section(s) 11-301(c) through 11-301(g), respectively.

SECTION 2. AND BE IT FURTHER ENACTED, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article - Commercial Law

11-301.

(B) "CONTROLLED OUTLET" MEANS AN OUTLET WHICH IS OPERATED BY A DISTRIBUTOR OR OPERATED BY COMPANY EMPLOYEES, A SUBSIDIARY COMPANY, COMMISSIONED AGENT, OR BY ANY PERSON WHO MANAGES THE OUTLET ON A FEE ARRANGEMENT WITH THE DISTRIBUTOR.

(E) "FARM COOPERATIVE" MEANS A COOPERATIVE ORGANIZED UNDER SUBTITLE 5 OF TITLE 5 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

(F) "INDEPENDENT JOBBER" MEANS AN INDIVIDUAL WHO PURCHASES GASOLINE PRODUCTS FROM A WHOLESALER FOR RESALE TO A DEALER.

11-304.

(L) (1) A DISTRIBUTOR WHO SETS THE RETAIL PRICE OF GASOLINE THROUGH CONTROLLED OUTLETS SHALL PROVIDE THOSE NONCONTROLLED OUTLETS THAT IT SUPPLIES WITH GASOLINE PRODUCTS AT A WHOLESALE PRICE OF AT LEAST 4 CENTS PER GALLON UNDER THE LOWEST PRICE POSTED FOR EACH GRADE OF GASOLINE AT ANY CONTROLLED OUTLET. VIOLATION OF THIS SUBSECTION CONSTITUTES PRICE DISCRIMINATION AS PROHIBITED BY ~~§11-204(3)~~ 11-204(A)(3) OF THIS ARTICLE.

(2) THE PROVISIONS OF THIS ACT SHALL NOT APPLY TO INDEPENDENT JOBBERS AND FARM COOPERATIVES.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
President of the Senate.

_____
Speaker of the House of Delegates.

Each Probate Judge, Sheriff, and the Clerk and Register of the Circuit Court is required by law to preserve this slip or pamphlet in a book kept in his office until the Act is published in permanent form.

ALABAMA LAW

(Regular Session, 1978)

Act No. 766 H. 769—Turnham

AN ACT

To require the State Building Commission to adopt, promulgate and enforce a state building code which contains energy conservation measures; to provide that said code is to be used in all future construction or remodeling of buildings which are constructed with state appropriated funds; to prescribe duties for the director of the technical staff and to establish minimal energy conservation criteria.

Be It Enacted by the Legislature of Alabama:

Section 1. Definitions.

1. "Commission" means the State Building Commission.

2. "Director" means the Director of the Technical Staff of the State Building Commission.

3. "Code" means the state building code to be adopted by the State Building Commission.

Section 2. Legislative Intent. For the health and welfare of the people of Alabama, the Building Commission of the State of Alabama which was created in 1945 by the legislature, is authorized and hereby directed to adopt, promulgate and enforce a state building code. The code adopted by the Commission under the provisions of this act, after having been recorded in the office of Secretary of State for sixty days, shall become effective. The code shall be applicable to all buildings constructed or remodeled after the effective date of this act with state appropriated funds or funds from any other instrumentality of the state. It shall include a minimal energy conservation section which controls those items affecting heat loss in the exterior envelop of buildings and affecting climatic control and illumination of buildings.

Section 3. Responsibility of the Director. The Director of the technical staff of the Commission shall have the responsibility for developing said code and presenting it to the Commission for adoption, and in fulfillment of such responsibility, may, as it becomes necessary, contract for the consultant services of

architects, engineers and other technicians with a portion of the funds provided. It shall be the further responsibility of the Director to keep the code updated and consistent with acceptable engineering and architectural practices by from time to time presenting the Commission with recommended changes and modifications for adoption. The Director shall, at the earliest possible date after the passage of this bill, submit a state building code, for any building or construction utilizing state funds, to the Commission for adoption. Said code shall contain provisions for an Energy Conservation Code which regulates the thermal efficiency of the exterior of buildings and the efficiency of lighting design and climatic control in buildings. The director shall include in the said code thermal and lighting efficiency standards which will meet the following criteria:

a) Be applicable to all new and renovated buildings; and

b) Be no less stringent than the Appendix "J" of the Standard Building Code.

The director shall prepare and offer such training and assistance as the State Building Commission deems necessary in implementing the provisions of this act and the standards herein established.

The commission also shall cause the director to formulate guidelines for thermal and lighting efficiency applicable to all new and renovated buildings, whether such buildings are state funded or not, and the manner of implementation therefor.

Section 4. Severability. The provisions of this act are severable. If any part of the act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 5. Repealer. All laws or parts of laws which conflict with this act are hereby repealed.

Section 6. Effective Date. This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved May 2, 1978

Time: 6:30 P.M.

I hereby certify that the foregoing copy of an Act of the Legislature of Alabama has been compared with the enrolled Act and it is a true and correct copy thereof.

Given under my hand this 4th day of May, 1978.

JOHN W. PEMBERTON

Clerk of the House

Assembly Bill No. 2373

CHAPTER 248

An act to amend Sections 25402.1, 25960, and 25964 of the Public Resources Code, relating to energy and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 16, 1978. Filed with Secretary of State June 16, 1978.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2373, Wornum. Energy regulations: operating efficiency; gas appliances.

(1) Under existing law the State Energy Resources Conservation and Development Commission is required to perform specified tasks for the purpose of implementing the requirements of subdivisions (a) and (b) of Section 25402 of the Public Resources Code which state that the commission shall prescribe by regulation, building design and construction standards which increase energy use efficiency, and energy conservation design standards, for new buildings. Existing law further requires that a local building department not issue a building permit unless the building plans satisfy the standards established pursuant to subdivisions (a) and (b) of Section 25402, and states that nothing in those subdivisions shall prohibit the enforcement of city or county energy conservation or energy insulation standards provided that the commission finds that the standards will require a diminution of energy consumption levels permitted by the rules and regulations adopted pursuant to subdivisions (a) and (b) of Section 25402.

This bill would require that a local building department not issue a building permit unless the building plans satisfy standards established pursuant to subdivision (a) or (b) of Section 25402, and would require that a city or county file the basis for its determination that energy conservation or energy insulation standards are cost effective in addition to requiring a diminution of energy consumption levels permitted by the rules and regulations adopted pursuant to subdivisions (a) and (b) of Section 25402. The bill would also make other technical changes in such provisions.

(2) Existing law prohibits the sale or installation of any new residential-type gas appliance equipped with a pilot light, such prohibition being effective 24 months after an intermittent ignition device has been certified by the commission. Existing law also provides that beginning 24 months after an ignition device has been certified, no person shall cause to be distributed, sold, or installed in this state any new gas appliance without obtaining a proper seal of certification from the commission.

This bill would delete the prohibition on the installation of any new

residential-type gas appliance equipped with a pilot light, and would provide that beginning 24 months after an ignition device has been certified, no person shall sell or offer for sale any new gas appliance without obtaining a proper seal of certification from the commission. The bill would also provide that no city, county, or state agency, beginning 24 months after an intermittent ignition device has been certified by the commission, shall issue a permit for any building to be equipped with any new gas appliance unless the permit meets a specified condition, but it would allow installation of nonconforming appliances which were purchased pursuant to a contract made prior to June 17, 1978, if a building permit was approved prior to July 8, 1978.

The bill would take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 25402.1 of the Public Resources Code is amended to read:

25402.1. In order to implement the requirements of subdivisions (a) and (b) of Section 25402, the commission shall do all of the following:

(a) Develop a public domain computer program which will enable contractors, builders, architects, engineers, and government officials to estimate the energy consumed by various classes of buildings with various types of occupancies. The commission may charge a fee for the use of the program, which fee shall be based upon the actual cost of the program, including any computer costs.

(b) Include a prescriptive method of complying with the standards including design aids such as a manual, sample calculations and model structural designs. The prescriptive program shall be based on the standards developed pursuant to Chapter 11.5 (commencing with Section 19878) of Part 3 of Division 13 of the Health and Safety Code as it existed prior to the effective date of this section.

(c) Produce, no later than 180 days after adoption of the standards, an energy conservation manual for use by designers, builders, and contractors of nonresidential buildings. The manual shall be furnished upon request at a price sufficient to cover the costs of production and shall be distributed at no cost to all affected local agencies. The manual shall contain, but not be limited to, the following:

(1) The standards for energy conservation established by the commission.

(2) Forms, charts, tables, and other data to assist designers and builders in meeting the standards.

(3) Design suggestions for meeting or exceeding the standards.

(4) Any other information which the commission finds will assist persons in conforming to the standards.

(5) Instructions for use of the computer program for calculating energy consumption in residential and nonresidential buildings.

(6) The prescriptive method for use as an alternative to the computer program.

(d) The commission shall establish a continuing program of technical assistance to local building departments in the enforcement of subdivisions (a) and (b) of Section 25402 and this section. The program shall include the training of local officials in building technology and enforcement procedures related to energy conservation, and the development of complementary training programs conducted by local governments, educational institutions, and other public or private entities. The technical assistance program shall include the preparation and publication of forms and procedures for local building departments in performing the review of building plans and specifications. The commission shall provide, on a contract basis, a review of building plans and specifications submitted by a local building department, and shall adopt a schedule of fees sufficient to repay the cost of such services.

(e) The provisions of subdivisions (a) and (b) of Section 25402 and this section, and the rules and regulations of the commission adopted pursuant thereto, shall be enforced by the building department of every city, county, or city and county.

(1) No building permit for any residential or nonresidential building shall be issued by a local building department unless a review by the building department of the plans for the proposed residential or nonresidential building contains detailed energy system specifications and confirms that the building satisfies the minimum standards established pursuant to subdivision (a) or (b) of Section 25402 and this section applicable to such building.

(2) Where there is no such local building department the commission shall enforce the provisions of subdivisions (a) and (b) of Section 25402 and this section.

(3) If a local building department fails to enforce subdivisions (a) and (b) of Section 25402 and this section or any other provision of this chapter or standard adopted pursuant thereto the commission may provide such enforcement after furnishing 10 days' written notice to the local building department.

(4) A city, county, or city and county may by ordinance or resolution prescribe a schedule of fees sufficient to pay the costs incurred in the enforcement of subdivisions (a) and (b) of Section 25402 and this section. The commission may establish a schedule of fees sufficient to pay the costs incurred by such enforcement.

(f) The provisions of subdivisions (a) and (b) of Section 25402 and this section shall apply only to new residential and nonresidential buildings on which actual site preparation and construction have not commenced prior to the effective date of rules and regulations adopted pursuant to those sections that are applicable to such buildings. Nothing in those sections shall prohibit either of the

following:

(1) The enforcement of state or local energy conservation or energy insulation standards, adopted prior to the effective date of rules and regulations adopted pursuant to subdivisions (a) and (b) of Section 25402 and this section with regard to residential and nonresidential buildings on which actual site preparation and construction have commenced prior to that date.

(2) The enforcement of city or county energy conservation or energy insulation standards, whenever adopted, with regard to residential and nonresidential buildings on which actual site preparation and construction have not commenced prior to the effective date of rules and regulations adopted pursuant to subdivisions (a) and (b) of Section 25402 and this section provided that the city or county files the basis of its determination that the standards are cost effective with the commission and the commission finds that such standards will require the diminution of energy consumption levels permitted by the rules and regulations adopted pursuant to those sections.

(g) The commission may exempt from the requirements of this section and of any regulations adopted pursuant thereto any proposed building for which compliance would be impossible without substantial delays and increases in cost of construction, if the commission finds that substantial funds have been expended in good faith on planning, designing, architecture or engineering prior to the date of adoption of such regulations.

(h) Should a dispute arise between an applicant for a building permit and the building department regarding interpretation of Section 25402 or the regulations adopted pursuant thereto, either party may submit the dispute to the commission for resolution. The commission's determination of the matter shall be binding on the parties.

(i) Nothing in Section 25130, 25131, or 25402, or in this section shall be construed to prevent enforcement of any regulation adopted pursuant to this chapter, or Chapter 11.5 (commencing with Section 19878) of Part 3 of Division 13 of the Health and Safety Code as they existed prior to the effective date of this section.

SEC. 2. Section 25960 of the Public Resources Code is amended to read:

25960. No new residential-type gas appliance that is equipped with a pilot light shall be sold in the state after an alternate means has been certified by the commission. This prohibition shall become operative 24 months after an intermittent ignition device has been demonstrated and certified by the commission as an alternate means. The commission may determine, after demonstration, that there is no feasible alternative means to the use of pilot light or that the use of a pilot light is necessary for public health and safety.

SEC. 3. Section 25964 of the Public Resources Code is amended to read:

25964. After 24 months after an intermittent ignition device has been certified by the commission, no person shall sell or offer for sale in this state any new gas appliances, as defined in Section 25950, without obtaining the proper seal of certification from the commission, unless the commission otherwise permits such action. Beginning 24 months after an intermittent ignition device has been certified by the commission, no city or county, city and county, or state agency shall issue a permit for any building to be equipped with any new gas appliance, as defined in Section 25950, unless such building permit shows that the gas appliance complies with the provisions of this chapter, except that any new gas appliance which does not comply with the provisions of this chapter may be installed if such applicance was purchased pursuant to a contract executed prior to June 17, 1978, and if the building permit was approved prior to July 8, 1978.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order that residential-type gas appliances equipped with a pilot light may be installed after July 8, 1978, when authorized under a building permit issued prior to July 8, 1978, it is necessary that this act become effective immediately.

O

95 120

Substitute House Bill No. 5441

PUBLIC ACT NO. 78-269

AN ACT ESTABLISHING LIGHTING EFFICIENCY STANDARDS FOR PUBLIC BUILDINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) As used in this act: (1) "Public building" means any building or portion thereof, other than an "exempted building", which is open to the public during normal business hours including: (A) Any building which provides facilities or shelter for public assembly; (B) any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant, or other commercial establishment which provides services or retails merchandise and (C) any building owned or leased by the state of Connecticut or any political subdivision thereof, or any building owned or leased by another state or political subdivision thereof and located in Connecticut, including libraries, museums, schools, hospitals, auditoriums, sports arenas, and university buildings; (2) "exempted building" means: (A) Any building whose peak design rate of energy usage for all purposes is less than one watt per square foot of floor area for all purposes; (B) any building with neither a heating nor cooling system and (C) any building owned or leased in whole or in part by the United States; (3) "commissioner" means the commissioner of administrative services or his designee and (4) "secretary" means the secretary of the office of policy and management or his designee.

Sec. 2. (NEW) The commissioner, after consultation with the secretary and with such advisory board as said secretary may appoint, shall adopt, in accordance with chapter 54 of the general statutes, regulations establishing lighting standards for all public buildings. The members of any such advisory board shall receive neither compensation nor expenses for the performance of their duties.

Sec. 3. (NEW) The lighting standards adopted pursuant to section 2 of this act shall provide for the maximum feasible energy efficiency of lighting equipment commensurate with other factors relevant to lighting levels and equipment, including, but not limited to, the purposes of the lighting, reasonable economic considerations in terms both of initial capital costs and of operating costs including non-energy operating

costs, reasonable budgetary considerations in terms of the feasibility of implementing changes which require a significant capital expenditure in a given time period, any constraints imposed on lighting equipment by the nature of the activities being carried out in the facility involved, considerations involving historic preservation or unusual architectural features, the amount of remaining useful lifetime which a particular structure would be expected to enjoy and the size of the building or portion of the building involved.

Sec. 4. (NEW) The commissioner shall, upon the adoption of the regulations required by section 2 of this act, make random inspections of public buildings to monitor compliance with the standards established by such regulations. The commissioner may also inspect any public buildings against which complaints alleging violation of such standards have been received. The operator of a public building or portion thereof shall provide access to such inspectors at any reasonable time, including all times during which the facility is open to the public. If an inspector is denied access to a public building for the purposes of making an inspection in accordance with the provisions of this act, the commissioner may apply to the superior court for the judicial district wherein such building is located for injunctive or other equitable relief. If upon inspection it is determined that the lighting levels in a public building do not conform to such standards, the inspector shall make available to the owner or operator of such building, information regarding such standards and the economic and energy savings expected to result from compliance therewith. The owner or operator of a public building may, after having taken appropriate measures to render such building in compliance with such standards request a reinspection of such building by the commissioner. The commissioner may, upon such request or at his own discretion, conduct such reinspection and determine whether or not such building has been brought into compliance with such standards.

Sec. 5. (NEW) The commissioner shall maintain a listing of all public buildings found to be in compliance with the lighting standards adopted pursuant to section 3 of this act. On or before January 1, 1979, the commissioner shall report the progress achieved in securing

compliance with such standards to the governor and general assembly. On or before January 1, 1979, the commissioner, the secretary and the public utilities control authority shall, jointly or severally, report to the governor and the general assembly their recommendations for such additional measures, incentives, enforcement provisions, educational programs or other activities as they may deem appropriate or useful for furthering compliance with such standards and implementing the purposes of this act provided, if no such additional activities are deemed necessary by said commissioner or secretary or authority such finding or findings shall be so reported. Such recommendations may address: (1) The appropriateness of the continued exercise by the commissioner of jurisdiction over the lighting standards adopted pursuant to this act as opposed to the exercise of such jurisdiction by the department of public safety established by section 3 of public act 77-614 and (2) the feasibility of differential treatment, during conditions of any energy emergency declared under title 16a, title 28 or section 29-61 of the general statutes, between public buildings which have complied with such lighting standards and public buildings which have not so complied.

Sec. 6. This act shall take effect July 1, 1978, except that sections 1, 2 and 3 shall take effect from passage.

Certified as correct by

_____

Legislative Commissioner.

_____

Clerk of the Senate.

_____

Clerk of the House.

Approved _____, 1977

_____

Governor.

ENROLLMENT

March 9, 1978

The Committee of the House on [redacted], [redacted] Journals has examined the within and finds the same properly enrolled.

Billy Milford of 13th

Chairman

Thomas B. Murphy

Speaker of the House

Clerk of the House

President of the Senate

Hamilton McWhorter, Jr.

Secretary of the Senate

Received Tom L. Chaney

Secretary, Executive Department

This 9th day of March 1978

Approved George Busbee

Governor

This 10th day of April 1978

H. B. No. 1310 Act No. 1470

General Assembly

AN ACT

To authorize the State Building Administrative Board to adopt regulations for the establishment of thermal efficiency standards for new and renovated buildings, and lighting efficiency standards for new and renovated public buildings; to provide for a short title ("Energy Conservation Building Standards Act of 1978"); to provide for definitions; and for other purposes.

IN HOUSE

Read 1st time Jan. 10, 1978

Read 2nd time Jan. 11, 1978

Read 3rd time Jan. 13, 1978

And Passed

Ayes 95 Nays 1

Clerk of the House

IN SENATE

Read 1st time Jan. 16, 1978

Read 2nd time Feb. 9, 1978

Read 3rd time Feb. 13, 1978

And Passed

Ayes 52 Nays 1

Hamilton McWhorter, Jr.

Secretary of the Senate

By: Reps. Lambert of the 112th, Carlisle of the 71st, Swann of the 90th, and Nichols of the 27th, and Daniel of the 88th

[redacted] Journals has examined the within and finds the same properly

AN ACT

To authorize the State Building Administrative Board to adopt regulations for the establishment of thermal efficiency standards for new and renovated buildings, and lighting efficiency standards for new and renovated public buildings; to provide for a short title; to provide for definitions; to provide for the adoption of thermal and lighting efficiency standards; to provide for the amendment of standards; to provide for the enforcement of standards; to provide for appeals; to provide for severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Short title. This Act shall be known and may be cited as the "Energy Conservation Building Standards Act of 1979."

Section 2. Findings; Declaration of Policy. The General Assembly finds that the increasing scarcity of traditional energy resources, which have been the foundation of Georgia's economic growth and well-being, demands a positive program to encourage energy conservation. Because lighting, heating, and cooling of buildings presently constitute a substantial portion of the State's energy use, the 1977 Session of the General Assembly directed the State Building Administrative Board to develop thermal and lighting efficiency standards to encourage energy conservation in the construction and renovation of

buildings. The General Assembly recognizes the diligent efforts of the State Building Administrative Board in developing the Georgia State Code for Energy Conservation in New Building Construction at the direction of the General Assembly (Ga. Laws 1977, p. 769), and declares, therefore, that the State Building Administrative Board shall be authorized to adopt regulations for the implementation of thermal efficiency standards for new and renovated buildings, and lighting efficiency standards for new and renovated public buildings.

Section 3. Definitions. For the purpose of this Act, the following terms shall have the definitions ascribed to them below, unless the context clearly requires otherwise:

(1) "Board" means State Building Administrative Board.

(2) "Exempted building" means any of the following:

(a) any building whose peak design rate of energy usage for heating, cooling, ventilation, and lighting is less than one watt or 3.4 British thermal units (Btus) per hour per square foot of floor area for all purposes;

(b) any building which is neither mechanically heated nor cooled;

(c) any mobile home; and

(d) any building owned or leased in whole or in part by the United States.

(3) "Exterior envelope" means those elements of a building which enclose conditioned spaces through which thermal energy may be transferred to or from the exterior.

(4) "New building" means any building on which final design is commenced after the adoption of standards

under this Act.

(5) "Public building" means any building which is open to the public during normal business hours, and is not an exempted building, including the following:

(a) any building which provides facilities or shelter for public assembly, or which is used for educational, office, or institutional purposes;

(b) any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant, or other commercial establishment which provides services or retails merchandise;

(c) any portion of an industrial plant building used primarily as office space; and

(d) any building owned by the State or a political subdivision or instrumentality thereof, including libraries, museums, schools, hospitals, auditoriums, sports arenas, and university buildings.

(6) "Renovated building" means either of the following:

(a) a building undergoing alteration of the exterior envelope, heating, ventilation and air conditioning systems, water heating systems or lighting systems, for which the aggregate cost exceeds ten percent of the assessed value of the building immediately prior to such alteration; or

(b) a building undergoing alteration in the physical configuration or interior space for which the aggregate cost of alteration exceeds one-fourth of the assessed value of the building, immediately prior to such alteration.

Section 4. Adoption of Thermal and Lighting Efficiency Standards. The Board shall have the power to adopt regulations which establish minimum thermal efficiency

standards in new and renovated buildings, and lighting efficiency standards in new and renovated public buildings. The standards shall not apply to exempted buildings, and the standards for renovated buildings shall apply only to the portions or systems of the building which are directly involved in the renovation. No standards shall become effective without the approval of the Office of Energy Resources. The Board shall consult with the Office of Energy Resources during the development of any standards to be adopted under this Act, and shall submit such standards to the Office of Energy Resources for approval at least ten days prior to the adoption of such standards. The standards shall be adopted no later than three months from the date of enactment of this Act, and in accordance with the Administrative Procedure Act. Such standards shall:

(1) Be developed in consideration of the Georgia State Code for Energy Conservation in New Building Construction, which was developed by the Board from a model prepared by the National Conference of States on Building Codes and Standards;

(2) Be designed to achieve maximum energy savings, consistent with protecting the public health, safety, and welfare; and commensurate with the cost of complying with such standards;

(3) Be consistent with the latest and most effective technology;

(4) Incorporate maximum flexibility by the use of performance standards, where feasible, as well as prescriptive standards; and

(5) Exclude exempted buildings.

Section 5. Amendment of Standards. The Board shall review the standards adopted under this Act at least annually, and make any revisions deemed appropriate. Prior

to any revision of the standards, the Board shall consult with and use the advice of the Energy Standards Advisory Committee as to any proposed or considered revisions of the standards.

To effectuate the provisions of this Section, there is hereby created the Energy Standards Advisory Committee. The Committee shall be composed of five (5) persons to be appointed by the Governor. The five (5) members shall be representative of the building industry, both commercial and residential. The Committee members shall serve at the pleasure of the Governor. The Committee members shall serve without compensation. The Governor shall annually select one of the members to serve as Chairman and one of the members to serve as Vice Chairman. The State Building Administrative Board shall act as the Committee's administrative agent.

The Committee shall meet as necessary to consult with and give advice to the Board concerning the Board's annual review of the standards and consideration of any revisions thereof. A majority of the members of the Committee shall constitute a quorum for the transaction of any and all business.

Such revisions shall be considered and adopted in accordance with the Georgia Administrative Procedure Act, and shall be subject to the provisions of Section 4 of this Act.

Section 6. Enforcement of Standards. The design, erection, construction and alteration of any building for which the standards provided for by this Act shall apply shall be accomplished so that the building, or applicable portions thereof, shall meet or conform to such standards. Enforcement of compliance with the provisions of this Section shall be solely the province of local governing

authorities, except in regard to buildings owned by the State. In State-owned buildings, the State agency which owns the building shall provide for the compliance with the standards adopted under this Act. Local governing authorities are authorized to adopt rules and regulations for the administration and enforcement of these standards, and to adopt such penalties for violation of the standards as they deem appropriate.

Section 7. Appeals. The Chairman of the Board shall designate from time to time an Appeals Board, which shall consist of not less than three nor more than five members of the Board. The Appeals Board shall have authority to hear appeals relating to the interpretation, enforcement, and administration by local governing authorities of the standards adopted under this Act, or concerning exceptions to this Act. The Appeals Board may, at its option, hear de novo cases, but shall not hear any appeal until it is determined that the appeal procedures available through the affected local government have been exhausted. If the Appeals Board determines that the local governing authority erred in its interpretation of the standards, it shall remand the case to the local government with instructions to take such action as the Appeals Board directs. Decisions of the Appeals Board may be further appealed to the full Board. Further appeals may be made as provided by the Administrative Procedure Act.

Section 8. Severability. In the event any section, subsection, sentence, clause or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect, as if

the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

Section 9. Effective Date. This Act shall become effective upon its approval by the Governor or upon its becoming law without his approval.

Section 10. Repealer. All laws and parts of laws in conflict with this Act are hereby repealed.

HOUSE OF REPRESENTATIVES
NINTH LEGISLATURE, 1978
STATE OF HAWAII

H.B. NO. 2169-78 H.D. 2 S.D. 1

Act 132-78

A BILL FOR AN ACT

RELATING TO ENERGY CONSERVATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 46- Energy conservation standards for building design and construction. (a) Energy efficiency building standards based on the design requirements for improvements of energy utilization in buildings developed and approved by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Incorporated (ASHRAE 90), meeting the requirements of Public Law 94-163 shall be incorporated by each county into its building code by July 1, 1978. The energy efficiency building standards shall apply to all new and renovated buildings, including State buildings.

SMA 153-601

(b) The energy efficiency building standards shall not apply to exempted buildings. For the purposes of this section, "exempted building" means:

(1) Any building whose peak design rate of energy usage is less than one watt per square foot of floor area for all purposes;

(2) Any building with neither a heating nor cooling system;

(3) Any building owned or leased in whole or in part by the United States;

(4) Any building that is deliberately preserved beyond its normal term of use because of historic significance, architectural interest, or public policy or that qualifies for special historic building code provisions; and

(5) Dwelling units with air conditioning systems totaling less than 12,000 BTUH capacity.

For special applications such as hospitals, laboratories, thermally sensitive equipment, computer rooms, and manufacturing and industrial processes, the design concepts and parameters shall conform to the requirements of the application at minimum energy levels, provided that where these special applications are described in the ASHRAE handbook and product directory, applications volume, the criteria described therein shall be used.

(c) The energy efficiency building standards shall be enforced at the time of construction of a new building or at the time of major addition, alteration, or repair of an existing building when the proposed major addition, alteration, or repair must comply with the standards applicable to new buildings under the applicable county building code. No official of the State nor of any county charged with the enforcement of laws or ordinances pertaining to the construction or alteration of buildings or structures shall accept or approve any plan or specification including or pertaining to the design and construction details and standards for a heating or cooling system unless the energy efficiency building standards are met. All such plans and specifications submitted with or in connection with an application for a building or construction permit shall bear the certification by a registered architect or engineer that the plans and specifications comply with the energy efficiency building standards.

(d) At such time as performance standards that address the overall energy performance of buildings are promulgated pursuant to the Energy Conservation Standards for New Buildings Act of 1976, title III of the Energy Conservation and Production Act, Public Law 94-385,

such standards shall be considered for adoption by each county and shall be incorporated into its building code in addition to the standard adopted pursuant to subsection (a) above, as required by federal law."

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 46- Energy efficiency standards for lighting for existing buildings. (a) Energy efficiency standards for lighting, based on a lighting power limit and meeting the requirements of Public Law 94-163, shall be incorporated by each county of the State into its building code by July 1, 1978.

(b) The energy efficiency standards for lighting shall not apply to exempted buildings. For the purposes of this section, "exempted building" means:

(1) Any building whose peak design rate of energy usage is less than one watt per square foot of floor area for all purposes;

(2) Any building with neither a heating nor cooling system;

(3) Any building owned or leased in whole or in part by the United States;

(4) Any building that is deliberately preserved beyond its normal term of use because of historic significance, architectural interest, or public policy or that qualifies for special historic building code provisions;

(5) Any building the gross interior floor area of which or the non-residential gross interior floor area of which is less than ten thousand square feet; and

(6) Any portion of a multi-use building used solely for residential purposes.

(c) The energy efficiency standards for lighting shall be enforced at the time when additions, alterations, or repairs are made to an existing building. No official of the State nor of any county charged with the enforcement of laws or ordinances pertaining to the alteration of buildings or structures shall accept or approve any plan or specification including or pertaining to the design and construction details and standards for lighting unless the energy efficiency standards for lighting are met.

(d) The energy efficiency standards for lighting specified by this section shall not apply to proposed additions, alterations, or repairs that must comply with

the standards applicable to new buildings under the applicable county building code."

SECTION 3. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.

SECTION 4. This Act shall take effect upon its approval.

SENATE BILL No. 512

AN ACT supplementing the Kansas consumer protection act; relating to flame spread standards for thermal insulation.

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

Section 1. (a) No person shall manufacture, distribute, offer for sale, sell or install any thermal insulation in this state unless such insulation has been tested in accordance with the American Society for Testing and Materials Standard E 84, Standard Method of Test for Surface Burning Characteristics of Building Materials, and certified, by an independent testing laboratory approved by the state fire marshal, as having a flame spread rating of seventy-five (75) or less, or as having a classification representing a flame spread rating not in excess thereof, and is clearly labeled to that effect on the package or, if not contained in a package, is accompanied by a written statement to that effect.

(b) Nothing in this section shall be construed to prevent a city or county from requiring a lower maximum flame spread rating than required herein for thermal insulation which is manufactured, distributed, offered for sale, sold or installed within the jurisdiction of the city or county.

(c) As used in this section, "thermal insulation" means any material designed for installation in the walls, floors or ceilings of a structure for the specific purpose of reducing loss or gain of energy by such structure but shall not include any backing or vapor barrier attached to such material.

(d) This section shall be a part of and supplemental to the Kansas consumer protection act.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body.

_____

Senate adopted Conference Committee report_____

_____
President of the Senate.

_____
Secretary of the Senate.

Passed the HOUSE as amended_____

House adopted Conference Committee report_____

_____
Speaker of the House.

_____
Chief Clerk of the House.

APPROVED _____

_____
Governor.

ENROLLED

Regular Session, 1978.

ACT NO. 715

HOUSE BILL NO. 1384

BY MR. TAUZIN

(A SUBSTITUTE BILL FOR HOUSE BILL NO. 963 BY MR. TAUZIN)

AN ACT

To amend Title 30 of the Louisiana Revised Statutes of 1950 by adding thereto a new Chapter, to be designated as Chapter 11, to be entitled Building Energy Conservation, to be comprised of Sections 1101 through 1105, both inclusive; to provide for the conservation of thermal and lighting energy in certain buildings; to authorize the secretary of the Department of Natural Resources to recommend rules establishing energy efficiency standards for buildings; to establish an advisory board; to provide for the duties of the board; and to otherwise provide with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 11, comprised of Sections 1101 through 1105 of Title 30 of the Louisiana Revised Statutes of 1950 is hereby enacted to read as follows:

CHAPTER 11. BUILDING ENERGY CONSERVATION

§1101. Findings, policy, and purpose

A. The legislature finds that the development and implementation of laws, policies, programs, and procedures to conserve and improve efficiency in the use of energy will have an immediate and substantial effect in reducing the rate of growth of energy demands in this state and minimizing the adverse social and economic impact of the decline in the oil and gas reserves of the state, further the unique economic, climatic, and geographic conditions of this state are of paramount importance in the formulation and implementation

of a state energy conservation program and state energy efficiency standards for buildings, and it is in the public interest and within the police power of the state to develop energy efficiency standards designed to reduce energy consumption in residential, commercial, and public buildings.

B. It is the policy of this state to develop a state energy conservation plan to reduce the total amount of energy consumed in this state by five percent or more from the projected energy consumption for this state in 1980.

C. The purpose of this Chapter is to develop thermal and lighting efficiency standards for residential, commercial, and public buildings in this state that are designed to meet the unique economic and environmental conditions and requirements of this state.

§1102. Definitions

Except where the context clearly indicates otherwise, as used in this Chapter:

(1) "Building" means any structure which includes provisions for a heating or cooling system, or both, or for a hot water system.

(2) "Commercial building" means any building other than a residential building, including any building developed for industrial or public purposes.

(3) "Energy analyst" means a person who determines the thermal or lighting efficiency of a building which is to be constructed or renovated.

(4) "Energy auditor" means a person who conducts and certifies an energy audit to determine the thermal or lighting efficiency of a building.

(5) "Light commercial building" means any commercial building of less than five thousand square feet in gross floor area and three or less stories in height.

(6) "Public building" means any building which is open to the public during normal business hours.

(7) "Residential building" means any structure which is constructed and developed for residential occupancy.

(8) "Secretary" means the secretary of the Department of

Natural Resources.

§1103. Rule-making authority of the secretary

A. The secretary is authorized to develop rules establishing minimum thermal efficiency standards for new residential and light commercial buildings, minimum thermal and lighting efficiency standards for new and renovated commercial buildings, minimum lighting efficiency standards for existing public buildings, procedures for the issuance of certificates certifying compliance with energy efficiency standards for buildings, and procedures for the examination and certification of energy auditors and energy analysts. The lighting and thermal efficiency standards shall allow a single design of a building based on total building performance, and the thermal efficiency standards for new residential shall describe acceptable building and construction practices.

B. The secretary shall devise such rules before August 1, 1979, in conformance with the Louisiana Administrative Procedure Act.

C. The secretary is authorized to employ, from funds appropriated or otherwise available to the department, technical consultants and other persons whose advice and assistance is deemed necessary to formulate such rules.

§1104. Louisiana Building Energy Conservation Advisory Board

A. There is created the Louisiana Building Energy Conservation Advisory Board.

B. The board shall advise the secretary on energy efficiency standards for buildings, assist the secretary in adopting rules establishing lighting and thermal efficiency standards for buildings, annually review the rules establishing light and thermal standards for buildings and recommend any necessary amendments or revision of such rules, advise the secretary regarding acceptable building and construction practices which comply with the lighting and thermal efficiency standards for buildings in this state, and assist the secretary in determining the qualifications and procedures for the examination and certification of energy analysts and auditors. The board may adopt rules of procedure to govern its operations.

C. The board shall be composed of six members appointed by the

governor as follows: one member appointed from a list of three nominees submitted by the Louisiana Architects Association, one member appointed from a list of three nominees submitted jointly by the Consulting Engineers Council of Louisiana and the Louisiana Engineers Society, one member appointed from a list of three nominees submitted by the Louisiana Home Builders Association, one member appointed from a list of three nominees submitted jointly by the Investor-Owned Electric Companies in Louisiana, three members who are owners of commercial buildings in the state of Louisiana, one member appointed from a list of three nominees submitted by the Louisiana Municipal Association, and one member appointed from a list of three nominees submitted by the Louisiana Police Jury Association. The secretary or his designee shall be an ex officio member of the board.

D. The secretary or his designee shall serve as chairman of the board. The board may elect a secretary and any other officers it deems necessary.

E. Members of the board shall be appointed to serve three-year terms, except that the governor shall designate two of the initial members to serve a one-year term and two of the initial members to serve two-year terms. A vacancy in the membership of the board shall be filled by nomination and appointment by the governor for the remainder of the unexpired term.

§1105. Exemptions

The following buildings shall be exempt from the provisions of this Chapter: buildings owned or leased by the United States, buildings not heated or cooled by fuel, and buildings of significance in American history, architecture, archeology, or culture that are listed in the National Register or the State Register.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are

hereby repealed.

Section 4. No rules or regulations proposed by the Department of Natural Resources pursuant to this Act shall be effective until approved by the legislature in open session.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED:_____

HOUSE BILL No. 365
(81r1473)

Introduced by Delegate Sklar

Read and Examined by Proofreader:

_____
Proofreader.

_____
Proofreader.

Sealed with the Great Seal and presented to the Acting Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

_____
Speaker.

CHAPTER 332

AN ACT concerning

Statewide Building Energy Utilization ~~Standard~~ Guidelines

FOR the purpose of establishing minimum ~~requirements~~ guidelines for energy utilization in new buildings; providing for ~~enforcement~~ development of these ~~requirements~~ guidelines; providing for training ~~of enforcement officials~~ to local jurisdictions; creating a certain Advisory Commission; and generally relating to energy utilization of buildings.

BY adding to

Article 41 – Governor – Executive and Administrative Departments
Section 257M to be under the new subheading "Statewide Building Energy Utilization ~~Standard~~ Guidelines"
Annotated Code of Maryland
(1971 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

Article 41 — Governor — Executive and Administrative Departments

STATEWIDE BUILDING ENERGY UTILIZATION ~~STANDARD~~ GUIDELINES

257M.

(A) (1) IN THIS SECTION THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

(2) "ASHRAE" MEANS THE ORGANIZATION KNOWN AS THE AMERICAN SOCIETY OF HEATING, REFRIGERATING, AND AIR CONDITIONING ENGINEERS.

~~(3) "BUILDING" MEANS ANY STRUCTURE USED OR INTENDED FOR SUPPORTING OR SHELTERING ANY USE OR OCCUPANCY, INCLUDING ASSEMBLY, BUSINESS, FACTORY, INDUSTRIAL, INSTITUTIONAL, MERCANTILE, STORAGE, AND RESIDENTIAL USES OR OCCUPANCIES. THE TERM DOES NOT INCLUDE FARM BUILDINGS WHICH ARE NOT INTENDED FOR HUMAN OCCUPANCY.~~

~~(4)~~ (3) "DEPARTMENT" MEANS THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT.

~~(5)~~ (4) "SECRETARY" MEANS SECRETARY OF THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT.

(B) (1) THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT~~, OR THE APPROPRIATE DIVISION THEREOF,~~ SHALL ~~PROMULGATE AND ADOPT~~ DEVELOP ~~A~~ STATEWIDE ENERGY UTILIZATION ~~STANDARD~~ GUIDELINES THAT IS APPLICABLE TO ALL NEW BUILDINGS FOR WHICH A BUILDING OR ZONING PERMIT IS ISSUED AND NOT EXEMPTED BY THE LOCAL JURISDICTIONS.

(2) IN DEVELOPING THE STATE ~~STANDARD~~ GUIDELINES, THE DEPARTMENT SHALL UTILIZE THE MOST RECENT ASHRAE STANDARD, "ENERGY CONSERVATION IN NEW BUILDING DESIGN". ~~HOWEVER, THE DEPARTMENT MAY MAKE EXCEPTIONS OR MODIFICATIONS WHICH, AFTER ADEQUATE PUBLIC NOTICE AND PUBLIC HEARING, IT DEEMS APPROPRIATE.~~

~~(3) THE DEPARTMENT ALSO MAY MODIFY THE STATE STANDARD TO CONFORM WITH THE NATIONAL ENERGY CONSERVATION STANDARD IMPOSED ON STATE BUILDING CODES BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PURSUANT TO THE REQUIREMENTS OF TITLE III OF THE ENERGY CONSERVATION AND PRODUCTION ACT OF 1976.~~

(3) AFTER APPROVAL BY THE AELR COMMITTEE OF THE MARYLAND GENERAL ASSEMBLY, THESE GUIDELINES WILL BE PROMULGATED. BASED ON THE STATE GUIDELINES, AS APPROVED BY THE AELR COMMITTEE, EACH LOCAL JURISDICTION SHALL REQUIRE EACH PERMIT APPLICATION TO BE ACCOMPANIED BY SUFFICIENT INFORMATION FOR THE LOCAL JURISDICTION TO DETERMINE THE NECESSARY ENERGY CONSERVATION MEASURES NEEDED UNDER THE GUIDELINES.

(C) (1) THERE IS AN ADVISORY COMMISSION ON ENERGY UTILIZATION IN BUILDINGS.

(2) THE SECRETARY SHALL APPOINT 15 MEMBERS OF THE ADVISORY COMMISSION. THE MEMBERS SHALL SERVE WITHOUT COMPENSATION.

(3) MEMBERS APPOINTED SHALL BE BROADLY REPRESENTATIVE AND SHALL INCLUDE REPRESENTATIVES FROM BUILDING CODE ENFORCEMENT AGENCIES, ARCHITECTURAL AND ENGINEERING PROFESSIONS, PUBLIC UTILITIES, THE RESIDENTIAL OR COMMERCIAL CONSTRUCTION INDUSTRY, LEGISLATIVE BODIES OF LOCAL GOVERNMENT, AND THE GENERAL PUBLIC.

(4) THE ADVISORY COMMISSION SHALL MAKE RECOMMENDATIONS TO THE SECRETARY REGARDING THE PROMULGATION OF THE STATEWIDE ENERGY UTILIZATION ~~STANDARD~~ GUIDELINES AND ~~ITS~~ THEIR ~~ENFORCEMENT~~ APPLICATION.

~~(3) (I) ENFORCEMENT OF THE STATE STANDARD GUIDELINES SHALL BE BY EACH LOCAL JURISDICTION, WHICH SHALL REQUIRE EACH PERMIT APPLICATION TO BE ACCOMPANIED BY INFORMATION DEEMED SUFFICIENT BY IT TO DETERMINE COMPLIANCE WITH THE STATE STANDARD. COMPLIANCE CERTIFICATION BY AN ENGINEER OR ARCHITECT REGISTERED IN THE STATE OF MARYLAND MAY BE DEEMED BY A LOCAL JURISDICTION TO CONSTITUTE SUFFICIENT COMPLIANCE UNDER THIS SECTION.~~

~~(2)~~ (D) THE DEPARTMENT SHALL PROVIDE TRAINING TO LOCAL JURISDICTIONS ON THE APPLICATION OF THE STATE ~~STANDARD~~ GUIDELINES. TRAINING MAY INCLUDE PROGRAMS DEVELOPED BY AGENCIES OF THE FEDERAL GOVERNMENT.

(E) THE PROVISIONS OF THIS ACT DO NOT APPLY TO APPLICATIONS FOR BUILDING OR ZONING PERMITS MADE BEFORE JANUARY 1, 1979.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1979.

Approved:

_____
Acting Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

H O U S E O F D E L E G A T E S

81r1176 No. 413
(PRE-FILED)

By: Delegates Toth, Biemen, Kopp, Riley, Sklar, Taylor, and Weir

Requested: October 18, 1977
Introduced and read first time: January 11, 1978
Assigned to: Environmental Matters

Committee report: Favorable
House action: Adopted
Read second time: February 13, 1978

CHAPTER 597

AN ACT concerning

Department of General Services - Energy Conservation

FOR the purpose of directing the Department of General Services to establish standards for life-cycle cost analysis of alternative architectural and engineering designs on all new State buildings after a certain date; defining terms; providing that all construction appropriations authorized after a certain date require certain agencies to obtain evaluations of life-cycle costs and energy consumption; requiring the Department to define certain terms with supporting criteria; requiring the Department to establish standards for energy performance indices; and generally relating to energy conservation and State building construction.

BY adding to

Article 78A - Public Works
Section 25A through 25F, inclusive, to be under the new subheading "Energy Conservation in Buildings"
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 78A - Public Works

ENERGY CONSERVATION IN BUILDINGS

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

25A.

IN ORDER THAT ENERGY EFFICIENCY CONSIDERATIONS BECOME A FUNCTION OF BUILDING DESIGN, AND ALSO A MODEL FOR FUTURE APPLICATION IN THE PRIVATE SECTOR, IT IS THE POLICY OF THIS STATE THAT BUILDINGS CONSTRUCTED AND FINANCED BY THE STATE OR WITH STATE ASSISTANCE ARE TO BE DESIGNED AND CONSTRUCTED IN A MANNER WHICH WILL MINIMIZE BOTH THE COST TO THE STATE AND THE CONSUMPTION OF ENERGY RESOURCES USED IN THE OPERATION AND MAINTENANCE OF BUILDINGS. TO ACCOMPLISH THE DUAL BENEFITS OF COST AND ENERGY SAVINGS, A LIFE CYCLE COST AND ENERGY CONSUMPTION ANALYSIS SHALL BE CONSIDERED DURING THE PRELIMINARY DESIGN OF NEW BUILDINGS.

25B.

(A) IN THIS SUBHEADING THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "DEPARTMENT" MEANS THE DEPARTMENT OF GENERAL SERVICES.

(C) "ENERGY PERFORMANCE INDEX OR INDICES" (EPI) MEANS A NUMBER DESCRIBING THE ENERGY REQUIREMENTS AT THE BUILDING BOUNDARIES, PER SQUARE FOOT OF FLOOR SPACE OR PER CUBIC FOOT OF OCCUPIED VOLUME, AS APPROPRIATE, UNDER DEFINED INTERNAL AND EXTERNAL AMBIENT CONDITIONS OVER AN ENTIRE SEASONAL CYCLE. AS EXPERIENCE DEVELOPS ON THE ENERGY PERFORMANCE ACHIEVED WITH STATE BUILDINGS, THE INDICES (EPI) WILL SERVE AS A MEASURE OF BUILDING PERFORMANCE WITH RESPECT TO ENERGY CONSUMPTION.

(D) "BUILDING" MEANS A NEW BUILDING OR FACILITY WITH AN AREA OF 5,000 SQUARE FEET OR GREATER, OR ANY ADDITION TO AN EXISTING BUILDING THAT WILL ADD AT LEAST 10 PERCENT GROSS FLOOR SPACE TO THE BUILDING, WHERE THE COST OF CONSTRUCTION IS ESTIMATED TO EXCEED $25,000 OR ANY MAJOR RENOVATION TO AN EXISTING BUILDING.

(E) "LIFE-CYCLE COSTS" MEAN THE COST OF INITIAL CONSTRUCTION AND THE COST OF OPERATING AND MAINTAINING THE BUILDING OVER THE LIFE OF THE STRUCTURE, INCLUDING THE COST OF ENERGY CONSERVATION MEASURES TO REDUCE A BUILDING'S ENERGY OR FUEL CONSUMPTION AND ANY OTHER COSTS INCIDENTAL TO OWNING THE BUILDING.

(F) "ENERGY CONSUMPTION ANALYSIS" MEANS THE EVALUATION OF ALL ENERGY CONSUMING SYSTEMS AND COMPONENTS BY DEMAND AND TYPE OF ENERGY AND INCLUDES BUT IS NOT LIMITED TO:

(1) ANY EQUIPMENT THAT IS EMPLOYED TO HEAT A BUILDING;

(2) ANY EQUIPMENT THAT IS EMPLOYED TO HEAT WATER USED IN A BUILDING;

(3) ANY EQUIPMENT ON THE SITE THAT IS EMPLOYED TO GENERATE ELECTRICITY FOR THE BUILDING;

(4) ANY EQUIPMENT THAT IS EMPLOYED ON THE SITE TO USE THE SUN, WIND, OIL, NATURAL GAS, COAL, AND ELECTRICITY AS ITS POWER SUPPLY IN WHOLE OR IN PART;

(5) ANY EQUIPMENT THAT IS EMPLOYED TO COOL A BUILDING; AND

(6) ENERGY CONSERVATION MEASURES INCLUDED IN THE BUILDING DESIGN AND CONSTRUCTION THAT DECREASE THE ENERGY REQUIREMENTS OF THE BUILDING IN WHOLE OR IN PART.

25C.

ALL CONSTRUCTION APPROPRIATIONS AUTHORIZED AFTER JULY 1, 1979 SHALL REQUIRE A STATE AGENCY, INCLUDING DISTRICT SCHOOL BOARDS, TO OBTAIN FROM THE DEPARTMENT A PROPER EVALUATION OF LIFE-CYCLE COSTS AND ENERGY CONSUMPTION.

25D.

FOR THE PURPOSE OF EVALUATING LIFE-CYCLE COSTS THE DEPARTMENT SHALL ESTABLISH AND UNIFORMLY APPLY A DEFINITION OF WHAT CONSTITUTES THE LIFE OF A BUILDING. THE DEPARTMENT SHALL ALSO SUPPLY DEFENDING CRITERIA FOR THE SELECTION OF THE DEFINITION.

25E.

(A) THE DEPARTMENT SHALL ESTABLISH STANDARDS AND PROCEDURES, INCLUDING ENERGY CONSERVATION PERFORMANCE GUIDELINES FOR EVALUATING THE EFFICIENCY OF DESIGNS FOR ALL PROPOSED STATE-FINANCED AND STATE-ASSISTED BUILDING CONSTRUCTION. THESE STANDARDS AND PROCEDURES SHALL TAKE EFFECT BY MARCH 1, 1979.

(B) THE LIFE-CYCLE COSTS SHALL BE THE SUM OF:

(1) THE REASONABLY EXPECTED FUEL COSTS OVER THE LIFE OF THE BUILDING, AS DETERMINED BY THE DEPARTMENT, THAT ARE REQUIRED TO MAINTAIN ILLUMINATION, POWER, TEMPERATURE, HUMIDITY, VENTILATION, AND ALL OTHER ENERGY-CONSUMING EQUIPMENT IN A BUILDING; AND

(2) THE REASONABLE COSTS OF PROBABLE MAINTENANCE, INCLUDING LABOR AND MATERIALS, AND OPERATION OF THE BUILDING.

(C) TO DETERMINE THE LIFE-CYCLE COSTS AS DEFINED IN SUBSECTION (B), THE DEPARTMENT SHALL ESTABLISH STANDARDS THAT SHALL INCLUDE, BUT NOT BE LIMITED TO:

(1) THE ORIENTATION AND INTEGRATION OF THE BUILDING WITH RESPECT TO ITS PHYSICAL SITE, IF WIND OR SOLAR ENERGY IS TO BE EMPLOYED;

(2) THE AMOUNT AND TYPE OF GLASS EMPLOYED IN THE BUILDING AND THE DIRECTIONS OF EXPOSURE;

(3) THE EFFECT OF INSULATION INCORPORATED INTO THE BUILDING DESIGN AND THE EFFECT ON SOLAR UTILIZATION OF THE PROPERTIES OF EXTERNAL SURFACES;

(4) THE VARIABLE OCCUPANCY AND OPERATING CONDITIONS OF THE BUILDING AND SUBPORTIONS OF THE BUILDING; AND

(5) AN ENERGY CONSUMPTION ANALYSIS OF THE MAJOR EQUIPMENT OF THE BUILDING'S HEATING SYSTEM, VENTILATION SYSTEM, COOLING SYSTEM, LIGHTING SYSTEM, HOT WATER SYSTEM, AND ALL OTHER MAJOR ENERGY-CONSUMING EQUIPMENT AND SYSTEMS AS APPROPRIATE. THIS ANALYSIS SHALL INCLUDE:

(I) THE COMPARISON OF ALTERNATIVE ENERGY SYSTEMS, EACH OF WHICH UTILIZES THE MOST PLENTIFUL AND AVAILABLE ENERGY RESOURCES IN COMBINATIONS WHICH RESULT IN GREATEST ENERGY EFFICIENCY BOTH IN THE BUILDING AND AT THE SOURCE; AND

(II) A PROJECTION OF THE ANNUAL ENERGY CONSUMPTION OF MAJOR ENERGY-CONSUMING EQUIPMENT OF EACH SYSTEM AND SYSTEMS FOR A RANGE OF OPERATION OF THE BUILDING OVER ITS LIFE.

(D) THE STANDARDS SHALL BE BASED ON THE BEST CURRENTLY AVAILABLE METHODS OF ANALYSIS, INCLUDING THOSE OF THE NATIONAL BUREAU OF STANDARDS, THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND OTHER FEDERAL AGENCIES, PROFESSIONAL SOCIETIES, AND MATERIALS DEVELOPED BY THE DEPARTMENT. PROVISIONS SHALL BE MADE FOR A BIENNIAL UPDATING OF THESE RULES AND STANDARDS AS REQUIRED.

25F.

THE DEPARTMENT SHALL ESTABLISH STANDARDS FOR ENERGY PERFORMANCE INDICES AS DEFINED IN 25B(C) TO AUDIT AND EVALUATE COMPETING DESIGN PROPOSALS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

S E N A T E O F M A R Y L A N D

81r4320 No. 1270

By: Senator Bozick
Introduced and read first time: February 24, 1978
Assigned to: Economic Affairs

Committee report: Favorable with amendments
Senate action: Adopted
Read second time: March 23, 1978

CHAPTER 302

AN ACT concerning

Public Buildings - Illumination Standards

FOR the purpose of providing statewide illumination guidelines for existing public buildings; providing for development and promulgation of these guidelines and for certain training programs and assistance with respect to the guidelines; defining certain terms; and generally relating to illumination in public buildings.

BY adding to

Article 41 - Governor - Executive and Administrative Departments
Section 257M, to be under the new subheading "Illumination Guidelines for Public Buildings"
Annotated Code of Maryland
(1971 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 41 - Governor - Executive and Administrative Departments

ILLUMINATION GUIDELINES FOR EXISTING PUBLIC BUILDINGS

257M.

(A) (1) IN THIS SECTION THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

(2) "ASHRAE" MEANS THE ORGANIZATION KNOWN AS THE AMERICAN SOCIETY OF HEATING, REFRIGERATING, AND AIR CONDITIONING ENGINEERS.

(3) "PUBLIC BUILDING" MEANS:

~~(I) ANY BUILDING THAT IS OPEN TO THE PUBLIC DURING NORMAL BUSINESS HOURS;~~

~~(II) ANY BUILDING THAT PROVIDES FACILITIES OR SHELTER FOR PUBLIC ASSEMBLY;~~

~~(III) ANY BUILDING THAT IS USED FOR EDUCATIONAL, OFFICE, OR INSTITUTIONAL SPACE;~~

~~(IV) ANY COMMERCIAL ESTABLISHMENT THAT PROVIDES SERVICES OR RETAILS MERCHANDISE, INCLUDING ANY INN, HOTEL, MOTEL, SPORTS ARENA, SUPERMARKET, TRANSPORTATION TERMINAL, RETAIL STORE, OR RESTAURANT;~~

~~(V) ANY BUILDING THAT A STATE OR POLITICAL SUBDIVISION OF A STATE OWNS, INCLUDING ANY LIBRARY, MUSEUM, SCHOOL, HOSPITAL, AUDITORIUM, SPORTS ARENA, OR UNIVERSITY BUILDING; AND~~

~~(VI) ANY PORTION OF AN INDUSTRIAL PLANT BUILDING THAT IS USED PRIMARILY AS OFFICE SPACE~~ OWNED BY THE STATE OR ANY COUNTY OR MUNICIPAL GOVERNMENT OR ANY AGENCY THEREOF;

~~(VII)~~ (II) THE PROVISIONS OF THIS ACT SHALL APPLY TO ALL PUBLIC BUILDINGS, AS DEFINED, WHICH ARE 10,000 OR MORE SQUARE FEET IN AREA, PER FLOOR.

(B) (1) THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, IN CONJUNCTION WITH THE DEPARTMENT OF NATURAL RESOURCES, SHALL DEVELOP GUIDELINES FOR RECOMMENDED ILLUMINATION LEVELS IN EXISTING PUBLIC BUILDINGS IN MARYLAND 6 MONTHS AFTER ASHRAE 100 STANDARDS ARE PROMULGATED.

(2) AFTER APPROVAL BY THE AELR COMMITTEE OF THE MARYLAND GENERAL ASSEMBLY, THESE GUIDELINES WILL BE PUBLISHED IN THE MARYLAND REGISTER AND OTHER APPROPRIATE MEDIA IN ORDER TO ENCOURAGE THEIR USE AND TO OFFER GUIDELINES AGAINST WHICH OWNERS AND/OR OPERATORS OF EXISTING PUBLIC BUILDINGS, INCLUDING LOCAL GOVERNMENTS, THE DEPARTMENT OF GENERAL SERVICES, AND OTHER AGENCIES WHICH MANAGE STATE BUILDINGS, MAY TARGET THEIR ENERGY CONSERVATION EFFORT WITH REGARD TO ILLUMINATION.

(C) (1) THERE IS AN ADVISORY COMMISSION ON ENERGY CONSERVATION IN BUILDINGS.

(2) THE SECRETARY OF ECONOMIC AND COMMUNITY DEVELOPMENT SHALL APPOINT 15 MEMBERS OF THE ADVISORY COMMISSION. THE MEMBERS SHALL SERVE WITHOUT COMPENSATION

AND SHALL BE REIMBURSED FOR EXPENSES IN ACCORDANCE WITH THE STANDARD TRAVEL REGULATIONS.

(3) MEMBERS APPOINTED SHALL BE BROADLY REPRESENTATIVE AND SHALL INCLUDE REPRESENTATIVES FROM STATE AND LOCAL CODE ENFORCEMENT AGENCIES, ARCHITECTURAL AND ENGINEERING PROFESSIONS, PUBLIC UTILITIES, THE CONSTRUCTION INDUSTRY, LEGISLATIVE BODIES OF LOCAL GOVERNMENT, AND THE GENERAL PUBLIC.

(D) (1) THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, IN CONJUNCTION WITH THE DEPARTMENT OF NATURAL RESOURCES, SHALL PROVIDE TO LOCAL JURISDICTIONS TRAINING ON THE APPLICATION OF THE STATE ILLUMINATION GUIDELINES FOR EXISTING PUBLIC BUILDINGS. THE TRAINING MAY INCLUDE A PROGRAM THAT A FEDERAL AGENCY OR CONTRACT AGENT DEVELOPS.

(2) THE DEPARTMENT OF NATURAL RESOURCES WILL RENDER ASSISTANCE TO LOCAL JURISDICTIONS IN DETERMINING THE COST-BENEFIT IMPACTS OF IMPLEMENTATION OF THE GUIDELINES AND ALSO IN CARRYING OUT AUDITS OF SPECIFIC BUILDINGS OR INSTALLATIONS TO DETERMINE LIGHTING PERFORMANCE CHARACTERISTICS AND THE SAVINGS POSSIBLE THROUGH IMPLEMENTATION OF THESE GUIDELINES.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
President of the Senate.

_____
Speaker of the House of Delegates.

CHAPTER 786-H.F.No.2261

[Coded in Part]

An act relating to energy; changing the powers of the Minnesota energy agency; implementing certain residential energy efficiency standards; establishing insulation product and application standards; prescribing penalties; providing property tax exemptions for alternative energy systems; providing for solar energy zoning and planning ordinances; requiring the metropolitan council to consider access to sunlight in its land use plans; providing for solar easements; delaying implementation of the state building code; appropriating money; amending Minnesota Statutes 1976, Sections 116H.08; 273.11, Subdivision 1, and by adding a subdivision; 394.25, Subdivision 2; 394.27, Subdivision 7; 462.357, Subdivisions 1 and 6; 462.358, Subdivisions 2 and 6; 462.39, Subdivision 3; 473.05, Subdivision 1; 473.859, Subdivision 2; and Minnesota Statutes, 1977 Supplement, Section 116H.129, Subdivision 1, and by adding subdivisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1976, Section 116H.08, is amended to read:

116H.08 POWERS. The director may:

(a) Adopt rules ~~and regulations~~ pursuant to chapter 15 necessary to carry out the purposes of sections 116H.01 to 116H.15;

(b) Make all contracts pursuant to sections 116H.01 to 116H.15 and do all things necessary to cooperate with the United States government and to qualify for, accept and disburse any ~~private~~ grant intended for the administration of sections 116H.01 to 116H.15. Notwithstanding any other law the agency is designated the state agency to apply for, receive and accept federal or other funds made available to the state for the purposes of sections 116H.01 to 116H.15.

(c) Contract for professional services if such work or services cannot be satisfactorily performed by employees of the agency or by any other state agency;

(d) Enter into interstate compacts to jointly carry out such research and planning with other states or the federal government where appropriate;

(e) Distribute informational material at no cost to the public upon reasonable request.

Sec. 2. Minnesota Statutes, 1977 Supplement, Section 116H.129, Subdivision 1, is

amended to read:

116H.129 ENERGY CONSERVATION STANDARDS FOR EXISTING RESIDENCES. Subdivision 1. Before January 1, ~~1978~~ 1979, the commissioner of administration, in consultation with the director and the appropriate standing committees of the legislature, shall promulgate minimum energy efficiency standards for existing ~~residential buildings~~ residences. The standards shall be economically feasible in that the resultant savings in energy procurement costs, based on current and projected average residential energy costs in Minnesota as certified by the director in the state register, will exceed the cost of the energy conserving requirements amortized over a ~~period of five years~~ the five-year period subsequent to the incurring of such cost. The costs computed under this section shall include reasonable inflation and interest factors.

~~By February 15, 1978, the director shall make recommendations to the legislature on methods to obtain compliance with the standards set forth in this subdivision.~~

Sec. 3. Minnesota Statutes, 1977 Supplement, Section 116H.129, is amended by adding subdivisions to read:

Subd. 2. For the purposes of subdivisions 3 to 7, the following terms shall have the meanings given them:

(a) "Residence" means any dwelling for habitation either seasonally, meaning all or a portion of the months of December through March, or permanently by one or more persons. A residence may be owned or rented and may be part of a multi-dwelling or multi-purpose building, but shall not include buildings such as hotels, hospitals, motels, dormitories, sanitariums, nursing homes, schools and other buildings used for educational purposes, or correctional institutions. A mobile home as defined in section 168.011, subdivision 8, shall be a residence for purposes of this section.

(b) "Time of sale" means the time when a written purchase agreement is executed by the buyer, or, in the absence of a purchase agreement, at the time of the execution of any document providing for the conveyance of a residence.

(c) "Energy disclosure report" means the written and signed evaluation by a person certified pursuant to subdivision 6 of this section made on an approved form, representing to the actual buyer of the residence evaluated that the evaluator has used reasonable care and diligence, and has found no instance of noncompliance with the items contained on the approved form as of the date thereon except as specifically designated.

(d) "Applicable energy efficiency standards" means those standards established under subdivision 1 which are not shown to be economically infeasible for the building in question.

Subd. 3. ENERGY CONSERVATION FOR RENTAL PROPERTY. Effective January 1, 1980, all residences constructed prior to January 1, 1976, which are renter-occupied during all or a portion of the months of November through April shall be in compliance with standards pursuant to subdivision 1 pertaining to caulking and

weatherstripping of exterior joints and sealing of other openings in the building envelope. Effective July 1, 1983, all residences which are renter-occupied during all or a portion of the months of November through April shall be in compliance with all applicable energy efficiency standards.

Subd. 4. **INSPECTIONS.** The energy agency shall conduct inspections on a random basis for compliance with the provisions of subdivision 3 of this section.

Subd. 5. **RESIDENTIAL ENERGY DISCLOSURE PROGRAM.** By March 1, 1979, the commissioner of administration, in consultation with the director of the energy agency and the appropriate standing committees of the legislature, shall promulgate rules providing for residential energy disclosure requirements and shall approve forms for the purposes of this subdivision. The rules and forms shall provide only for the disclosure of structural characteristics, energy use characteristics relating to energy consumption and conservation, and the extent of compliance with standards adopted pursuant to section 116H.129, subdivision 1. Nothing in the forms shall indicate or be deemed to indicate that the residence meets all state building code specifications.

Subd. 6. **BUILDING EVALUATORS.** By August 1, 1979, the commissioner of administration shall certify evaluators in each county of the state who are qualified to determine the compliance of a residence with applicable energy disclosure requirements. The commissioner of administration shall, by rule pursuant to chapter 15, establish standards for the certification and performance of evaluators and set a fee for the certification of evaluators which is sufficient to cover the ongoing costs of the program once it is established. The commissioner shall encourage the certification of existing groups of trained municipal personnel and individuals from public service organizations. Effective August 1, 1979, each certified evaluator shall, on request of the owner, inspect any residence and report the degree to which it complies with applicable energy disclosure requirements. The inspections shall be made within 30 days of the request.

Subd. 7. **DISCLOSURE REPORT.** Effective October 1, 1979, no owner or agent shall sell by conveyance or contract for conveyance a residence constructed before January, 1976, without providing to the buyer, prior to the time of sale, a copy of an energy disclosure report for the residence unless the buyer has been provided a copy of the form used in making an energy disclosure report and has declared in writing that he waives his right to a report. If the residence has been evaluated subsequent to the effective date of this section, no new evaluation shall be required for five years after the date of the evaluation, if a copy of the last evaluation has been delivered to the prospective buyer. The provisions of this subdivision shall not apply to the sale or conveyance of any residence to a public body or by a sheriff, constable, marshal or other public or court officer in the performance of his official duties as such, or to trustees in bankruptcy or any other person or persons acting under the direction or authority of any court, state or federal, in selling a residence, except as to a public sale ordered by a probate court, in which case this subdivision shall apply.

Subd. 2 8. Before January 1, 1978, the commissioner of administration, in consultation with the director, shall by rule amend the standards concerning heat loss, illumination, and climate control promulgated pursuant to section 116H.12, subdivision 4,

to require that electrical service to individual dwelling units in buildings containing two or more units be separately metered, with individual metering readily accessible to the individual occupants. The standards authorized by this subdivision shall only apply to buildings constructed after the effective date of the amended standards. Buildings intended for occupancy primarily by persons who are 62 years of age or older or handicapped, or which contain a majority of units not equipped with complete kitchen facilities, shall be exempt from the provisions of this subdivision.

Sec. 4. [325.984] **HOME INSULATION; CONSUMER PROTECTION; DEFINITIONS.** Subdivision 1. For the purposes of sections 4 to 9, the following terms shall have the meanings here given them.

Subd. 2. "Advertisement" means any written or verbal statement, illustration or depiction which appears in the mass media, in brochures, leaflets, or circulars, outdoor advertising, retail displays, or on vehicles, which is designed to cause the sale of or interest in the purchase of insulation.

Subd. 3. "Energy agency" means the Minnesota energy agency as provided in chapter 116H.

Subd. 4. "Industry members" means producers and suppliers of materials from which insulation is made who promote the sale or distribution of insulation; manufacturers of insulation; jobbers, wholesalers and retailers of insulation; contractors and applicators who sell and install residential insulation; and those engaged in the marketing of insulation who are, or who purport to act as, agents of manufacturers or suppliers of insulation.

Subd. 5. "Insulation" means any material or assembly of materials used primarily to provide resistance to heat flow in building structures, including but not limited to mineral fibrous, mineral cellular, organic fibrous, organic cellular or reflective materials, whether in loose fill, flexible, semi-rigid or rigid form.

Subd. 6. "Laboratory qualified to test thermal insulation" means an approved laboratory classified by the energy agency in consultation with industry members as passing an appropriate examination of ability to perform tests and continuing inspection or follow-up service according to specifications for manufacture and installation, also referred to as "testing laboratory".

Subd. 7. "Presenting a clear and present danger" means known to cause physical damage to structure or health hazards to occupants through continuing direct contact or release of hazardous substances as defined in section 24.33.

Subd. 8. "R value" means the measure of resistance to heat flow through a material or the reciprocal of the heat flow through a material expressed in British thermal units per hour per square foot per degree Farenheit at 75 degrees Farenheit mean temperature.

Subd. 9. "Specifications for manufacture and installation" means those specifications in section 5.

Sec. 5. [325.985] **SPECIFICATIONS FOR THE MANUFACTURE, LABELING, AND INSTALLATION OF INSULATION.** Subdivision 1. Within nine months of the effective date of this act, the energy agency shall promulgate rules pursuant to chapter 15 regarding quality, information, and product safety specifications for the manufacture, labeling, installation, and thermographing of insulations. The specifications and any amendments to them shall conform as far as is practical to federal standards or other standards generally accepted and in use throughout the United States. Such standards, with modifications as may be deemed necessary, may be adopted by reference. The specifications as promulgated and any amendments shall be based on the application of scientific principles, approved tests, and professional judgment. Upon the effective date of this act, the energy agency may issue temporary rules pursuant to section 15.0412, subdivision 5, for the purposes of this section.

Subd. 2. In addition to the specifications promulgated pursuant to subdivision 1 of this section, no insulation presenting a clear and present danger by the nature of its composition at the time of installation shall be used or offered for sale in Minnesota.

Subd. 3. The manufacturer's written instructions describing the proper methods of application of the insulation and required or recommended safety measures shall be provided to each intermediate and ultimate consumer of all insulation sold for use in Minnesota within ten days of when the insulation is sold.

Sec. 6. [325.986] **TESTING OF INSULATION.** Subdivision 1. The director of the energy agency shall promulgate rules concerning qualifications of testing laboratories and the nature of continuing inspection and follow-up services for this section.

Subd. 2. Effective December 1, 1979, all insulation used or offered for sale in Minnesota shall be subject to a continuing inspection and follow-up service by an approved laboratory qualified to test thermal insulation.

Subd. 3. Upon the adoption of specifications under section 5, subdivision 1, all insulation used or offered for sale in Minnesota shall be tested in accordance with testing procedures required under those specifications by a laboratory qualified to test thermal insulation.

Subd. 4. The director of the energy agency shall purchase from time to time unopened insulation packages which shall be sent to an approved testing laboratory to test for compliance with the specifications established under section 5, subdivision 1.

Sec. 7. [325.987] **UNFAIR AND DECEPTIVE ADVERTISING PRACTICES.** Subdivision 1. It shall be considered an unfair and deceptive practice to violate any of the provisions of this section.

Subd. 2. No advertisement for insulation to be used or offered for sale in Minnesota shall state that a percentage of fuel costs or a certain dollar amount of fuel costs will be saved unless the statement is accompanied by the following or substantially similar disclaimer in letters the same size as the claim of savings: "Stated savings are estimates only. Actual savings may vary depending on type of home, weather conditions.

occupant lifestyle, energy prices and other factors."

Subd. 3. No advertisement for insulation to be used or offered for sale in Minnesota shall contain any claim which is false or misleading, or for which there exists no reasonable substantiation at the time the claim is made. Prohibited claims include, but are not limited to, the following: does not burn, noncombustible, self-extinguishing, nonpoisonous, non-irritating, vermin-proof, rodent-proof, resists mildewing, will not shrink, will not crack, permanent, no deterioration, complete coverage, fills all voids, never needs replacing, will not settle. This prohibition shall not apply if the claim is substantiated by tests identified in the specifications established under section 5, subdivision 1, or by appropriate testing procedures of the American Society for Testing and Materials where no test required under section 5, subdivision 1, applies. Such tests shall be made by a laboratory qualified to test thermal insulation. When tests are not designed to duplicate actual conditions, substantiated claims must so state.

Subd. 4. No representation about the thermal resistance value of insulation shall be made unless the R value is given and has been determined by the tests required in the specification established under section 5, subdivision 1, or by appropriate testing procedures of the American Society for Testing and Materials where no test required under section 5, subdivision 1, applies. Such tests shall be made by an approved laboratory qualified to test thermal insulation.

Sec. 8. [325.988] **MARKING, LABELING, AND CONSUMER INFORMATION.** Subdivision 1. The outside of all containers and wrappings of insulation used or offered for sale in Minnesota shall have the following information printed legibly thereon in bold type not less than 1/8 inch high:

(a) Type (pneumatic or blown, pouring, batt, roll, blanket, board, cellular, or reflective);

(b) R value (to the nearest tenth) per inch at the recommended installation density;

(c) Required thickness in inches to obtain four or more commonly used R values and the corresponding coverage areas in square feet of the insulation in the container or wrapping;

(d) Expiration date and expected shelf life of all resins, catalysts, and foaming agents for all foam insulations, whether in powder, diluted or partially diluted state, on canister, drum, container, or package. For purposes of this section, "foam insulation" means products having an organic base or composed of vinyl or plastic material or both, which are manufactured or installed using a process involving a foaming agent, a resin, a catalyst and an air compressor, including but not limited to urea-formaldehyde, other urea-based foams, urethane foam, polyurethane foam, polystyrene foam, and isocyanurate foam.

(e) Name and address of the manufacturer of the insulation;

(f) A notation of those current specifications of the United States General Services

Administration, the United States Department of Energy, the United States Department of Housing and Urban Development, the United States Consumer Product Safety Commission, the Federal Trade Commission and the energy agency with which the insulation complies;

(f) The net weight of the contents of the bag, package, or container.

Subd. 2. Where insulation is used or offered for sale without the manufacturer's container, the information required in subdivision 1 shall be provided in a separate printed statement to the intermediate and ultimate consumers.

Sec. 9. [325.989] **ENFORCEMENT; PENALTIES.** Subdivision 1. Violation of section 5, subdivision 2, or section 6, subdivision 2 or 3, shall constitute a misdemeanor, provided that the sole liability for such violation on insulation sold under the manufacturer's brand or trademark shall be the manufacturer's, and that an industry member who is not a manufacturer shall be liable under this subdivision only if he has actual knowledge or knowledge fairly implied on the basis of the objective circumstances that the insulation presents a clear and present danger or has not been subject to the required testing procedures.

Subd. 2. Violation of section 5, subdivision 3, section 7, or section 8 shall constitute a misdemeanor.

Subd. 3. The provisions of section 7 may be enforced by the attorney general pursuant to section 325.907. The attorney general may recover costs and disbursements, including costs of investigation and reasonable attorney's fees. In addition to the remedies otherwise provided by law, any person injured by a violation of sections 5, 7, or 8 may bring a civil action and recover damages together with costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court. The court may as appropriate enter a consent judgment or decree without the finding of illegality.

Subd. 4. Remedies taken under this section shall not exclude other civil or criminal actions under Minnesota Statutes.

Sec. 10. Minnesota Statutes 1976, Section 273.11, Subdivision 1, is amended to read:

273.11 **VALUATION OF PROPERTY.** Subdivision 1. Except as provided in ~~subdivision~~ subdivisions 2 and 6 or section 273.17, subdivision 1, all property shall be valued at its market value. In estimating and determining such value, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which such property would sell at auction or at a forced sale, or in the aggregate with all the property in the town or district; but he shall value each article or description of property by itself, and at such sum or price as he believes the same to be fairly worth in money. In assessing any tract or lot of real property, the value of the land, exclusive of structures and improvements, shall be determined, and also the value of all structures and improvements

thereon, and the aggregate value of the property, including all structures and improvements, excluding the value of crops growing upon cultivated land. In valuing real property upon which there is a mine or quarry, it shall be valued at such price as such property, including the mine or quarry, would sell for a fair, voluntary sale, for cash. In valuing real property which is vacant, the fact that such property is platted shall not be taken into account. An individual lot of such platted property shall not be assessed in excess of the assessment of the land as if it were unplatted until the lot is improved with a permanent improvement all or a portion of which is located upon the lot, or for a period of three years after final approval of said plat whichever is shorter. When a lot is sold or construction begun, the assessed value of that lot or any single contiguous lot fronting on the same street shall be eligible for reassessment. All property, or the use thereof, which is taxable under sections 272.01, subdivision 2, or 273.19, shall be valued at the market value of such property and not at the value of a leasehold estate in such property, or at some lesser value than its market value.

Sec. 11. Minnesota Statutes 1976, Section 273.11, is amended by adding a subdivision to read:

Subd. 6. **EXEMPTION FROM VALUATION INCREASE DUE TO ENERGY SYSTEM.** For purposes of property taxation, the market value of real and personal property installed prior to January 1, 1984, which is a solar, wind, or agriculturally derived methane gas system used as a heating, cooling, or electric power source of a building or structure shall be excluded from the market value of that building or structure if the property is not used to provide energy for sale.

Sec. 12. Minnesota Statutes 1976, Section 394.25, Subdivision 2, is amended to read:

Subd. 2. Zoning ordinances establishing districts within which the use of land or the use of water or the surface of water pursuant to section 378.32 for agriculture, forestry, recreation, residence, industry, trade, soil conservation, water supply conservation, surface water drainage and removal, conservation of shorelands, as defined in section 105.485, and additional uses of land and of the surface of water pursuant to section 378.32, may be by official controls encouraged, regulated, or prohibited and for such purpose the board may divide the county into districts of such number, shape, and area as may be deemed best suited to carry out the comprehensive plan. Official controls may also be applied to wetlands preservation, open space, parks, sewage disposal, protection of ground water, protection of flood plains as defined in section 104.02, protection of wild, scenic or recreational rivers as defined in section 104.33, protection of slope, soils, unconsolidated materials or bedrock from potentially damaging development, preservation of forests, woodlands and essential wildlife habitat, reclamation of non-metallic mining lands; protection and encouragement of access to direct sunlight for solar energy systems as defined in section 116H.02, subdivision 11; and the preservation of agricultural lands.

Sec. 13. Minnesota Statutes 1976, Section 394.27, Subdivision 7, is amended to read:

Subd. 7. The board of adjustment shall have the exclusive power to order the issuance of variances from the terms of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control in cases when there are practical difficulties or particular hardship in the way of carrying out the strict letter of any official control, and when the terms of the variance are consistent with the comprehensive plan. "Hardship" as used in connection with the granting of a variance means the property in question cannot be put to a reasonable use if used under the conditions allowed by the official controls; the plight of the landowner is due to circumstances unique to his property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute a hardship if a reasonable use for the property exists under the terms of the ordinance. No variance may be granted that would allow any use that is prohibited in the zoning district in which the subject property is located. The board of adjustment may impose conditions in the granting of variances to insure compliance and to protect adjacent properties and the public interest. The board of adjustment may consider the inability to use solar energy systems a "hardship" in the granting of variances.

Sec. 14. Minnesota Statutes 1976, Section 462.357, Subdivision 1, is amended to read:

462.357 **PROCEDURE FOR PLAN EFFECTUATION; ZONING.** Subdivision 1. **AUTHORITY FOR ZONING.** For the purpose of promoting the public health, safety, morals and general welfare, a municipality may by ordinance regulate the location, height, bulk, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, conservation of shorelands, as defined in section 105.485, access to direct sunlight for solar energy systems as defined in section 116H.02, flood control or other purposes, and may establish standards and procedures regulating such uses. The regulations may divide the municipality into districts or zones of suitable numbers, shape and area. The regulations shall be uniform for each class or kind of buildings, structures or land and for each class or kind of use throughout such district, but the regulations in one district may differ from those in other districts. The ordinance embodying these regulations shall be known as the zoning ordinance and shall consist of text and maps. A city may by ordinance extend the application of its zoning regulations to unincorporated territory located within two miles of its limits in any direction, but not in a county or town which has adopted zoning regulations; provided that where two or more noncontiguous municipalities have boundaries less than four miles apart, each is authorized to control the zoning of land on its side of a line equidistant between the two noncontiguous municipalities unless a town or county in the affected area has adopted zoning regulations. Any city may thereafter enforce such regulations in the area to the same extent as if such property were situated within its corporate limits, until the county or town board adopts a comprehensive zoning regulation which includes the area.

Sec. 15. Minnesota Statutes 1976, Section 462.357, Subdivision 6, is amended to

read:

Subd. 6. **APPEALS AND ADJUSTMENTS.** Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the literal provisions of the ordinance in instances where their strict enforcement would cause undue hardship because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of the ordinance. Undue hardship includes, but is not limited to, inadequate access to direct sunlight for solar energy systems. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not permitted under the ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances to insure compliance and to protect adjacent properties.

Sec. 16. Minnesota Statutes 1976, Section 462.358, Subdivision 2, is amended to read:

Subd. 2. **TERMS OF REGULATIONS.** Subdivision regulations shall require that a proposed subdivision plat shall be in conformity with the official map if such exist. In establishing requirements for the location and width of streets, the municipality shall take into consideration anticipated traffic needs and the prospective character of the development and make any reasonable requirements therefor. As a condition to the approval of any subdivision plat of lands to which the regulations apply, subdivision regulations may prescribe requirements concerning the extent and manner in which streets shall be graded and improved, and electric and gas distribution lines or piping, water, sewer, or other facilities shall be installed. The regulations may provide, or authorize the governing body or other platting authority to provide, that, in lieu of the completion of such work before the final approval of the plat, the governing body or platting authority may accept or require a contract secured by a cash deposit, certified check, or a bond in an amount and with surety and conditions satisfactory to it, to assure the municipality that such improvements and utilities will be actually constructed and installed according to the specifications approved by the governing body or platting authority as expressed in the contract; and the municipality may enforce such contracts by appropriate legal and equitable remedies. The subdivision regulations may require that in appropriate plots of subdivisions to be developed for residential, commercial, industrial or other uses, or as a planned development which includes residential, commercial and industrial uses, or any combination thereof, that a reasonable portion of each proposed subdivision be dedicated to the public for public use as parks, playgrounds, public open space, or storm water

holding areas or ponds, or that the subdivider contribute an equivalent amount in cash based on the fair market value of the undeveloped land, as defined by the regulations, provided that cash payments received under such regulations shall be placed in a special fund by the municipality and used only for the acquisition of land for parks, playgrounds, public open space and storm water holding areas or ponds, development of existing park and playground sites, public open space and storm water holding areas or ponds, and debt retirement in connection with land previously acquired for such public purposes. The subdivision regulations, in setting forth the reasonable portion of each proposed subdivision to be dedicated to the public for public use as provided above, may take into consideration the open space, park, recreational or common areas and facilities which the subdivider has provided for the exclusive use of the residents of the subdivision.

A municipality may, through subdivision regulations, prohibit or restrict development for purposes of soil and water conservation. Such soil and water conservation regulations may call for site development plans with provisions for the control of drainage, erosion, and siltation.

A municipality may, for purposes of protecting and assuring access to direct sunlight for solar energy systems, prohibit, restrict or control development through subdivision regulations. The regulations may call for subdivision development plans containing restrictive convenants, height restrictions, side yard and setback requirements, or other permissible forms of land use controls.

Sec. 17. Minnesota Statutes 1976, Section 462.358, Subdivision 6, is amended to read:

Subd. 6. **VARIANCES.** Subdivision regulations may provide for a procedure for varying the regulations as they apply to specific properties where an unusual hardship on the land exists, but variances may be granted only upon the specific grounds set forth in the regulations. Unusual hardship includes, but is not limited to, inadequate access to direct sunlight for solar energy systems.

Sec. 18. Minnesota Statutes 1976, Section 462.39, Subdivision 3, is amended to read:

Subd. 3. **PLANNING.** The commission shall prepare and adopt, after appropriate study and such public hearings as may be necessary, a comprehensive development plan for the region. The plan shall consist of a compilation of policy statements, goals, standards, programs, and maps prescribing guides for an orderly and economic development, public and private, of the region. The comprehensive development plan shall recognize and encompass physical, social, or economic needs of the region, and those future developments which will have an impact on the entire region including but not limited to such matters as land use, parks and open space land needs, access to direct sunlight for solar energy systems, the necessity for and location of airports, highways, transit facilities, public hospitals, libraries, schools, public and private, housing, and other public buildings. In preparing the development plan the commission shall use to the maximum extent feasible the resources studies and data available from other planning agencies within the region, including counties, municipalities, special districts, and

subregional planning agencies, and it shall utilize the resources of the state planning agency to the same purpose. No development plan or portion thereof for the region shall be adopted by the commission until it has been submitted to the state planning agency for review and comment and a period of 60 days has elapsed after such submission. When a development plan has been adopted, the commission shall distribute it to all local government units within the region.

Sec. 19. Minnesota Statutes 1976, Section 473.05, Subdivision 1, is amended to read:

473.05 **PLANS.** Subdivision 1. The commission shall make plans for the physical, social, and economic development of its metropolitan area with the general purpose of guiding and accomplishing a coordinated and harmonious development of the area and of public facilities, improvements, and utilities which do not begin and terminate within the boundaries of any single governmental unit or which do not relate exclusively to the development of any single governmental unit. Such plans may include, among other things, suggestions as to highways and other transportation facilities, parks and recreational facilities, methods for protection and assuring access to direct sunlight for solar energy systems, drainage and water supply facilities, public buildings, utilities and services, as well as suggested standards for the subdivision of land and for control over the construction, height, bulk, location and use of buildings and premises. The commission may adopt by resolution of a majority of its full membership any such plan or portion of any plan as its official recommendation for the development of the area.

Sec. 20. Minnesota Statutes 1976, Section 473.859, Subdivision 2, is amended to read:

Subd. 2. **LAND USE PLAN.** A land use plan shall designate the existing and proposed location, intensity and extent of use of land and water for agricultural, residential, commercial, industrial and other public and private purposes, or any combination of such purposes. A land use plan shall contain a protection element, as appropriate, for historic sites and the matters listed in section 473.204, and an element for protection and development of access to direct sunlight for solar energy systems. A land use plan shall also include a housing element containing standards, plans and programs for providing adequate housing opportunities to meet existing and projected local and regional housing needs, including but not limited to the use of official controls and land use planning to promote the availability of land for the development of low and moderate income housing.

Sec. 21. **[500.30] SOLAR EASEMENTS.** Subdivision 1. "Solar easement" means a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of any owner of land or solar skyspace for the purpose of ensuring adequate exposure of a solar energy system as defined in section 116H.02, Subdivision 11, to solar energy.

Subd. 2. Any property owner may grant a solar easement in the same manner and with the same effect as a conveyance of an interest in real property. The easements shall be created in writing and shall be filed, duly recorded, and indexed in the office of the

corder of the county in which the easement is granted. No duly recorded solar easement ll be unenforceable on account of lack of privity of estate or privity of contract; such nents shall run with the land or lands benefited and burdened and shall constitute a perpetual easement, except that a solar easement may terminate upon the conditions stated therein or pursuant to the provisions of section 500.20.

Subd. 3. Any deed, will, or other instrument that creates a solar easement shall include, but the contents are not limited to:

(a) a description of the real property subject to the solar easement and a description of the real property benefiting from the solar easement;

(b) a description of the vertical and horizontal angles, expressed in degrees and measured from the site of the solar energy system, at which the solar easement extends over the real property subject to the solar easement, or any other description which defines the three dimensional space, or the place and times of day in which an obstruction to direct sunlight is prohibited or limited;

(c) any terms or conditions under which the solar easement is granted or may be terminated;

(d) any provisions for compensation of the owner of the real property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation of the owner of the real property subject to the solar easement for maintaining the solar easement;

(e) any other provisions necessary or desirable to execute the instrument.

Subd. 4. A solar easement may be enforced by injunction or proceedings in equity or other civil action.

Subd. 5. Any depreciation caused by any solar easement which is imposed upon designated property, but not any appreciation caused by any solar easement which benefits designated property, shall be included in the valuation of the property for property tax purposes.

Sec. 22. Notwithstanding the provisions of section 16.851, the date by which the state building code must be enforced within all municipalities in the state is January 1, 1979, except that those portions of the state building code relating to the grading of lumber shall not be effective until January 1, 1980.

Sec. 23. **APPROPRIATIONS.** Subdivision 1. For the year ending June 30, 1979, the sum of $26,000 is appropriated from the general fund to the energy agency for the purposes of sections 5 and 6.

Subd. 2. For the year ending June 30, 1979, the sum of $18,000 is appropriated from the general fund to the department of administration for the purposes of section 3.

Subd. 3. The sum of $80,000 of the funds appropriated pursuant to Laws 1976, Chapter 254, Section 16, Clause (e), is cancelled. For the fiscal years 1978 and 1979, the sum of $80,000 is appropriated from the general fund to the director of the housing finance agency for the purpose of studying and reporting to the legislature by January 15, 1979, on existing loan programs for the rehabilitation of low and moderate income rental housing for energy conservation purposes. In particular, the study shall focus on the financial impact of rehabilitation and energy conservation programs on tenants. The director shall also include in the report to the legislature his recommendations for additional legislation for energy conservation programs for low and moderate income rental housing, and for methods of protecting tenants from unreasonable costs as a result of such programs. The spending limit on general administrative cost of housing finance agency programs for fiscal years 1978 and 1979 shall be increased by the amount of the funds appropriated by this subdivision.

Sec. 24. **EFFECTIVE DATE.** This act shall be effective the day after enactment. Section 11 shall be effective for assessments made for taxes levied in 1978 and payable in 1979 and thereafter.

Approved April 5, 1978.

MISSISSIPPI LEGISLATURE REGULAR SESSION 1978-W04

BY: SENATORS STECKLER, MULHOLLAND, TUCKER

TO: PUBLIC PROPERTY

SENATE BILL NO. 2379
(As Sent to Governor)

AN ACT DIRECTING THE STATE BUILDING COMMISSION TO PROMULGATE RULES FOR CONDUCTING LIFE-CYCLE COST ANALYSES OF ALTERNATIVE ARCHITECTURAL AND ENGINEERING DESIGNS ON ALL STATE BUILDINGS; DIRECTING THE STATE BUILDING COMMISSION TO PROMULGATE RULES FOR ENERGY PERFORMANCE INDICES; AUTHORIZING THE STATE BUILDING COMMISSION TO PROMULGATE THERMAL AND LIGHTING EFFICIENCY STANDARDS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This act shall be known and may be cited as the "Mississippi Energy Conservation in Buildings Act of 1978."

SECTION 2. In order that energy efficiency considerations become a function of building design, and also as a model for a future application in the private sector, it shall be the policy of the state that buildings constructed and financed by the state be designed and constructed in a manner which will minimize the consumption of energy used in the operation and maintenance of such buildings.

SECTION 3. For purposes of this act, the following words shall have the meaning ascribed herein unless the context shall otherwise require:

(a) "Commission" shall mean the State Building Commission.

(b) "Facility" shall mean a building or other structure.

(c) "Energy performance index or indices" (EPI) shall mean a number describing the energy requirements at the building

boundary of a facility per square foot of floor space or per cubic foot of occupied volume as appropriate under defined internal and external ambient conditions over an entire seasonal cycle. As experience develops on the energy performance achieved with state building, the indices (EPI) will serve as a measure of building performance with respect to energy consumption.

(d) "Life-cycle costs" shall mean the cost of owning, operating and maintaining the facility over the life of the structure. This may be expressed as an annual cost for each year of the facility's use.

SECTION 4. No state agency shall lease within limits prescribed herein, construct or have constructed within limits prescribed herein, a facility without having secured from the commission a proper evaluation of life-cycle costs, as computed by a qualified architect or engineer. Furthermore, construction shall proceed only upon disclosing for the facility chosen, the life-cycle costs as determined in Section 5 of this act and the capitalization of the initial construction costs of the building. The life-cycle costs shall be a primary consideration in the selection of a building design. Such analysis shall be required only for construction of buildings with an area of five thousand (5,000) square feet or greater. For leased areas of twenty thousand (20,000) square feet or greater within a given building boundary, a life-cycle analysis shall be performed and a lease shall only be made where there is a showing that the life-cycle costs are minimal compared to available like facilities.

SECTION 5. (1) The commission shall promulgate rules and procedures including energy conservation performance guidelines for conducting a life-cycle cost analysis of alternative

architectural and engineering designs and for developing energy performance indices to evaluate the efficiency of energy utilization for competing designs in the construction of state-financed and leased facilities.

(2) Such life-cycle costs shall be the sum of:

(a) The reasonably expected fuel costs over the life of the building as determined by the commission that are required to maintain illumination, power, temperature, humidity and ventilation, and all other energy consuming equipment in a facility, and

(b) The reasonable costs of probable maintenance, including labor and materials, and operation of the building.

(3) To determine the life-cycle costs as defined in Section 5(2) of this act, the commission shall promulgate rules that shall include but not be limited to:

(a) The orientation and integration of the facility with respect to its physical site;

(b) The amount and type of glass employed in the facility, and the directions of exposure;

(c) The effect of insulation incorporated into the facility design, and effect on solar utilization, of the properties of external surfaces;

(d) The variable occupancy and operating conditions of the facility, and sub-portions of the facility; and

(e) An energy consumption analysis of the major equipment of the facility's heating, ventilating and cooling system, lighting system, hot water system, and all other major energy consuming equipment and systems as appropriate. This analysis shall include:

(i) The comparison of alternative systems;

(ii) A projection of the annual energy consumption of major energy consuming equipment, and systems for a range of operation of the facility over the life of the facility;

(iii) The evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs.

(4) Such rules shall be based on the best currently available methods of analyses, including such as those of the National Bureau of Standards, the Department of Housing and Urban Development, other federal agencies and professional societies, and materials developed by the commission. Provisions shall be made for an annual updating of rules and standards as required.

SECTION 6. (1) The commission is authorized to contract with the Mississippi Fuel and Energy Management Commission, created by Executive Order No. 151 (1973), and the State Office of Petroleum Allocation, created by Executive Order No. 164 (1974), to perform the functions of those federal programs delegated to the state which relate to thermal and lighting efficiency standards and energy efficient public procurement. The commission, in consultation with other appropriate offices and agencies of the state government, appropriate professional groups and organizations, and others knowledgeable in the subjects, shall develop, promulgate and enforce thermal and lighting efficiency standards and public procurement practices in order to promote the efficient use of energy. The standards shall conform to the minimum standards required for the states under the Federal Energy Policy and Conservation Act of 1975 (P.L. 94-163). Said standards shall be subject to prior approval of the Legislature, and shall become effective upon such approval.

(2) After the contractual agreements provided for in Section 6(1) have been entered into, all funds which become available to

the State of Mississippi for performing those functions provided for by this section and which are being performed by the State Building Commission, shall be delivered to the State Building Commission in a timely manner by the office or agency receiving such funds.

SECTION 7. The commission shall promulgate rules for energy performance indices as defined in Section 3 of this act to audit and evaluate competing design proposals submitted to the state, subject to prior approval of the Legislature. The energy performance indices adopted pursuant to this section shall become effective on the date set by the Legislature at the time of adoption.

SECTION 8. This act shall take effect and be in force from and after passage and shall stand repealed from and after July 1, 1979.

ASSEMBLY, No. 562

STATE OF NEW JERSEY

INTRODUCED JANUARY 30, 1978

By Assemblymen DiFRANCESCO, KAVANAUGH, Assemblywomen MUHLER and BURGIO

Referred to Committee on Energy and Natural Resources

AN ACT requiring public agencies to include in the design phase of any construction or renovation of a major facility a life-cycle cost analysis to determine the initial cost of a major facility, the cost of energy consumed over the facilities economic life and the energy consumption related cost of its operation and maintenance.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "Life-Cycle Cost Analysis Act."

2. As used in this act:

a. "Public agency" means every State office, officer, board, commission, committee, bureau, department, and all political subdivisions of the State.

b. "Major facility" means any publicly owned or leased building having 25,000 square feet or more of usable floor space.

c. "Initial cost" means the moneys required for the capital construction or renovation of a major facility.

d. "Renovation" means additions, alterations, or repairs within any 12-month period which exceed 50 per cent of the value of a major facility and which will affect any energy system.

e. "Economic life" means the projected or anticipated useful life of a major facility as expressed by a term of years.

f. "Life-cycle cost" means the cost of a major facility, including its initial cost, the cost of the energy consumed over its economic life, and the energy consumption related cost of its operation and maintenance.

g. "Life-cycle cost analysis" includes the following elements:

(1) The coordination and positioning of a major facility on its physical site.

(2) The amount and type of fenestration employed in a major facility.

(3) The amount of insulation incorporated into the design of a major facility.

(4) The variable occupancy and operating conditions of a major facility.

(5) An energy-consumption analysis of a major facility.

h. "Energy systems" means all utilities, including, but not limited to, heating, air-conditioning, ventilating, lighting, and the supplying of domestic hot water.

i. "Energy-consumption analysis" means the evaluation of all energy systems and components by demand and type of energy, including the internal energy load imposed on a major facility by its occupants, equipment, and components, and the external energy load imposed on a major facility by the climatic conditions of its location. An energy-consumption analysis of the operation of energy systems of a major facility shall be prepared by a professional engineer or licensed architect and shall include the following elements:

(1) The comparison of three or more system alternatives.

(2) The simulation of each system over the entire range of operation of the facility for a year's operating period.

(3) The evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated output.

3. On and after the effective date of this act, whenever a public agency determines that any major facility is to be constructed or renovated, that agency shall cause to be included in the design phase of the construction or renovation a provision that requires a life-cycle cost analysis to be prepared for the facility. The analysis shall be approved by the agency prior to the commencement of actual construction or renovation. A public agency may accept the facility design if the agency is satisfied that the life-cycle cost analysis provides for an efficient energy system or systems based on the economic life of the major facility.

4. This act shall take effect 180 days following its enactment.

STATEMENT

Major publicly owned or leased facilities have a significant impact on energy consumption. If energy conservation practices were adopted for the design, construction, and utilization of those facilities, they would have a beneficial effect on the overall supply

of energy. Since the cost of energy consumed by publicly owned or leased facilities is significant, that cost should be considered over the life of the facility in addition to the initial cost of constructing those facilities.

This act requires that major facility designs be based on the total life-cycle cost, including the initial construction cost, and the cost (over the economic life of a major facility) of the energy consumed and of the operation and maintenance of a major facility as they affect energy consumption.

Signed into law June 19, Chapter 397

STATE OF NEW YORK

S. 8088—A A. 10494—A

Cal. No. 953

SENATE–ASSEMBLY

February 23, 1978

IN SENATE—Introduced by Sens. PISANI, McFARLAND—read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Public Utilities—reported favorably from said committee with amendments and ordered reprinted as amended and when reprinted to be committed to the order of first report

IN ASSEMBLY—Introduced by M. of A. CONNOR, ORAZIO—Multi-Sponsored by—M. of A. HOCHBRUECKNER, HARENBURG, HINCHEY, E. F. X. RYAN, GRABER, LIPSCHUTZ, DeSALVIO, PROUD, WILSON, MARCHISELLI, ENGEL—read once and referred to the Committee on Environmental Conservation—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the energy law and the executive law, in relation to establishing a state energy conservation construction code act, and to repeal section two of chapter eight hundred twenty-four of the laws of nineteen hundred seventy-four, relating to expanding the membership of the state building code council and to direct the council to prepare an energy efficiency construction code, in relation thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "state energy conservation construction code act".

§ 2. The energy law is hereby amended by adding thereto a new article eleven to read as follows:

ARTICLE 11

STATE ENERGY CONSERVATION CONSTRUCTION CODE ACT

Section 11-101. Purpose.
11-102. Definitions.
11-103. Applications.
11-104. State energy conservation construction code.
11-105. Limitation of application.
11-106. Variances and modifications; state board of review.
11-107. Administration and enforcement.
11-108. Penalties.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

LBD8-39-420A

11-109. Municipal regulations.
11-110. Powers of the council; cooperation of other agencies.

§ 11-101. Purpose. In furtherance of the policy set forth in subdivision two of section 3-101 of this chapter, the legislature hereby directs that a state energy conservation construction code be adopted to protect the health, safety and security of the people of the state and to assure a continuing supply of energy for future generations and that such code mandate that economically reasonable energy conservation techniques be used in the design and construction of all new public and private buildings in the state.

§ 11-102. Definitions. For the purposes of this article, the following words and phrases shall have the following meanings unless a different meaning is plainly required by the context:

1. "Building." Any combination of materials, whether portable or fixed, having a roof to form a structure which is heated or cooled in the normal course affording shelter for persons, animals or property, including any equipment therein, provided however that the term "building" shall not include any structure which is heated and cooled without the use of electricity or fossil fuel. The word "building" shall include "factory manufactured homes" as defined in section four hundred-c of article eighteen-B of the executive law.

2. "Code." The state energy conservation construction code provided for in this article, or any portion thereof, any modification of or amendments thereto.

3. "Construction." The construction of a new building, or any addition, alteration or renovation of an existing building, where such addition, alteration or renovation materially increases the heating or cooling requirements for any such building.

4. "Council." The state building code council created by article eighteen of the executive law.

5. "Equipment." Plumbing, heating, electrical, insulating, ventilating, air conditioning, and refrigerating equipment, elevators, escalators, and other mechanical additions or installations but does not include any items constituting an industrial or commercial process.

6. "Municipality." Any county, city, town, village, school district or district corporation.

7. "Owner." The owner or owners of the freehold of a premises or any lesser estate therein, a mortgagee or vendee in possession, a contract vendee, assignee of rents, receiver, executor, trustee, lessee, or any other person, firm or corporation in control of a building.

8. "Residential." Any building which is designed or is to be used primarily as a dwelling or household.

9. "State board of review." The state building construction board of review created pursuant to section three hundred eighty-one of the executive law.

§ 11-103. Applications. 1. On or before July first, nineteen hundred seventy-eight, the commissioner shall adopt rules and regulations which shall comprise and collectively be known as the code relating to the construction of all buildings, or classes of buildings in the state, for purposes of minimizing the consumption of energy and providing for the efficient utilization of the energy expended in the use and occupancy of buildings. Such code shall incorporate and be equal to the standards specified in standard 90-75 of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., dated August eleventh, nineteen hundred seventy-five, entitled "Energy Conservation in New Building Design", known hereafter as ASHRAE Standard 90-75; provided however, that in addition any portion of the code which applies to residential construction shall be equivalent to the requirements set forth in the public service commission opinions, PSC 76-16(C) dated May fifteenth and sixteenth, nineteen hundred seventy-seven, and appendices thereto. The code shall apply to all buildings for which application for a building permit is made and plans are filed in this state on or after October

first, nineteen hundred seventy-eight, which date shall be the effective date of the code.

2. The commissioner is further authorized, from time to time as he deems appropriate and consistent with the purposes of this article, to review and propose amendments to the code provided that the code remains cost effective with respect to building construction in the state. The code shall be deemed cost effective if the cost of materials and their installation to meet its standards would be equal to or less than the present value of energy savings that could be expected over a ten year period in the building in which such materials are installed.

3. The commissioner shall submit any such amendments together with proposed implementing legislation to the legislature for approval and enactment.

4. Notwithstanding any other provision of law, the commissioner in accordance with the mandate under this article shall have exclusive authority among state agencies to promulgate a construction code incorporating energy conservation features. Any other code, rule or regulation heretofore promulgated or enacted by any other state agency, incorporating specific energy conservation requirements applicable to the construction of any building, shall be superseded by the code promulgated by the commissioner pursuant to this section.

§ 11-104. State energy conservation construction code. In addition to meeting the purposes set forth in section 11-101 of this article, the code shall be designed to satisfy the following specific criteria:

1. The code's standards and requirements, so far as may be practicable, shall be formulated in terms of performance objectives.

2. To the fullest extent feasible, use of modern technical methods, devices and improvements which tend to minimize consumption of energy and utilize to the greatest extent practical solar and other renewable sources of energy without affecting reasonable requirements for the health, safety and security of the occupants or users of buildings shall be permitted.

3. As far as may be practicable, the improvement of energy conservation construction practices, methods, equipment, materials and techniques shall be encouraged.

4. The code shall provide reasonable uniform standards and requirements for construction and construction materials for the improvement of energy conservation construction practices.

§ 11-105. Limitation of application. Notwithstanding the provisions of subdivision one of section 11-103 of this article, the commissioner, by regulation, may limit the application of any portion of the code so as to include or exclude classes or types of buildings, according to the use thereof or the cost effectiveness of the code with respect to any such class or type of building, or according to any other distinction as may make differentiation or separate classification or regulation necessary, proper or desirable, so long as any such limitation is consistent with the purposes of this article and the criteria set forth in section 11-104 of this article.

§ 11-106. Variances and modifications; state board of review. 1. Any standard or requirement of the code may be varied or modified, in whole or part, with regard to specific construction upon application made by or on behalf of an owner, where strict compliance with such standard or requirement would entail practical difficulty or cause any unnecessary hardship in relation to such construction, provided, however, that any such variance or modification shall provide for alternative energy conservation standards or requirements to achieve to the extent practicable the purposes of this article.

2. An application for a variance or modification of any standard or requirement of the code shall be made to the state board of review and the provisions of section three hundred eighty-two of the executive law shall apply to such applications, provided, however, that the powers and duties in relation to the code conferred upon the state board of review pursuant to this section or section three hundred eighty-two of the executive law shall be limited to and exercised only in relation to construction

within municipalities which have not adopted a local energy conservation construction code pursuant to section 11-109 of this article.

§ 11-107. Administration and enforcement. Except as otherwise expressly provided herein, the administration and enforcement of the provisions of the code shall be the responsibility of the municipalities of the state, and the code shall be administered and enforced by such municipalities in the manner prescribed by applicable local law or ordinance. All provisions of law relating to the administration and enforcement of local building regulations in any municipality shall be applicable to the administration and enforcement of the code in such municipality, provided, however, that the provisions of any local law or ordinance shall not apply with regard to the variance or modification of the provisions of the code in a municipality which has not adopted a local energy conservation construction code pursuant to section 11-109 of this article.

§ 11-108. Penalties. 1. Any person having been served with an order pursuant to the provisions of any local law or ordinance who shall fail to comply with such order within thirty days after such service or within the time fixed by the local building department for compliance, whichever is greater, and any owner, builder, architect, engineer, contractor or subcontractor taking part or assisting in the construction or use of any building who shall knowingly violate any applicable provisions of the code or any lawful order of a local building department made thereunder shall be punishable by a fine of not more than five hundred dollars or by imprisonment of not more than thirty days in jail, or both.

2. Except as provided otherwise by law, any such violation shall not be a crime and the penalty or punishment imposed therefor shall not be deemed for any purpose a penal or criminal penalty or punishment, and shall not impose any disability upon or affect or impair the credibility as a witness, or otherwise, of any person convicted thereof.

§ 11-109. Municipal regulations. 1. Nothing in this article shall be construed as abrogating or impairing the power of any municipality to enforce the provisions of any local building regulations provided that such provisions are not inconsistent with the code, or to promulgate a local energy conservation construction code more stringent than the code.

2. Any municipality which adopts a local energy conservation construction code in accordance with this section shall file a copy of such code and any amendments or revisions thereof with the commissioner within thirty days after promulgation or adoption of such code, amendments or revisions. The failure to comply with the provisions of this subdivision shall not impair or otherwise affect the validity of such local code or amendment or revision.

§ 11-110. Powers of the council; cooperation of other agencies. 1. The council shall study and report yearly to the legislature and the commissioner as to the operation of the state energy conservation construction code, local building regulations and other laws relating to the construction of buildings so as to ascertain the effectiveness of their provisions for minimizing consumption of and providing for the efficient utilization of energy.

2. The council and other agencies of the state shall provide the commissioner with such cooperation and assistance as he may deem necessary to carry out the purposes of this article.

§ 3. Severability. In the event any section, subdivision, sentence, clause or phrase of article eleven of the energy law shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subdivisions, sentences, clauses, or phrases of such article, which shall remain in full force and effect, as if the section, subdivision, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally part hereof.

§ 4. Subdivision two of section 5-105 of the energy law is hereby amended to read as follows:

2. To promulgate, issue, amend, rescind, revoke or waive orders, and, after public hearings, promulgate rules and regulations *to effectuate the purposes and provisions of this chapter*.

§ 5. Paragraphs b and c of subdivision one of section three hundred eighty-two of the executive law, as amended by chapter two hundred sixty-six of the laws of nineteen hundred seventy-four, are hereby amended to read as follows:

b. To reverse, modify or annul, in whole or part, any ruling, direction, determination or order of any state agency or local building department affecting or relating to the construction of any building, factory manufactured home, or mobile home, the construction of which is pursuant or purports to be pursuant to the provisions of the state building construction code, the uniform standards code for factory manufactured homes act, [or] the uniform code of construction and installation standards for mobile homes of the state of New York, *or the state energy conservation construction code,* and the standards, rules, regulations or codes promulgated pursuant to such acts.

c. To review, after disapproval or upon failure to approve within sixty days after submission, any application for permission for the construction of a building, factory manufactured home or mobile home pursuant to the provisions of the state building construction code, the uniform standards code for factory manufactured homes act, the uniform code of construction and installation standards for mobile homes of the state of New York, *or state energy conservation construction code,* and the standards, rules, regulations and codes promulgated pursuant to such acts, or plans or specifications submitted in connection therewith; to reverse, modify or annul such disapproval in whole or part; and to make a determination that such application or plans or specifications are in compliance with the provisions of such standards, rules, regulations or codes. If such determination be made, the state or municipal officer charged with the duty shall forthwith issue any permit, license, certificate, seal, authorization or other document required for such construction.

§ 6. Section two of chapter eight hundred twenty-four of the laws of nineteen hundred seventy-four, relating to expanding the membership of the state building code council and to direct the council to prepare an energy efficiency construction code, is hereby **repealed.**

§ 7. This act shall take effect immediately.

REPEAL NOTE.—Section two of chapter eight hundred twenty-four of the laws of nineteen hundred seventy-four, to be repealed by this act, required the state building code council to prepare on or before December first, nineteen hundred seventy-four and submit to the governor and the legislature an energy efficiency construction code.

Signed into law August 4, Chapter 710

STATE OF NEW YORK

9015—A

IN SENATE

March 30, 1978

Introduced by Sen. McFARLAND—(at request of the Governor)—read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Public Utilities—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the energy law, in relation to establishing state lighting efficiency standards for existing public buildings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "state lighting efficiency standards for existing public buildings act".

§ 2. The energy law is hereby amended by adding a new article eight to read as follows:

ARTICLE 8

STATE LIGHTING EFFICIENCY STANDARDS FOR EXISTING PUBLIC BUILDINGS ACT

Section 8-101. Purpose.
8-102. Definitions.
8-103. Application.
8-104. State lighting efficiency standards for existing public buildings.
8-105. Limitation of application.
8-106. Administration and enforcement.
8-107. Municipal regulations.

§ 8-101. Purpose. In furtherance of the policy set forth in subdivision two of section 3-101 of this chapter, the legislature hereby directs that state lighting efficiency standards for existing public buildings be promulgated to protect the health, safety, security and welfare of the people of the state, to conserve energy and to reduce public expenditure for energy; and that such standards ensure that economically reasonable energy conservation techniques be used in the lighting of all existing public buildings in the state. It is a further purpose of this act to encourage and promote voluntary compliance with such standards by private owners of public buildings.

§ 8-102. Definitions. For the purposes of this article, the following words and phrases shall have the following meanings unless a different meaning is plainly required by the context:

1. "Government building." Any building owned by the state or a municipality thereof, including but not limited to state and municipal buildings, libraries and

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

LBD8-41-738XA

museums.

2. "Municipality." Any county, city, town, village, school district, district corporation, public authority or the port authority of New York and New Jersey to the extent its facilities are located within the state of New York.

3. "Existing public buildings." Any building which is open to the public during normal business hours and which is in existence or under construction, or for which an application for a building permit has been made and plans filed in this state on or before September thirty-first, nineteen hundred seventy-eight.

4. "Standards." The state lighting efficiency standards for existing public buildings provided for in this article, or any portion thereof, any modification of or amendments thereto.

§ 8-103. Application. On or before July first, nineteen hundred seventy-eight, the commissioner shall promulgate, and thereafter may amend from time to time, standards relating to the lighting of all existing public buildings, or classes of existing public buildings, for purposes of minimizing the consumption of energy and providing for the efficient utilization of the energy expended for lighting in the use and occupancy of existing public buildings. Such standards shall be cost effective and shall not impair the health and safety of the occupants of the property. The standards shall be deemed cost effective if the cost of implementing them would be equal to or less than the present value of energy and maintenance savings that would be expected over a seven-year period in a building to which the standards are applicable. The effective date of the standards shall be October first, nineteen hundred seventy-eight.

§ 8-104. State lighting efficiency standards for existing public buildings. In addition to meeting the purposes set forth in section 8-101 of this article, the standards shall be designed to satisfy the following specific criteria:

1. The standards, so far as may be practicable, shall be formulated in terms of performance objectives.

2. The standards, so far as may be practicable, shall further the improvement of energy conservation lighting practices, methods, equipment, materials and techniques.

3. The standards shall encourage economically reasonable energy conserving lighting techniques to be used in the lighting of all existing public buildings.

4. The standards shall provide reasonable uniform standards and requirements for lighting and lighting materials for the improvement in efficiency of lighting systems.

§ 8-105. Limitation of application. Notwithstanding the provisions of subdivision one of section 8-103 of this article, the commissioner may limit by regulation the application of any standards so as to include or exclude classes or types of buildings, according to the use thereof, or according to any other distinction as may make differentiation of separate classification or regulation necessary, proper or desirable, so long as such limitations of the application of the standards are consistent with the purposes of this article, as set forth in section 8-101 of this article, and the criteria set forth in section 8-104 of this article.

§ 8-106. Administration and enforcement. 1. With respect to buildings owned by the state, this article is to be administered by the commissioner and the standards promulgated pursuant thereto enforced by the office of general services in accordance with procedures to be developed by the commissioner after consultation with the commissioner of the office of general services. The commissioner may request any department, division, board, bureau, commission, or other state agency to provide such information, data and assistance as is necessary to enable the commissioner to effectuate the purposes of this article, and such departments, divisions, boards, bureaus, commissions and other state agencies are authorized to provide, to the extent feasible, such information, data and assistance.

2. With respect to buildings owned by municipalities, the administration and enforcement of the standards to be promulgated pursuant to this article shall be the

responsibility of such municipality in the manner prescribed by applicable local law or ordinance.

3. The commissioner shall monitor the extent of voluntary compliance with the standards by owners of all public buildings that are not government buildings. The commissioner shall report to the legislature and the governor, on or before December thirty-first, nineteen hundred seventy-nine, the degree of such voluntary compliance and make recommendations with respect thereto.

§ 8-107. Municipal regulations. 1. Nothing in this article shall be construed as abrogating or impairing the power of any municipality to enforce the provisions of any local building regulations pertaining to lighting standards in existing buildings, provided that such provisions are not inconsistent with the standards, or to promulgate local lighting efficiency standards for existing public buildings more stringent than the standards.

2. Any municipality which adopts local lighting efficiency standards for existing public buildings in accordance with this section shall file a copy of such standards and any amendments or revisions thereof with the commissioner within thirty days after promulgation or adoption of such standards, amendments or revisions. The failure to comply with the provisions of this subdivision shall not impair or otherwise affect the validity of such local standards or amendments or revisions thereof.

§ 3. Severability. In the event any section, subdivision, sentence, clause or phrase of this article shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subdivisions, sentences, clauses or phrases of this article, which shall remain in full force and effect as if the section, subdivision, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally part hereof.

§ 4. This act shall take effect immediately.

(Amended Substitute Senate Bill No. 127)

AN ACT

To amend section 3781.06 and to enact sections 3781.21 and 4933.021 of the Revised Code to require utilities to provide information on approved contractors that install home insulation and financial institutions that make loans for home insulation, to make the state building laws applicable to additional buildings, to repeal section 4933.021 of the Revised Code as enacted by this act four years after the effective date of this act, unless reenacted by subsequent legislation.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 3781.06 be amended and sections 3781.21 and 4933.021 of the Revised Code be enacted to read as follows:

Sec. 3781.06. Any building which may be used as a place of resort, assembly, education, entertainment, lodging, dwelling, trade, manufacture, repair, storage, traffic, or occupancy by the public, and all other buildings or parts and appurtenances thereof erected within this state shall be so constructed, erected, equipped, and maintained that they shall be safe and sanitary for their intended use and occupancy, except that sections 3781.06 to 3781.18, ~~inclusive,~~ and ~~section~~ 3791.04 of the Revised Code, shall be considered as model provisions with no force and effect when applied to single-family, two-family, and three-family dwelling houses which have not been constructed or erected as industrialized one-family, two-family, or three-family units or structures within the meaning of the term "industrialized unit" as provided in section 3781.10 of the Revised Code, EXCEPT WHERE THE CONTEXT SPECIFIES MANDATORY APPLICABILITY. Sections 3781.06 to 3781.18 , ~~inclusive,~~ and ~~section~~ 3791.04 of the Revised Code , shall not apply to buildings, or structures which are incident to the use

for agricultural purposes of the land on which such buildings or structures are located, provided such buildings or structures are not used in the business of retail trade.

As used in these sections:

(A) "Agricultural purposes" include agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, viticulture, ornamental horticulture, olericulture, pomiculture, and animal and poultry husbandry;

(B) "A building" is any structure consisting of foundations, walls, columns, girders, beams, floors, and roof, or a combination of any number of these parts, with or without other parts or appurtenances.

A building is considered safe when free from danger or hazard to the life, safety, health, or welfare of persons occupying or frequenting it, or of the public and from danger of settlement, movement, disintegration, or collapse, whether such danger arises from the methods or materials of its construction or from equipment installed therein, for the purpose of lighting, heating, the transmission or utilization of electric current, or from its location or otherwise.

A building is sanitary when it is free from danger or hazard to the health of persons occupying or frequenting it or to that of the public, if such danger arises from the method or materials of its construction or from any equipment installed therein, for the purpose of lighting, heating, ventilating, or plumbing.

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Sec. 3781.21. TO ENCOURAGE FUEL CONSERVATION IN DWELLINGS THE BOARD OF BUILDING STANDARDS SHALL, IN ACCORDANCE WITH CHAPTER 119. OF THE REVISED CODE, ADOPT RULES SETTING FORTH THERMAL EFFICIENCY AND SAFETY STANDARDS FOR ATTIC INSULATION, WALL INSULATION, HEAVY PLASTIC FOR WINDOWS, WEATHER STRIPPING, CAULKING, AND HEAT PUMPS, AND RESTRICTING THE USE OF THESE ITEMS IN ANY NEW DWELLING, OR IN ANY IMPROVEMENT MADE TO CONSERVE ENERGY IN ANY EXISTING DWELLING, TO THOSE THAT MEET SUCH STANDARDS. THE APPROVAL AND IMPLEMENTATION OF SAID STANDARDS SHALL BE DELEGATED TO THE LOCAL AUTHORITY RESPONSIBLE FOR APPROVING ONE-FAMILY, TWO-FAMILY, AND THREE-FAMILY DWELLING PLANS. NO PERSON SHALL VIOLATE ANY SUCH RULE. STANDARDS ADOPTED BY THE BOARD OF BUILDING STANDARDS SHALL BE BASED UPON THE LATEST MINIMUM PROPERTY STANDARDS FOR INSULATION PROMULGATED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. WHOEVER VIOLATES THIS SECTION IS GUILTY OF A MINOR MISDEMEANOR ON THE FIRST OFFENSE, AND ON SUBSEQUENT OFFENSES IS GUILTY OF A MISDEMEANOR OF THE FIRST DEGREE.

Sec. 4933.021. TO PROMOTE CONSERVATION OF NATURAL GAS AND ELECTRICITY, EACH GAS, NATURAL GAS, OR ELECTRIC LIGHT COMPANY HAVING MORE THAN THE MINIMUM NUMBER OF RESIDENTIAL CUSTOMERS DETERMINED BY THE PUBLIC UTILITIES COMMISSION TO CONSTITUTE A SMALL UTILITY SHALL MAKE AVAILABLE TO EACH OWNER OF A RESIDENTIAL DWELLING WHO IS A HOME HEATING CUSTOMER OF THE COMPANY A LIST OF CONTRACTORS APPROVED BY THE COMPANY OR BETTER BUSINESS BUREAU SERVING THE PARTICULAR RESIDENTIAL AREA WHO INSTALL INSULATION IN RESIDENTIAL DWELLINGS AND WHO HAVE REQUESTED THEIR NAMES TO BE PLACED ON A LIST TO BE GIVEN TO RESIDENTIAL HEATING CUSTOMERS OF THE COMPANY AND A LIST OF FINANCIAL INSTITUTIONS WHO HAVE REQUESTED THEIR NAMES BE PLACED ON A LIST OF INSTITUTIONS THAT WILL FINANCE THE INSTALLATION OF INSULATION TO QUALIFIED APPLICATIONS SETTING FORTH THE METHOD OF PAYMENT AND THE INTEREST RATE CHARGED FOR SUCH FINANCING.

LOAN APPLICATION FORMS FURNISHED BY THE FINANCIAL INSTITUTIONS SHALL BE MADE AVAILABLE AT EACH OFFICE OF THE COMPANY AND SHALL BE MAILED UPON REQUEST BY ANY CUSTOMER. TO INFORM CUSTOMERS ABOUT AVAILABILITY OF THE LOANS THE COMPANY SHALL DISTRIBUTE TO EACH RESIDENTIAL HEATING CUSTOMER DURING THE MONTHS OF MAY AND SEPTEMBER A COPY OF THE LIST OF CONTRACTORS AND FINANCIAL INSTITUTIONS PREPARED UNDER THE FIRST PARAGRAPH OF THIS SECTION.

IF A LIST OF FINANCIAL INSTITUTIONS WILLING TO MAKE LOANS TO QUALIFIED APPLICANTS HAS NOT BEEN PROVIDED BY THE UTILITY AS SPECIFIED IN THE FIRST PARAGRAPH OF THIS SECTION, OR FINANCIAL INSTITUTIONS WILLING TO MAKE LOANS TO QUALIFIED APPLICANTS HAVE NOT REQUESTED THEIR NAMES BE PLACED ON THE LIST, OR IF A HOME HEATING CUSTOMER HAS BEEN DENIED A LOAN BY A LISTED LENDING INSTITUTION, EACH GAS, NATURAL GAS, OR ELECTRIC LIGHT COMPANY HAVING MORE THAN THE MINIMUM NUMBER OF RESIDENTIAL CUSTOMERS DETERMINED BY THE PUBLIC UTILITIES COMMISSION TO CONSTITUTE A SMALL UTILITY SHALL MAKE AVAILABLE A LOAN NOT TO EXCEED SEVEN HUNDRED FIFTY DOLLARS TO EACH OWNER OF A RESIDENTIAL DWELLING WHO IS A HOME HEATING CUSTOMER OF THE COMPANY WHO APPLIES FOR THE LOAN AND WHO MEETS THE SPECIFIC CREDIT REQUIREMENTS ESTABLISHED BY THE COMPANY PURSUANT TO THIS SECTION, TO PAY HIS EXPENSES FOR INSULATING SUCH A DWELLING. NO SUCH LOAN MAY BE MADE TO

A CUSTOMER WHOSE UTILITY BILL, INCLUDING ARREARAGES, HAS NOT BEEN PAID FOR THE MOST RECENT TWO BILLINGS. EACH GAS, NATURAL GAS, OR ELECTRIC COMPANY SHALL ESTABLISH SPECIFIC CREDIT REQUIREMENTS TO DETERMINE THE CREDIT WORTHINESS OF A CUSTOMER WHO APPLIES TO IT FOR A LOAN AND SHALL MAKE LOANS BASED UPON THESE REQUIREMENTS. EACH GAS, NATURAL GAS, OR ELECTRIC COMPANY SHALL MAKE THESE CREDIT REQUIREMENTS KNOWN TO ITS HOME HEATING CUSTOMERS. DURING THE FIRST YEAR OR ANY SUCCEEDING YEAR IN WHICH A COMPANY MAKES ANY SUCH LOANS, THE INTEREST CHARGED ON THE LOANS SHALL NOT EXCEED AN ACTUARIAL ANNUAL PERCENTAGE RATE EQUAL TO FOUR PER CENT IN EXCESS OF THE DISCOUNT RATE ON NINETY-DAY COMMERCIAL PAPER IN EFFECT AT THE FEDERAL RESERVE BANK IN THE FOURTH FEDERAL RESERVE DISTRICT AT THE TIME THE LOAN IS EXECUTED. AT THE END OF THE FIRST YEAR THE COMPANY SHALL SET THE ACTUARIAL ANNUAL PERCENTAGE RATE OF INTEREST CHARGED SO THAT THE REVENUES RECOVERED FROM THE INTEREST CHARGED WILL BE EQUAL TO THE COSTS OF ADMINISTERING THE LOAN PROGRAM. IF SUCH COSTS EXCEED AN ACTUARIAL ANNUAL PERCENTAGE RATE EQUAL TO FOUR PER CENT IN EXCESS OF THE DISCOUNT RATE ON NINETY-DAY COMMERCIAL PAPER IN EFFECT AT THE FEDERAL RESERVE BANK IN THE FOURTH FEDERAL RESERVE DISTRICT AT THE TIME THE LOAN IS EXECUTED, THE EXCESS SHALL BE ASSUMED BY THE COMPANY AND NOT CHARGED TO THE OPERATING COSTS OF THE UTILITY. IN ANY YEAR, INCLUDING THE FIRST YEAR, IN WHICH THE ADMINISTRATIVE COSTS OF THE PROGRAM ARE LESS THAN THE REVENUE RECOVERED BY THE COMPANY FROM INTEREST CHARGES, THE COMPANY SHALL CREDIT THOSE CUSTOMERS WHO HAD LOANS OUTSTANDING DURING THAT YEAR, IN AN AMOUNT IN PROPORTION TO THE AMOUNT OF THE CUSTOMER'S LOAN AND INTEREST PAYMENTS DURING THAT YEAR. CREDIT SHALL BE APPLIED AGAINST THE UNPAID BALANCE OF THE CUSTOMER'S LOAN OR AGAINST THE CUSTOMER'S BILL THE NEXT YEAR.

LOAN APPLICATION FORMS SHALL BE MADE AVAILABLE AT EACH OFFICE OF THE COMPANY AND SHALL BE MAILED UPON REQUEST BY ANY CUSTOMER. TO INFORM CUSTOMERS ABOUT AVAILABILITY OF THE LOANS THE COMPANY SHALL DISTRIBUTE IN ITS REGULAR BILLING RELEVANT INFORMATION ABOUT SUCH LOANS INCLUDING THE INTEREST RATE CHARGED, THE PERIOD FOR WHICH LOANS ARE MADE, A REPAYMENT SCHEDULE THAT INDICATES ALL MONTHLY PRINCIPAL AND INTEREST PAYMENTS TO BE MADE, THE APPLICATION AND BILLING PROCEDURE, AND ANY RELATED INFORMATION TO EXPLAIN THE LOAN PROGRAM TO ITS CUSTOMERS. INFORMATION ABOUT INSULATION MATERIALS THAT MAY BE USED AND CONTRACTORS THE COMPANY AUTHORIZES FOR PARTICIPATION IN THE PROGRAM SHALL BE PROVIDED TO APPLICANTS FOR LOANS. LOANS EXTENDED TO CUSTOMERS SHALL BE PAID IN EQUAL MONTHLY PAYMENTS AND SHALL NOT EXTEND MORE THAN SIXTY MONTHS. EACH GAS, NATURAL GAS, OR ELECTRIC COMPANY SHALL NOTIFY EACH BORROWER, TOGETHER WITH ITS MONTHLY BILLINGS, OF THE AMOUNT OF PRINCIPAL AND INTEREST DUE ON THE LOAN. NO CHARGES MAY BE ADDED TO THE LOAN OTHER THAN INTEREST AND PRINCIPAL AMOUNTS AND NO COLLATERAL SHALL BE REQUIRED FROM THE BORROWER. IF DURING ANY ONE MONTH THE BORROWER FAILS TO REMIT TO THE CREDITOR UTILITY COMPANY AN AMOUNT EQUAL TO THE SUM OF THE CURRENT SERVICE PAYMENTS AND THE PAYMENTS OF PRINCIPAL AND INTEREST CURRENTLY DUE ON THE LOAN, ANY AMOUNT RECEIVED SHALL FIRST BE APPLIED TO THE PAYMENT FOR CURRENT SERVICE, WITH ANY REMAINING AMOUNT TO BE APPLIED TO THE REPAYMENT OF THE PRINCIPAL AND INTEREST CURRENTLY DUE ON THE LOAN. DEFAULT ON THE LOAN SHALL NOT OCCUR UNTIL THE BORROWER IS NOTIFIED OF ALL DELINQUENT LOAN PAYMENTS AND GIVEN A THIRTY-DAY PERIOD IN WHICH TO CORRECT SUCH LATE PAYMENTS. UPON DEFAULT, THE CREDITOR UTILITY COMPANY SHALL NOT ACCELERATE THE OUTSTANDING LOAN PAYMENTS THAT HAVE NOT BECOME DUE AS OF THE DATE OF DEFAULT, BUT SHALL PROCEED TO COLLECT SUCH DELINQUENT PRINCIPAL AND INTEREST PAYMENTS UNDER CURRENT COMPANY POLICY. LOAN LOSSES ATTRIBUTABLE TO THE LOAN PROGRAM SHALL BE CONSIDERED A COST OF RENDERING SERVICE UNDER DIVISION (A) (4) OF SECTION 4909.15 OF THE REVISED CODE. THE AMOUNT LOANED TO ANY CUSTOMER SHALL BE DETERMINED BY THE COMPANY BASED ON ITS EVALUATION OF THE INSULATION REQUIREMENTS OF EACH DWELLING AND ITS ESTIMATE OF THE COST TO PURCHASE AND INSTALL THE INSULATION, INCLUDING MATERIAL AND LABOR COST. THE COMPANY SHALL ENTER INTO A CONTRACT WITH EACH CUSTOMER TO WHOM A LOAN IS MADE, WHICH CONTRACT SHALL REQUIRE THE BORROWER TO OBTAIN A CERTIFICATION BY THE CONTRACTOR WHO INSTALLED THE HOME INSULATION MATERIALS TO THE COMPANY THAT THE MATERIALS USED MEET THE STANDARDS ADOPTED BY THE BOARD OF BUILDING STANDARDS UNDER SECTION 3781.21 OF THE REVISED CODE.

SECTION 2. That existing section 3781.06 of the Revised Code is hereby repealed.

SECTION 3. Section 4933.021 of the Revised Code, as enacted by this act, is hereby repealed four years after the effective date of this act.

Vernal G. Riffe

Speaker _____ *of the House of Representatives.*

Richard F. Celeste

President _____ *of the Senate.*

Passed JULY 29, 1977

Approved AUGUST 30, 1977

James A. Rhodes

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

David A. Johnston

Director, Legislative Service Commission.

By Frank E. Puckett

Chief of Code Revision

Filed in the office of the Secretary of State at Columbus, Ohio, on the 30th day of August, A. D. 1977,

Ted W. Brown

Secretary of State.

File No. 1

Effective Date November 29, 1977.

AN ACT

To amend sections 125.09, 153.01, 153.04, 153.10, 3301.07, and 3781.10, and to enact sections 123.011, 123.11, 125.16, 1301.16, 1301.17, 1301.18, and 5501.031 of the Revised Code to encourage energy conservation.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 125.09, 153.01, 153.04, 153.10, 3301.07, and 3781.10 be amended and sections 123.011, 123.11, 125.16, 1301.16, 1301.17, 1301.18, and 5501.031 of the Revised Code be enacted to read as follows:

Sec. 123.011. (A) THE DEPARTMENT OF ADMINISTRATIVE SERVICES IN ITS RESPONSIBILITY FOR STATE-OWNED, ASSISTED, AND LEASED FACILITIES, SHALL ENSURE THAT ENERGY CONSERVATION GOALS ARE OBSERVED IN THE DESIGN, CONSTRUCTION, RENOVATION, AND UTILIZATION OF THESE FACILITIES IN A MANNER THAT WILL MINIMIZE THE CONSUMPTION OF ENERGY USED IN THE OPERATION AND MAINTENANCE OF SUCH FACILITIES. THIS PROCESS SHALL INCLUDE THE USE OF LIFE-CYCLE COSTS, INCLUDING CONSTRUCTION, THE COSTS OF OPERATION AND MAINTENANCE OF THE FACILITY AS IT AFFECTS ENERGY CONSUMPTION OVER THE ECONOMIC LIFE OF THE FACILITY, AND ENERGY CONSUMPTION ANALYSES OF EXISTING FACILITIES IN ORDER TO DETERMINE AND REQUIRE NECESSARY CHANGES IN THE OPERATION AND MAINTENANCE OF SUCH FACILITIES.

AS USED IN THIS SECTION:

(1) "FACILITY" MEANS A BUILDING OR OTHER STRUCTURE THAT INCLUDES PROVISION FOR A HEATING OR COOLING SYSTEM, OR BOTH, OR FOR A HOT WATER SYSTEM.

(2) "STATE-ASSISTED FACILITY" MEANS A FACILITY CONSTRUCTED OR RENOVATED IN WHOLE OR IN PART

WITH STATE OR FEDERAL FUNDS OR WITH FUNDS GUARANTEED OR PROVIDED BY OR THROUGH A STATE AGENCY.

(3) "ENERGY CONSUMPTION ANALYSIS" MEANS THE EVALUATION OF ALL ENERGY CONSUMING SYSTEMS AND COMPONENTS BY DEMAND AND TYPE OF ENERGY, INCLUDING THE INTERNAL ENERGY LOAD IMPOSED ON A FACILITY BY ITS OCCUPANTS, EQUIPMENT, AND COMPONENTS AND THE EXTERNAL ENERGY LOAD IMPOSED ON A FACILITY BY CLIMATIC CONDITIONS.

(4) "ENERGY PERFORMANCE INDEX" MEANS A NUMBER DESCRIBING THE ENERGY REQUIREMENTS OF A FACILITY PER SQUARE FOOT OF FLOOR SPACE OR PER CUBIC FOOT OF OCCUPIED VOLUME AS APPROPRIATE UNDER DEFINED INTERNAL AND EXTERNAL AMBIENT CONDITIONS OVER AN ENTIRE SEASONAL CYCLE.

(5) "LIFE-CYCLE COSTS" MEANS THE COST OF OWNING, OPERATING, AND MAINTAINING A FACILITY OVER THE LIFE OF THE STRUCTURE. THIS MAY BE EXPRESSED AS AN ANNUAL COST FOR EACH YEAR OF THE FACILITY'S USE.

(B) NO STATE AGENCY, INCLUDING THOSE AGENCIES OTHERWISE EXCLUDED FROM THE JURISDICTION OF THE DEPARTMENT UNDER DIVISION (A) (3) OF SECTION 123.01 OF THE REVISED CODE, SHALL LEASE, CONSTRUCT, OR HAVE CONSTRUCTED, WITHIN THE LIMITS PRESCRIBED IN THIS SECTION, A FACILITY, WITHOUT HAVING SECURED FROM THE DEPARTMENT OF ADMINISTRATIVE SERVICES A PROPER EVALUATION OF LIFE-CYCLE COSTS OR, IN THE CASE OF A LEASE, AN ENERGY CONSUMPTION ANALYSIS, AS COMPUTED OR PREPARED BY A QUALIFIED ARCHITECT OR ENGINEER. CONSTRUCTION SHALL PROCEED ONLY UPON THE DISCLOSURE TO THE DEPARTMENT FOR THE FACILITY CHOSEN, THE LIFE-CYCLE COSTS AS DETERMINED IN THIS SECTION AND THE CAPITALIZATION OF THE INITIAL CONSTRUCTION COSTS OF THE BUILDING. THE LIFE-CYCLE COSTS SHALL BE A PRIMARY CONSIDERATION IN THE SELECTION OF A BUILDING DESIGN. SUCH ANALYSIS SHALL BE REQUIRED ONLY FOR CONSTRUCTION OF BUILDINGS WITH AN AREA OF FIVE THOUSAND SQUARE FEET OR GREATER. NO SUCH AGENCY SHALL LEASE AN AREA OF TWENTY THOUSAND SQUARE FEET OR GREATER WITHIN A GIVEN BUILDING BOUNDARY, WITHOUT HAVING SECURED FROM THE DEPARTMENT A PROPER EVALUATION OF AN ENERGY CONSUMPTION ANALYSIS FOR THE TERM OF THE PROPOSED LEASE. SUCH ENERGY CONSUMPTION ANALYSIS SHALL BE A PRIMARY CONSIDERATION IN THE SELECTION OF A FACILITY TO BE LEASED. NOTHING IN THIS SEC[illegible] SHALL DEPRIVE OR LIMIT ANY STATE

AGENCY THAT HAS REVIEW AUTHORITY OVER DESIGN OR CONSTRUCTION PLANS FROM REQUIRING A LIFE-CYCLE COST ANALYSIS.

WHENEVER ANY STATE DEPARTMENT, AGENCY, OR INSTITUTION REQUESTS RELEASE OF CAPITAL IMPROVEMENT FUNDS FOR ANY FACILITY, IT SHALL SUBMIT COPIES OF ALL PERTINENT LIFE-CYCLE COST ANALYSES PREPARED PURSUANT TO THIS SECTION AND IN ACCORDANCE WITH RULES ADOPTED UNDER CHAPTERS 3781. AND 4101. OF THE REVISED CODE.

(C) THE DEPARTMENT SHALL PROMULGATE RULES AND PROCEDURES, INCLUDING ENERGY CONSERVATION PERFORMANCE GUIDELINES, FOR CONDUCTING A LIFE-CYCLE COST ANALYSIS OF ALTERNATIVE ARCHITECTURAL AND ENGINEERING DESIGNS AND FOR DEVELOPING ENERGY PERFORMANCE INDICES TO EVALUATE THE EFFICIENCY OF ENERGY UTILIZATION OF COMPETING DESIGNS IN THE CONSTRUCTION OF STATE-FINANCED AND LEASED FACILITIES. SUCH RULES AND PROCEDURES SHALL TAKE EFFECT ONE HUNDRED EIGHTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION.

THE LIFE-CYCLE COST ANALYSIS SHALL DETERMINE THE REASONABLY EXPECTED FUEL COSTS OVER THE LIFE OF THE BUILDING THAT ARE REQUIRED TO MAINTAIN ILLUMINATION, POWER, TEMPERATURE, HUMIDITY, VENTILATION, AND ALL OTHER ENERGY CONSUMING EQUIPMENT IN A FACILITY AND THE REASONABLE COSTS OF PROBABLE MAINTENANCE INCLUDING LABOR, MATERIALS, AND BUILDING OPERATION. THE LIFE-CYCLE COST ANALYSIS SHALL INCLUDE BUT NOT BE LIMITED TO THE FOLLOWING:

(1) THE COORDINATION, ORIENTATION, AND POSITIONING OF THE FACILITY ON ITS PHYSICAL SITE;

(2) THE AMOUNT AND TYPE OF GLASS EMPLOYED IN THE FACILITY AND THE DIRECTIONS OF EXPOSURE;

(3) THERMAL CHARACTERISTICS OF MATERIALS, INCLUDING THE EFFECT OF INSULATION INCORPORATED INTO FACILITY DESIGN;

(4) ARCHITECTURAL FEATURES WHICH AFFECT ENERGY CONSUMPTION, INCLUDING THE EFFECT OF SOLAR UTILIZATION OF THE PROPERTIES OF EXTERNAL SURFACES;

(5) THE VARIABLE OCCUPANCY AND OPERATING CONDITIONS OF THE FACILITY AND SUBPORTIONS OF THE FACILITY, INCLUDING ILLUMINATION LEVELS;

(6) AN ENERGY CONSUMPTION ANALYSIS OF THE MAJOR EQUIPMENT OF THE FACILITY'S HEATING, VENTILATING, AND COOLING SYSTEM, LIGHTING SYSTEM, HOT WATER SYSTEM, AND ALL OTHER ENERGY CO[illegible]MING

SYSTEMS AND EQUIPMENT AS APPROPRIATE. THIS ANALYSIS SHALL INCLUDE:

(a) THE COMPARISON OF TWO OR MORE SYSTEM ALTERNATIVES ONE OF WHICH MAY BE A SYSTEM USING SOLAR ENERGY;

(b) THE PROJECTION OF THE ANNUAL ENERGY CONSUMPTION OF MAJOR ENERGY CONSUMING EQUIPMENT AND SYSTEMS FOR A RANGE OF OPERATION OF THE FACILITY OVER THE LIFE OF THE FACILITY;

(c) AN EVALUATION OF THE ENERGY CONSUMPTION OF COMPONENT EQUIPMENT IN EACH SYSTEM, CONSIDERING THE OPERATION OF SUCH COMPONENTS AT OTHER THAN FULL OR RATED OUTPUTS.

SUCH RULES SHALL BE BASED ON THE BEST CURRENTLY AVAILABLE METHODS OF ANALYSES, INCLUDING SUCH AS THOSE OF THE NATIONAL BUREAU OF STANDARDS, THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OTHER FEDERAL AGENCIES AND PROFESSIONAL SOCIETIES, AND MATERIALS DEVELOPED BY THE DEPARTMENT.

THE DEPARTMENT SHALL PROMULGATE RULES FOR ENERGY PERFORMANCE INDICES, AS DEFINED IN DIVISION (A) (4) OF THIS SECTION, TO AUDIT AND EVALUATE COMPETING DESIGN PROPOSALS SUBMITTED TO THE STATE.

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(D) THE DEPARTMENT SHALL CONDUCT STUDIES OF THE STATE'S PURCHASE AND USE OF SUPPLIES, AUTOMOBILES, AND EQUIPMENT HAVING A SIGNIFICANT IMPACT ON ENERGY USE BY GOVERNMENT, IN ORDER TO DETERMINE THE POTENTIAL FOR ENERGY CONSERVATION. THE DEPARTMENT OF ENERGY SHALL ADVISE THE DEPARTMENT ON THE STATE OF THE ART OF ENERGY EFFICIENCY, BOTH GENERALLY AND WITH REFERENCE TO THE COST OF VARIOUS LEVELS OF ENERGY EFFICIENCY. THE DEPARTMENT SHALL PROMULGATE RULES TO ENSURE THAT ENERGY EFFICIENCY AND CONSERVATION WILL BE CONSIDERED IN STATE PURCHASING. MINIMUM ENERGY EFFICIENCY STANDARDS ON PURCHASED PRODUCTS AND EQUIPMENT SHALL BE REQUIRED, BASED ON FEDERAL TESTING AND LABELING WHERE AVAILABLE OR STANDARDS DEVELOPED BY THE DEPARTMENT. LIFE-CYCLE COSTING OF ENERGY CONSUMING EQUIPMENT AND COMPONENTS SHALL BE APPLIED TO COMPETITIVE BIDDING WHERE POSSIBLE AND APPROPRIATE LIFE-CYCLE COSTS INCLUDE THE ACQUISITION COST AND THE COST OF OPERATION AND MAINTENANCE OF THE PRODUCT OVER ITS EXPECTED LIFE.

NOT LATER THAN JANUARY 1, 1979, THE DEPARTMENT SHALL TAKE THE INITIATIVE IN IMPLEMENTING

PURCHASING MEASURES THROUGH THE FOLLOWING MEANS:

(1) IDENTIFYING ENERGY CONSERVATION OPPORTUNITIES AVAILABLE;

(2) PROVIDING FOR INTERCHANGE OF INFORMATION AMONG STATE AGENCIES;

(3) IDENTIFYING LAWS, POLICIES, RULES, AND PROCEDURES WHICH NEED MODIFICATION;

(4) MONITORING EXPERIENCE WITH ENERGY CONSERVATION BUYING PRACTICES;

(5) PROVIDING TRAINING PROGRAMS AND WORKSHOPS FOR STATE EMPLOYEES INVOLVED IN THE PURCHASING PROCESS.

THE DEPARTMENT OF ENERGY SHALL MAKE RECOMMENDATIONS TO THE DEPARTMENT OF ADMINISTRATIVE SERVICES REGARDING PLANNING AND IMPLEMENTATION OF PURCHASING POLICIES AND PROCEDURES SUPPORTIVE OF ENERGY CONSERVATION.

(E) WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE DEPARTMENT OF ADMINISTRATIVE SERVICES SHALL REQUIRE ALL DEPARTMENTS, AGENCIES, STATE INSTITUTIONS, UNIVERSITIES, COLLEGES, AUTHORITIES, COMMISSIONS, BOARDS, AND QUASI-GOVERNMENTAL ENTITIES TO IMPLEMENT PROCEDURES ENSURING THAT ALL THEIR PASSENGER AUTOMOBILES ACQUIRED IN EACH FISCAL YEAR, EXCEPT FOR THOSE PASSENGER AUTOMOBILES ACQUIRED FOR USE IN LAW ENFORCEMENT OR EMERGENCY RESCUE WORK, ACHIEVE A FLEET AVERAGE FUEL ECONOMY OF NOT LESS THAN TWENTY MILES PER GALLON IN FISCAL YEAR 1979, NOT LESS THAN TWENTY-ONE MILES PER GALLON IN FISCAL YEAR 1980, AND, IN EACH FISCAL YEAR THEREAFTER, NOT LESS THAN THE FLEET AVERAGE FUEL ECONOMY PRESCRIBED, BY RULE, BY THE DIRECTOR OF ADMINISTRATIVE SERVICES FOR THAT FISCAL YEAR IN ACCORDANCE WITH THIS DIVISION.

PRIOR TO THE BEGINNING OF FISCAL YEAR 1981 AND EACH FISCAL YEAR THEREAFTER, THE DIRECTOR SHALL ADOPT RULES PRESCRIBING THE FLEET AVERAGE FUEL ECONOMY ALL PASSENGER AUTOMOBILES ACQUIRED BY ALL DEPARTMENTS, AGENCIES, STATE INSTITUTIONS, UNIVERSITIES, COLLEGES, AUTHORITIES, COMMISSIONS, BOARDS, AND QUASI-GOVERNMENTAL ENTITIES OF STATE GOVERNMENT DURING THE FISCAL YEAR COVERED BY THE RULES MUST ACHIEVE, EXCEPT FOR THOSE PASSENGER AUTOMOBILES ACQUIRED FOR USE IN LAW ENFORCEMENT OR EMERGENCY RESCUE WORK. THESE RULES SHALL NOT BE LESS STRINGENT THAN THE AVERAGE FUEL ECONOMY STANDARDS ESTABLISHED PUR-

SUANT TO FEDERAL LAW FOR PASSENGER AUTOMOBILES MANUFACTURED DURING THE MODEL YEAR THAT BEGINS DURING THE FISCAL YEAR.

(1) EACH DEPARTMENT, AGENCY, STATE INSTITUTION, UNIVERSITY, COLLEGE, AUTHORITY, COMMISSION, BOARD, AND QUASI-GOVERNMENTAL ENTITY OF STATE GOVERNMENT SHALL DETERMINE ITS FLEET AVERAGE FUEL ECONOMY BY DIVIDING:

(a) THE TOTAL NUMBER OF PASSENGER VEHICLES ACQUIRED DURING THE FISCAL YEAR, EXCEPT FOR THOSE PASSENGER VEHICLES ACQUIRED FOR USE IN LAW ENFORCEMENT OR EMERGENCY RESCUE WORK, BY

(b) A SUM OF TERMS, EACH OF WHICH IS A FRACTION CREATED BY DIVIDING:

(i) THE NUMBER OF PASSENGER VEHICLES OF A GIVEN MAKE, MODEL, AND YEAR, EXCEPT FOR PASSENGER VEHICLES ACQUIRED FOR USE IN LAW ENFORCEMENT OR EMERGENCY RESCUE WORK, ACQUIRED DURING THE FISCAL YEAR, BY

(ii) THE FUEL ECONOMY MEASURED BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, FOR THE GIVEN MAKE, MODEL, AND YEAR OF VEHICLE, THAT CONSTITUTES AN AVERAGE FUEL ECONOMY FOR COMBINED CITY AND HIGHWAY DRIVING.

(2) AS USED IN DIVISION (E) (1) OF THIS SECTION, "ACQUIRED" MEANS LEASED FOR A PERIOD OF SIXTY CONTINUOUS DAYS OR MORE, OR PURCHASED.

Sec. 123.11. EACH STATE AGENCY OWNING, LEASING, OR CONTROLLING THE OPERATION OF PARKING SPACES FOR USE BY ITS EMPLOYEES SHALL PROVIDE PREFERENTIAL PARKING FOR THOSE VEHICLES USED IN CARPOOLS AND VANPOOLS. THE DEPARTMENT OF ADMINISTRATIVE SERVICES SHALL COORDINATE THE EFFORTS OF THE AGENCIES IN PROVIDING PREFERENTIAL PARKING FOR SUCH VEHICLES.

Sec. 125.09. The department of administrative services may prescribe such conditions under which bids will be received and terms of the proposed purchase as it deems necessary, provided that all such conditions and terms shall be reasonable and shall not unreasonably restrict competition, and that bidders may bid upon all or any item of the supplies and equipment, or contracts of insurance, listed in such notice.

THE DEPARTMENT MAY REQUIRE THAT EACH BIDDER PROVIDE SUFFICIENT INFORMATION ABOUT THE ENERGY EFFICIENCY OR ENERGY USAGE OF HIS PRODUCT OR SERVI[illegible]

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Sec. 125.16. THE DEPARTMENT OF ADMINISTRATIVE SERVICES SHALL MAKE AVAILABLE TO BOARDS OF EDUCATION AND LOCAL GOVERNMENTS ANY AND ALL INFORMATION ABOUT ENERGY EFFICIENCY AND ENERGY CONSERVATION PURCHASING MEASURES DEVELOPED BY THE DEPARTMENT OR OTHER STATE AGENCY.

THE DEPARTMENT SHALL DEVELOP AND CONDUCT ORIENTATION AND TRAINING PROGRAMS CONCERNING ENERGY EFFICIENCY AND ENERGY CONSERVATION PURCHASING MEASURES FOR ALL STATE, BOARD OF EDUCATION, AND LOCAL EMPLOYEES HAVING DUTIES FOR PURCHASING SUPPLIES, MATERIAL, AND EQUIPMENT.

Sec. 153.01. Whenever any building or structure for the use of the state or any institution supported in whole or in part by the state or in or upon the public works of the state that is administered by the director of administrative services, is to be erected or constructed, or whenever additions, alterations, or structural or other improvements are to be made, or heating, cooling, or ventilating plants or other equipment is to be installed or material supplied therefor, the aggregate cost of which exceeds three thousand dollars, each officer, board, or other authority, upon whom devolves the duty of constructing, erecting, altering, or installing the same, referred to in sections 153.01 to 153.60 of the Revised Code, as the owner, shall cause to be made, by an architect or engineer whose contract of employment shall be prepared and approved by the attorney general and filed with the auditor of state, the following:

(A) Full and accurate plans, suitable for the use of mechanics and other builders in such construction, improvement, addition, alteration, or installation;

(B) Details to scale and full sized, so drawn and represented as to be easily understood;

(C) Accurate bills showing the exact quantity of different kinds of material necessary to the construction;

(D) Definite and complete specifications of the work to be performed, together with such directions as will enable a competent mechanic or other builder to carry them out and afford bidders all needful information;

(E) A full and accurate estimate of each item of expense and the aggregate cost thereof;

(F) A LIFE-CYCLE COST ANALYSIS;

(G) Such further data as may be required by the department of administrative services.

Sec. 153.04. The plans, details, bills of material, specifications of work, estimates of cost in detail and in the aggregate, LIFE-CYCLE COST ANALYSIS, form of bidding proposal, bond of

bidder, and other data that may be required shall be prepared on such material and in such manner and form as are prescribed by the department of administrative services, and shall be submitted to such department for its approval. THE LIFE-CYCLE COSTS SHALL BE A PRIMARY CONSIDERATION IN THE SELECTION OF A DESIGN. If so approved the same shall be deposited and safely kept in the office of the director of administrative services or such other state agency defined as the owner in section 153.01 of the Revised Code as the property of the state. The department of administrative services shall not let or permit to be let any contract for construction of new buildings, new structures, or other public improvements, or for building materials required therefor, or for purchase of real estate, if such contract is in an amount of more than three thousand dollars, unless the plans, estimates of cost, and other data pertaining to such public improvement or purchase of real estate have been certified by the office of budget and management as conforming to the capital plan, and as conforming to the standards promulgated under division (B) of section 125.81 of the Revised Code.

Sec. 153.10. After the plans, bills of material, specifications of work, estimates of cost in detail and in the aggregate, LIFE-CYCLE COST ANALYSIS, form of bidding proposal, bond of bidder, and other data that may be required are approved and filed with the auditor of state as provided in section 153.04 of the Revised Code, no change of plans, details, bills of material, or specifications shall be made or allowed unless the same are approved by the department of administrative services. When so approved, the plans of the proposed change, with detail to scale and full size, specifications of work, and bills of material shall be filed with the auditor of state as required with original papers. If such change affects the price, the amount thereof shall likewise receive such approval.

Sec. 1301.16. NO PERSON SHALL SELL, OFFER FOR SALE, OR INSTALL FOR USE ANY NEW GRAIN-DRYING EQUIPMENT UNLESS THE EQUIPMENT IS LABELED OR ACCOMPANIED BY AN OPERATOR'S MANUAL TO INDICATE ITS ENERGY USAGE TO THE PROSPECTIVE PURCHASER OF THE EQUIPMENT. WHOEVER VIOLATES THIS SECTION IS GUILTY OF A MINOR MISDEMEANOR.

Sec. 1301.17. NO PERSON SHALL SELL, OFFER FOR SALE, INSTALL FOR USE, USE, OR OPERATE ANY OUTDOOR DECORATIVE LAMP OR LIGHTING FIXTURE THAT IS OPERATED BY NATURAL GAS OR SYNTHETIC NATURAL GAS, EXCEPT THAT THIS SECTION DOES NOT RESTRICT OPERATION OR USE OF A LIGHTING FIXTURE OPERATED BY NATURAL GAS OR SYNTHETIC NATURAL GAS THAT IS IN OPERATION ON THE EFFECTIVE DATE OF THIS SECTION, IF IT IS LOCATED ALONG A STREET OR HIGHWAY NOT ILLUMINATED BY ELECTRIC OR OTHER STREET

LIGHTS, WITHIN THE BOUNDARIES OF A MUNICIPAL CORPORATION. WHOEVER VIOLATES THIS SECTION IS GUILTY OF A MINOR MISDEMEANOR.

Sec. 1301.18. NO PERSON SHALL SELL, OFFER FOR SALE, OR INSTALL FOR USE ANY NEW AIR CONDITIONER, HEATER, REFRIGERATOR, STOVE, RANGE, DISHWASHER, CLOTHES WASHER, CLOTHES DRYER, FURNACE, OR HOUSEHOLD APPLIANCE OTHER THAN A WATER HEATER, THAT IS OPERATED BY NATURAL GAS OR SYNTHETIC NATURAL GAS AND HAS A CONTINUOUSLY BURNING GAS PILOT LIGHT. WHOEVER VIOLATES THIS SECTION IS GUILTY OF A MINOR MISDEMEANOR ON A FIRST OFFENSE, AND ON SUBSEQUENT OFFENSES IS GUILTY OF A MISDEMEANOR OF THE FIRST DEGREE. HOWEVER, A PRODUCT COVERED BY THIS SECTION MAY BE SOLD OR OFFERED FOR SALE AT RETAIL FROM A RETAILER'S INVENTORY THAT REMAINS AT THE END OF THE DAY ON DECEMBER 31, 1979, IF HIS INVENTORY OF THE PRODUCT DURING DECEMBER, 1979, DOES NOT EXCEED HIS AVERAGE MONTHLY INVENTORY OF THE PRODUCT DURING THE PREVIOUS TWELVE CALENDAR MONTHS.

Sec. 3301.07. The state board of education shall exercise under the acts of the general assembly general supervision of the system of public education in the state. In addition to the powers otherwise imposed on the state board under the provisions of law, such board shall have the following powers:

(A) Exercise policy forming, planning, and evaluative functions for the public schools of the state, and for adult education, except as otherwise provided by law;

(B) Exercise leadership in the improvement of public education in ~~Ohio~~ THIS STATE, and administer the educational policies of this state relating to public schools, and relating to instruction and instructional material, building and equipment, transportation of pupils, administrative responsibilities of school officials and personnel, finance and organization of school districts and territory. Consultative and advisory services in such matters shall be provided by the board to school districts of this state.

(C) Administer and supervise the allocation and distribution of all state and federal funds for public school education under the provisions of law, and may prescribe such systems of accounting as are necessary and proper to this function. It may require county auditors and treasurers, boards of education, clerks of such boards, teachers, and other school officers and employees, or other public officers or employees, to file with it such reports as it may prescribe relating to such funds, or to the management and condition of such funds.

(D) Formulate and prescribe minimum standards to be applied to all elementary and secondary schools in this state for

the purpose of requiring a general education of high quality. Such standards shall provide adequately for: A curriculum sufficient to meet the needs of pupils in every community; the certification of teachers, administrators, and other professional personnel and their assignment according to training and qualifications; efficient and effective instructional materials and equipment, including library facilities; the proper organization, administration, and supervision of each school, including regulations for preparing all necessary records and reports and the preparation of a statement of policies and objectives for each school; buildings, grounds, health and sanitary facilities and services; admission of pupils and such requirements for their promotion from grade to grade as will assure that they are capable and prepared for the level of study to which they are certified; requirements for graduation; and such other factors as the board finds necessary.

In the formulation and administration of such standards for nonpublic schools the board shall also consider the particular needs, methods and objectives of said schools, provided they do not conflict with the provision of a general education of a high quality and provided that regular procedures shall be followed for promotion from grade to grade of pupils who have met the educational requirements prescribed.

(E) Formulate and prescribe minimum standards for driver education courses conducted at high schools in the state. In the formulation of standards for driver education courses, it shall call upon the director of highway safety for advice and assistance. THE BOARD SHALL REQUIRE ENERGY CONSERVATION INFORMATION AS PART OF THE DRIVER EDUCATION CURRICULUM. SUCH INFORMATION SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, THE IDENTIFICATION OF INEFFICIENT DRIVING TECHNIQUES AND IMPROPER MAINTENANCE AS THEY RELATE TO DECREASED GAS MILEAGE, INFORMATION REGARDING THE COSTS AND BENEFITS OF DIFFERENT MODES OF TRAVEL, AND INFORMATION CONCERNING RELATIVE FUEL ECONOMY AND LIFE-CYCLE COSTS OF NEW AUTOMOBILE PURCHASES.

(F) Prepare and submit annually to the governor and members of the general assembly a report on the status, needs and major problems of the public schools of the state, with recommendations for necessary legislative action and a ten-year projection of the state's public and nonpublic school enrollment, by year and by grade level;

(G) Prepare and submit to the director of budget and management the biennial budgetary requests of the state board of education, for its agencies and for the public schools of the state;

(H) Cooperate with federal, state, and local agencies concerned with the health and welfare of children and youth of the state;

(I) Require such reports from school districts, school officers, and employees as are necessary and desirable. The superintendent and clerk of a school district shall certify as to the accuracy of all reports required by law or state board or state department of education regulations to be submitted by the district and which contain information necessary for calculation of state funding. Any superintendent who knowingly falsifies such report shall be subject to certificate revocation pursuant to section 3319.31 of the Revised Code. The state board of education shall adopt rules governing the purchasing and leasing of data processing services and equipment for all local, exempted village, city, county, and joint vocational school districts.

(J) Adopt rules and standards for an annual education assessment program to be administered by the department of education pursuant to section 3301.131 of the Revised Code;

(K) In accordance with Chapter 119. of the Revised Code, adopt procedures, standards, and guidelines for the education of handicapped children pursuant to Chapter 3323. of the Revised Code.

(L) For the purpose of encouraging the development of special programs of education for academically gifted children, employ competent persons to analyze and publish data, promote research, advise and counsel with boards of education, and encourage the training of teachers in the special instruction of gifted children. The board may provide financial assistance out of any funds appropriated for this purpose to boards of education for developing and conducting programs of education for academically gifted children.

(M) REQUIRE THAT ALL PUBLIC SCHOOLS EMPHASIZE AND ENCOURAGE, WITHIN EXISTING UNITS OF STUDY, THE TEACHING OF ENERGY AND RESOURCE CONSERVATION, BEGINNING IN THE PRIMARY GRADES.

The board may adopt rules necessary for carrying out any function imposed on it by law, and may provide rules as are necessary for its government and the government of its employees, and may delegate to the superintendent of public instruction the management and administration of any function imposed on it by law. It may provide for the appointment of board members to serve on temporary committees established by the board for such purposes as are necessary. Permanent or standing committees shall not be created.

Sec. 3781.10. The board of building standards shall:

(A) Formulate and adopt rules governing the erection, construction, repair, alteration, and maintenance of all buildings or classes of buildings specified in section 3781.06 of the Revised Code, including land area incidental thereto, the construction of industrialized units, the installation of equipment, and the standards or requirements for materials to be used in connection therewith.

Such standards shall relate to the conservation of energy in and to the safety and sanitation of such buildings. The rules shall be the lawful minimum requirements specified for such buildings or industrialized units, except that no rule which specifies a higher requirement than is imposed by any section of the Revised Code shall be enforceable; the rules shall be acceptable as complete lawful ~~alternates~~ ALTERNATIVES to the requirements specified for such buildings or industrialized units in any section of the Revised Code; and the board shall on its own motion, or on application made under sections 3781.12 and 3781.13 of the Revised Code, formulate, propose, adopt, modify, amend, or repeal the rules to the extent necessary or desirable to effectuate the purposes of sections 3781.06 to 3781.18 of the Revised Code.

(B) Formulate and report to the general assembly such amendments in existing statutes relating to the purposes declared in section 3781.06 of the Revised Code as public health and safety and the development of the arts require and such additional legislation as it recommends with a view to carrying out fully, in statutory form, the purposes declared in such section; and prepare and submit to the general assembly a summary report of the number, nature, and disposition of the petitions filed under sections 3781.13 and 3781.14 of the Revised Code;

(C) Determine by rule, on its own motion or on application made under sections 3781.12 and 3781.13 of the Revised Code, and after thorough testing and evaluation that any particular fixture, device, material, process of manufacture, manufactured unit or component, method of manufacture, system, or method of construction, complies with performance standards adopted pursuant to section 3781.11 of the Revised Code, having regard to its adaptability for safe and sanitary erection, use, or construction, to that described in any section of the Revised Code, wherever the use of a fixture, device, material, method of manufacture, system, or method of construction which is described in such section of the Revised Code, is permitted by law; and on like application amend or annul any such rule, or issue an authorization for the use of a new material or manufactured unit; and no department, officer, board, or commission of the state other than the board of building standards or the board of building appeals shall permit the use of any fixture, device, material, method of manufacture, newly designed product, system, or method of construction at variance with what is described in any rule adopted or authorization issued by the board of building standards or in any section of the Revised Code;

(D) Recommend to the industrial commission, the public health council, or any other department, officer, board, or commission of the state, and to legislative authorities and building departments of counties, townships, and municipal corporations, the making, amending, fixing, or ordaining by such appropriate action as such state, county, township, or municipal authorities may be empowered by law or the constitution to take, of such rules, codes,

or standards as shall tend to carry out the purposes declared in section 3781.06 of the Revised Code, with a view to securing uniformity of state administrative ruling; and local legislation and administrative action;

(E) Certify municipal, township, and county building departments to exercise enforcement authority and to accept and approve plans and specifications, and make inspections pursuant to sections 3781.03 and 3791.04 of the Revised Code.

(1) Enforcement authority for approval of plans and specifications may be exercised, and plans and specifications approved on behalf of a municipal corporation, township, or county, by any of the following who meet the qualifications established by the board of building standards:

(a) Officers or employees of the municipal corporation, township, or county;

(b) Persons, or employees of firms or corporations, when such persons, firms, or corporations are under contract to furnish architectural or engineering services to the municipal corporation, township, or county, and such authority is exercised pursuant to such contract.

(c) Officers or employees of any other municipal corporation, township, county, health district, or other political subdivision, or persons or employees of firms or corporations under contract with the same pursuant to division (E) (1) (b) of this section, when such other municipal corporation, township, county, health district, or other political subdivision is under contract to furnish architectural or engineering services to the municipal corporation, township, or county, and such authority is exercised pursuant to such contract.

(2) Enforcement authority for inspections may be exercised, and inspections made on behalf of a municipal corporation, township, or county, by any of the following who meet the qualifications established by the board of building standards:

(a) Officers or employees of the municipal corporation, township, or county;

(b) Persons, or employees of firms or corporations, when such persons, firms, or corporations are under contract to furnish inspection services to the municipal corporation, township, or county, and such authority is exercised pursuant to such contract;

(c) Officers or employees of any other municipal corporation, township, county, health district, or other political subdivision under contract to furnish inspection services to the municipal corporation, township, or county, when such authority is exercised pursuant to such contract.

(3) Municipal, township, and county building departments shall have jurisdiction within the meaning of sections 3781.03 and 3791.04 of the Revised Code, only with respect to the types of buildings and subject matters as to which they have been cer-

tified under this section and as to which such certification remains in effect.

(4) Such certification shall be upon application by the municipal corporation, the board of township trustees, or the board of county commissioners and approval of such application by the board of building standards. Such application shall set forth:

(a) The types of building occupancies as to which the certification is requested;

(b) The number and qualifications of the staff composing the building department;

(c) The names, addresses, and qualifications of persons, firms, or corporations contracting to furnish work or services pursuant to divisions (E) (1) (b) and (2) (b) of this section;

(d) The names of other municipal corporations, townships, counties, health districts, or other political subdivisions contracting to furnish work or services pursuant to divisions (E) (1) (c) and (2) (b) of this section;

(e) The proposed budget for the operation of such department.

(5) The board of building standards shall adopt regulations governing:

(a) The qualifications of building department personnel and of those employees of persons, firms, or corporations exercising authority pursuant to divisions (E) (1) and (2) of this section. Any employee of the department or person who contracts for services with the department is disqualified from performing services for the department when the same would require him to pass upon, inspect, or otherwise exercise any authority given by the Ohio building code over any labor, material, or equipment furnished by him for the construction, alteration, or maintenance of a building or the preparation of working drawings or specifications for work within the jurisdictional area of the department. The department shall provide other similarly qualified personnel to enforce the requirements of the Ohio building code as it pertains to such work.

(b) The minimum services to be provided by a certified building department.

(6) Such certification may be revoked or suspended with respect to any or all of the building occupancies to which it relates on petition to the board of building standards by any person affected by such enforcement or approval of plans, or by said board on its own motion. Hearings shall be held and appeals permitted on any such proceedings for certification or for revocation or suspension of certification in the same manner as provided in section 3781.101 of the Revised Code for other proceedings of the board of building standards.

(7) Upon certification, and until such authority is revoked, county and township building departments shall enforce such regulations over those occupancies listed in the application without regard to any limitation upon the authority of boards of county commissioners under Chapter 307. of the Revised Code or boards of township trustees under Chapter 505. of the Revised Code.

(F) Conduct such hearings, in addition to those required by sections 3781.06 to 3781.18 ; and ~~section~~ 3791.04 of the Revised Code, and make such investigations and tests, and require from other state departments, officers, boards, and commissions such information as the board deems necessary or desirable in order to assist it in the discharge of any duty or in the exercise of any power mentioned in this section or in sections 3781.06 to 3781.18 ; and ~~section~~ 3791.04 of the Revised Code;

(G) Formulate regulations and establish reasonable fees for the review of all applications submitted where the applicant applies for authority to use a new material, assembly, or product of a manufacturing process. The fee established shall bear some reasonable relationship to the cost of such review or testing of the materials, assembly, or products submitted and notification of approval or disapproval as provided in section 3781.12 of the Revised Code.

(H) Compile and publish, in the form of a model code, rules pertaining to one-family, two-family, and three-family dwelling houses which any municipal corporation, township, or county may incorporate into its building code.

(I) ADOPT RULES CONSISTENT WITH THE "ENERGY POLICY AND CONSERVATION ACT OF 1976," 89 STAT. 871, 42 U.S.C.A. 6291, ESTABLISHING STANDARDS RELATING TO LIGHTING EFFICIENCY STANDARDS IN EXISTING PUBLIC BUILDINGS ABOVE A CERTAIN SIZE TO BE DETERMINED BY THE BOARD. THE STANDARDS SHALL TAKE EFFECT NO LATER THAN JANUARY 1, 1979.

(J) AS USED IN THIS DIVISION, "PUBLIC BUILDING" MEANS ANY BUILDING WHICH IS OPEN TO THE PUBLIC DURING NORMAL BUSINESS HOURS. THE FOLLOWING ARE INCLUDED WITHIN THE DEFINITION OF "PUBLIC BUILDING":

(1) ANY BUILDING WHICH PROVIDES FACILITIES OR SHELTER FOR PUBLIC ASSEMBLY, OR WHICH IS USED FOR EDUCATIONAL, OFFICE OR INSTITUTIONAL PURPOSES;

(2) ANY INN, HOTEL, MOTEL, SPORTS ARENA, SUPERMARKET, TRANSPORTATION TERMINAL, RETAIL STORE, RESTAURANT, OR OTHER COMMERCIAL ESTABLISHMENT WHICH PROVIDES SERVICES OR RETAIL MERCHANDISE;

(3) ANY PORTION OF AN INDUSTRIAL PLANT BUILDING USED PRIMARILY AS OFFICE SPACE;

(4) ANY BUILDING OWNED BY A STATE OR POLITICAL SUBDIVISION THEREOF, INCLUDING LIBRARIES, MUSEUMS, SCHOOLS, HOSPITALS, AUDITORIUMS, SPORTS ARENAS, AND UNIVERSITY BUILDINGS.

(K) THE FOLLOWING ARE EXCLUDED FROM THE DEFINITION OF "PUBLIC BUILDING":

(1) ANY BUILDING WHOSE PEAK DESIGN RATE OF ENERGY USAGE FOR ALL PURPOSES IS LESS THAN ONE WATT (3.4 BTU'S PER HOUR) PER SQUARE FOOT OF FLOOR AREA FOR ALL PURPOSES;

(2) ANY BUILDING WITH NEITHER A HEATING NOR COOLING SYSTEM;

(3) ANY MOBILE HOME;

(4) ANY BUILDING OWNED OR LEASED IN WHOLE OR IN PART BY THE UNITED STATES.

As used in sections 3781.10 to 3781.18 and 3791.04 to 3791.07 of the Revised Code, "industrialized unit" means an assembly of materials or products comprising all or part of a total structure which, when constructed, is self-sufficient or substantially self-sufficient, and when installed constitutes the structure or part of a structure, except for preparations for its placement.

Sec. 5501.031. THE DEPARTMENT OF TRANSPORTATION SHALL:

(A) CONSIDER ENERGY CONSERVATION AS AN INTEGRAL FACTOR ALONG WITH ECONOMICS, ENGINEERING, SAFETY, AND THE ENVIRONMENT IN THE PLANNING, DESIGN, AND UTILIZATION OF TRANSPORTATION FACILITIES;

(B) REEVALUATE EXISTING PLANS FOR HIGHWAYS AND OTHER TRANSPORTATION MODES AND SHALL REQUIRE REGIONAL TRANSPORTATION STUDIES AND LOCAL PLANNING AGENCIES OPERATING UNDER STATE COORDINATION OR WITH STATE FUNDS TO COOPERATE IN SUCH REEVALUATION. SUCH REEVALUATION SHALL CONSIDER SHIFTS TO ENERGY CONSERVATION MODES AND IMPROVEMENT IN MODAL ENERGY EFFICIENCIES, AND SHALL INCLUDE BOTH TECHNOLOGICAL ALTERNATIVES AND ADMINISTRATIVE OR MANAGEMENT STRATEGIES. SHORT-TERM CONSERVATION MEASURES MUST BE ADAPTABLE TO LONG-TERM CONSERVATION REQUIREMENTS TO INCLUDE PERMANENT REDUCTIONS IN GASOLINE USAGE AND REVITALIZATION OF RAILROADS.

(C) TAKE ALL NECESSARY STEPS TO INCREASE THE LEVEL OF AWARENESS OF TRANSPORTATION PROFESSIONS AND RELATED GOVERNMENT SECTORS OF THOSE TECHNIQUES THAT ARE IMMEDIATELY AVAILABLE TO REDUCE PETROLEUM CONSUMPTION IN IMPROVING OPERATION AND MAINTENANCE OF TRANSPORTATION FACILITIES;

(D) REVIEW CONSTRUCTION SPECIFICATIONS AND DESIGN STANDARDS FOR HIGHWAY CONSTRUCTION AND MAINTENANCE, WITH A VIEW TO PURSUING THE ELIMINATION OF THOSE FOUND TO BE UNNECESSARY AND WASTEFUL OF ENERGY;

(E) SUBMIT RECOMMENDATIONS TO THE DEPARTMENT OF ENERGY AND TO THE GENERAL ASSEMBLY, DESIGNED TO REDUCE THE ENERGY INTENSIVE NATURE OF THE EXISTING TRANSPORTATION SYSTEM, CONTROL THE GROWTH OF GASOLINE DEMAND, AND SUPPORT OTHER EFFORTS TO CONSERVE ENERGY.

(F) IN COOPERATION WITH THE STATE DEPARTMENT OF ENERGY, ENCOURAGE AND PROMOTE THE ESTABLISHMENT OF CARPOOL AND VANPOOL PROGRAMS INCLUDING PREFERENTIAL PARKING FOR VEHICLES USED IN CARPOOLS OR VANPOOLS. THE DEPARTMENT OF TRANSPORTATION SHALL ALSO STUDY THE FEASIBILITY OF PREFERENTIAL TRAFFIC CONTROL FOR PUBLIC TRANSIT VEHICLES AND VEHICLES USED IN CARPOOLS, AND VARIABLE WORKING HOURS AS ADDITIONAL CONSERVATION MEASURES.

THE DEPARTMENT SHALL UNDERTAKE TO UTILIZE TO THE FULLEST EXTENT FUNDS MADE AVAILABLE UNDER FEDERAL OR STATE PROGRAMS FOR THE DEVELOPMENT OF PARK-AND-RIDE LOTS TO SERVE CARPOOLS AND VANPOOLS AND ENCOURAGE THE USE OF TRANSIT FACILITIES. POTENTIAL LOCATIONS AND FUNDS FOR PARK-AND-RIDE LOTS SHALL BE IDENTIFIED IN AT LEAST ONE LOCATION IN EACH STANDARD METROPOLITAN STATISTICAL AREA IN THE STATE. THESE LOCATIONS SHALL BE REPORTED TO THE DEPARTMENT OF ENERGY.

SECTION 2. That existing sections 125.09, 153.01, 153.04, 153.10, 3301.07, and 3781.10 of the Revised Code are hereby repealed.

SECTION 3. Within one year of the effective date of this act, the department of administrative services shall survey all state buildings and facilities, including the buildings and facilities of the state and state-assisted universities and colleges, the state fairgrounds, agricultural research and development centers, and the Ohio historical society, to determine what energy savings can be accomplished by means of conversion to alternative fuels other than natural gas or petroleum products, improvements in insulation or thermal efficiency, improvements in lighting and climate control to conserve fuel or power, and other major energy conservation improvements. The department shall determine the remaining useful life for each such state building and the potential annual savings in fuel procurement expenses that each major improvement to each such building would enable. It shall determine whether or not the savings in fuel procurement expenses will exceed the cost of the improvement amortized over the remaining

useful life of the building. It shall submit an interim report to the General Assembly within one hundred eighty days of the effective date of this act, and a final report within one year of the effective date of this act, indicating the number and percentage of such buildings surveyed, the estimated cost of each improvement that would enable greater savings in fuel procurement expenses than its cost, the estimates of savings in fuel procurement expenses and fuel price assumptions on which they are based, and any other relevant findings, recommendations, and priorities for funding and implementation. Buildings heated by natural gas or petroleum products shall be surveyed first.

SECTION 4. Sections 1301.17 and 1301.18 of the Revised Code shall be effective January 1, 1980. Not later than ninety days after the effective date of this act, preferential parking for carpools and vanpools shall be instituted pursuant to section 123.11 of the Revised Code, the State Board of Education shall require energy conservation information as part of the driver education curriculum pursuant to section 3301.07 of the Revised Code.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed April 11, 1978

Approved May 8, 1978

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

David A. Johnston
Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 8th day of May, A. D. 1978,

Ted W. Brown
Secretary of State.

File No. 295. Effective Date August 7, 1978.
(Certain Sections of Act Effective January 1, 1980.)

Section 153.10 of the Revised Code is amended by this act and also by Am. Sub. S. B. 270 of the 112th General Assembly. Comparison of these amendments in pursuance of section 1.52 of the Revised Code discloses that they are not irreconcilable, so that they are required by that section to be harmonized to give effect to each amendment.

David A. Johnston
Director, Legislative
Service Commission

CHAPTER NO. 888

HOUSE BILL NO. 2338

By Murphy (Davidson), Wood, Kernell

Substituted for: Senate Bill No. 2353

By Albright

AN ACT to establish a state code for energy conservation in new building construction.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The code for energy conservation in new building construction published by the National Conference of States on Building Codes and Standards, Inc., in December, 1977, is hereby adopted by reference as the minimum requirements for the effective use of energy in new buildings; however, any revisions or amendments to the above referenced code shall become effective only upon approval by the Tennessee General Assembly or upon approval by the appropriate committee thereof.

SECTION 2. The State Code for energy conservation established by this Act, shall govern the design and construction of new buildings and structures or portions thereof and additions to existing buildings that provide facilities or shelter for public assembly, educational, business, mercantile, institutional, storage, and residential occupancies, as well as those portions of factory and industrial occupancies designed primarily for human occupancy by regulating their exterior envelopes and the selection of their heating, ventilating and air conditioning systems, service water heating, electrical distribution and illuminating systems and equipment for effective use of energy. The Code shall not apply to structures occupied exclusively as dwellings for residence purposes by one or two families;

outbuildings, such as barns and other farm buildings; and one-story buildings, not exceeding 2,500 square feet, which are used for commercial purposes of a non-hazardous nature.

SECTION 3. Buildings are exempt from the provisions of this code as follows:

1. All non-residential farm buildings;

2. All temporary buildings used exclusively for construction purposes;

3. Other buildings as specifically exempted by Sections 101.3 (a) and (b) of the code.

SECTION 4. Section 104.1 of the code shall be amended by deleting the period at the end of the section and replacing it with a semicolon followed by these words "however, the building official may not require submission of plans prepared by a licensed engineer or architect in the case of plans for single family dwellings and duplexes.

SECTION 5. It is the responsibility of every city, county, town, municipal corporation, and metropolitan government to enforce this Act.

SECTION 6. Each local government shall adopt the state code for energy conservation in new building construction with any amendments it deems reasonably necessary to accommodate local conditions. If the standards adopted by local governments are equal to or stricter than the code, the local standards shall control. If the local standards are less strict than the code standards, the code standards shall control.

SECTION 7. Local governments may charge a reasonable fee for each permit, to offset the costs of administration, inspection, and enforcement of the code, as local government sees fit. The fee may not accrue to the general revenue of the local government or by any other application become subject to laws regulating local taxation.

SECTION 8. If any provisions of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provisions or application, and to that end, the provisions of this Act are declared severable.

SECTION 9. This Act shall take effect January 1, 1979.

PASSED: March 30, 1978

Ned R. McWherter,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

John S. Wilder,
SPEAKER OF THE SENATE

APPROVED: April 14, 1978

Ray Blanton,
GOVERNOR

LD2997

HOUSE JOINT RESOLUTION NO. 141

Offered February 6, 1978

Requesting the Virginia Board of Housing to study the energy provisions of the Building Officials and Code Administrators Energy Code.

Patrons--Paul and Baliles

Referred to the Committee on General Laws

WHEREAS, the United States of America and this Commonwealth have recognized the need for energy conservation and development; and

WHEREAS, if Virginia is to take the leadership in meeting energy-related problems, certain reasonable adjustments and sacrifices must be initiated; and

WHEREAS, the Code of Virginia already provides authority for the inclusion in the Uniform Statewide Building Code of standards and requirements, adherence to which will reduce energy consumption; and

WHEREAS, the Building Officials and Code Administrators (BOCA) Energy Code would provide a very useful model for the amendment of the Uniform Statewide Building Code so as to make Virginia buildings more energy-efficient; and

WHEREAS, the General Assembly deems it of tantamount importance that the Virginia Building Code requirements promote the best energy saving practices in the United States for single-family and multi-family dwellings, apartments, institutions and commercial buildings; now, therefore, be it

RESOLVED by the House of Delegates of Virginia, the Senate concurring, That the Virginia Board of Housing, as the State agency responsible for the Uniform Statewide Building Code, is hereby requested to expeditiously upgrade the Uniform Statewide Building Code so as to require compliance with the latest conservation and energy efficiency requirement standards as set forth in the most current version of the applicable BOCA Code.

It is the desire of the General Assembly that the Uniform

Statewide Building Code Standards for single-family, apartment, and multi-family dwellings, commercial buildings, and schools and other institutions are in keeping with the best energy saving practices in the United States. To this end, the Virginia Board of Housing is requested to issue a report in December of each of the next four years beginning in December, nineteen hundred seventy-eight, specifically identifying changes and improvements which have been made in the Uniform Statewide Building Code during that year to further enhance the energy efficiency and conservation in each of the following: (i) - single-family or two-family dwellings; (ii) apartments; (iii) commercial buildings; and (iv) institutional buildings. If the Virginia Housing Board elects not to adopt some of the energy efficiency and conservation standards in the latest versions of the applicable BOCA Code then the Board shall identify in its yearly report the specific standards which it decided not to adopt and the reasons for such decision.

Official Use By Clerks

Agreed to By The House of Delegates		Agreed to By The Senate	
without amendment	☐	without amendment	☐
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐

Date: _____ Date: _____

_____ _____

Clerk of the House of Delegates Clerk of the Senate

CHAPTER 737

An Act to amend and reenact § 36-139 of the Code of Virginia, relating to powers and duties of the Director of the Department of Housing and Community Development.

[H 288]

Approved APR 9 1978

Be it enacted by the General Assembly of Virginia:

1. That § 36-139 of the Code of Virginia is amended and reenacted as follows:

§ 36-139. Powers and duties of Director.—The Director shall have the following responsibilities:

A. Collecting from the governmental subdivisions of the Commonwealth information relevant to their planning and development activities, boundary changes, changes of forms and status of government, intergovernmental agreements and arrangements, and such other information as it may deem necessary.

B. Making information available to communities, planning district commissions, service districts and governmental subdivisions of the Commonwealth.

C. Providing professional and technical assistance to, and cooperating with, any planning agency, planning district commission, service district, and governmental subdivision engaged in the preparation of development plans and programs, service district plans, or consolidation agreements.

D. Assisting the Governor in the providing of such State financial aid as may be appropriated by the General Assembly in accordance with § 15.1-1412 of the Code of Virginia.

E. Administering federal grant assistance programs, including funds from the Appalachian Regional Commission, the Economic Development Administration and other such federal agencies, directed at promoting the development of the Commonwealth's communities and regions.

F. Developing State housing and community development policies, goals, plans and programs for the consideration and adoption of the Governor and the General Assembly.

G. Determining present and future housing requirements of the State and designing programs to coordinate the elements of housing production which programs shall be designed to assure the availability of housing where and when needed.

H. Assuming administrative coordination of the various State housing programs and cooperating with the various State agencies in their programs as they relate to housing.

I. Establishing public information and educational programs relating to housing; devising and administering programs to inform all citizens about housing and housing-related programs that are available on all levels of government; designing and administering educational programs to prepare families for home ownership and counseling them during their first years as homeowners; and promoting educational programs to assist sponsors in the development of low and moderate income housing as well as

programs to lessen the problems of rental housing management.

J. Administering the provisions of the Urban Assistance Incentive Fund as set forth in §§ 15.1-1500 through 15.1-1505 of the Code of Virginia.

K. Administering the provisions of the Industrial Building Unit and Mobile Home Safety Law.

L. Administering the provisions of the Uniform Statewide Building Code.

M. Administering the provisions of the Virginia Fire Safety Law.

N. To promulgate and administer design standards relative to making places of public accommodation constructed, remodeled or rehabilitated in this State after the effective date of the standards promulgated under this section reasonably accessible to and useable by physically handicapped persons, as defined in § 2.1-109.02, at the least possible cost to those subject to the standards; provided, however, that construction, remodeling or rehabilitation done under contracts for planning, design or construction of places of public accommodation which have been awarded prior to the effective date of standards promulgated under this section shall not be subject to such standards. Within the meaning of this subsection "places of public accommodation" shall mean all auditoriums, hospitals, nursing homes, convalescent homes, theatres, stadiums, convention centers, restaurants, hotels, motels, shopping centers and malls, department stores, supermarkets, public transportation terminals, medical buildings, medical and dental offices, apartment developments containing more than twenty dwelling units, and office buildings containing more than twenty offices. The Board shall also have the power and duty to recommend design standards which would make all buildings, structures, facilities, complexes or improved areas accessible to physically handicapped persons.

O. To establish and operate a voluntary training program for the instruction of the personnel of local building departments concerning the content, application and intent of the Uniform Statewide Building Code. Upon the satisfactory completion of such instruction by any person, the Board may grant certification of his successful completions.

P. Carrying out such other duties as may be necessary and convenient to the exercise of powers granted to the Department.

Q. To administer, in conjunction with the federal government, and promulgate any necessary rules and regulations regarding energy standards for existing buildings as may be required pursuant to federal law.

(To be made one and twelve copies)

THE SENATE

.....NINTH..... LEGISLATURE, 19 78

STATE OF HAWAII

Act 134

S.B. NO. 1591-78 S.D. 1 ;H.D. 1

A BILL FOR AN ACT

RELATING TO ENERGY EFFICIENT PROCUREMENT PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The purpose of this Act is to require the State and counties to include energy efficiency standards in their procurement practices.

SECTION 2. Chapter 103, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 103- Energy efficiency through life-cycle costing. (a) The procurement practices of the State and its counties shall include energy efficiency standards and policies, including life-cycle costing. These shall be developed and introduced into procurement procedures by July 1, 1978.

"(b) In implementing life-cycle costing, the purchasing agent shall be guided by energy efficiency standards and policies for purchasing various items developed and promulgated by the U.S. Department of Energy and other Federal

agencies, and by nationally recognized trade associations, including but not limited to the Institute of Government Purchasing Agents, the Purchasing Management Association, and the Air Conditioning and Refrigeration Institute. The purchasing agent shall notify bidders of information, procedures and forms required in implementing energy efficiency standards and policies. The information required shall include purchasing standards and policies developed by Federal agencies and by nationally recognized agencies and associations, as well as energy consumption and life-cycle cost data.

(c) The purchaser shall consider purchasing via the life-cycle costing method those classes of items for which nationally recognized energy efficiency data have been developed. These items shall include but not be limited to automobiles and air conditioning systems. The watt-saving variety of common-sized fluorescent lamps shall be purchased except where standard wattage of such lamps is specifically required by the using agency."

SECTION 3. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.

SECTION 4. This Act shall take effect upon its approval.

(To be made one and twelve copies)

THE SENATE

....NINTH..... LEGISLATURE, 19 78

STATE OF HAWAII BL8-9

Act 137-78

S.B. NO. 1598-78 S.B. 1 H.B. 1

A BILL FOR AN ACT

RELATING TO THE BANNING OF PILOT LIGHTS ON GAS APPLIANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that gas appliances with pilot lights that remain continually lighted in order to ignite the appliance constitute wasteful use of valuable energy resources. Alternate systems that can be used in lieu of gas pilot lights are currently commercially available.

The purpose of this Act is to foster the State's energy conservation program by banning the sale and installation of gas appliances with pilot lights.

SECTION 2. The Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"Sec. - Gas appliances with pilot light prohibited; exemptions. (a) No new residential type gas appliance that is equipped with a pilot light shall be sold or installed in the State after June 30, 1980. Gas appliances sold

after June 30, 1980 shall be equipped with an intermittent ignition system or other ignition devices in lieu of gas pilot lights.

(b) Beginning ninety days after the effective date of this Act, the energy resources coordinator or its successor entity shall notify, in writing, all retail sellers of gas appliances doing business in the State of the provisions of this section.

(c) The provisions of this section shall not apply to any hot water heaters with pilot lights or to any gas appliance which can be conclusively demonstrated by the equipment manufacturer, to the satisfaction of the energy resources coordinator or its successor entity, that the gas pilot device in the appliance:

(1) Has a substantial lower life cycle cost than an electric ignition or other alternate ignition system;

(2) Is more energy efficient than available alternatives; or

(3) Is necessary to safeguard public health and safety.

(d) The provisions of this section shall not apply to people living in areas that are served with unreliable electric service or where it is not available.

(e) As used in this section:

(1) "Gas appliance" includes any new residential type heater, refrigerator, stove, range, dishwasher, dryer, air conditioner, decorative fireplace, or other similar devices;

(2) "Intermittent ignition device" means an ignition device which is activated only when the gas appliance is in operation; and

(3) "Pilot light" means any gas operated device that remains continually operated or lighted in order to ignite a gas appliance to normal operation."

SECTION 3. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.

SECTION 4. This Act shall take effect upon its approval.

SENATE FILE 182

AN ACT

RELATING TO THE SALE IN THIS STATE OF DECORATIVE GAS LAMPS AND GAS APPLIANCES EQUIPPED WITH A PILOT LIGHT AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. DEFINITIONS. As used in this Act, unless the context otherwise requires:

1. "Commission" means the Iowa state commerce commission.

2. "Gas appliance" means any new residential or commercial furnace that has an input capacity of not more than two hundred thousand British thermal units per hour, air conditioner, range or dryer which uses a gaseous fuel for operation and is automatically ignited.

3. "Intermittent ignition device" means an ignition device which is actuated only when the gas appliance is in operation.

4. "Pilot light" means a gas operated device that remains continually operated or lighted in order to ignite a gas appliance to begin normal operation.

Sec. 2. NEW SECTION. PILOT LIGHTS PROHIBITED. New gas appliances equipped with pilot lights shall not be sold or installed in this state commencing twenty-four months after the commission has certified an intermittent ignition device for the gas appliance as provided in section three (3) of this Act. The commission may determine that an intermittent ignition device is not feasible for a particular gas appliance or that the use of a pilot light on a particular gas appliance is necessary for public health and safety. The provisions of this section shall not apply to the sale and installation of a gas appliance in a residence that does not have a one hundred twenty volt power supply.

Sec. 3. NEW SECTION. SPECIFICATIONS DEVELOPED. The

commission shall not later than July 1, 1979, develop the specifications for certification of intermittent ignition devices for at least three gas appliances. The commission shall appoint a task force composed of affected consumer and industry representatives to assist in developing the specifications. The specifications shall not significantly affect the price of a gas appliance compared to the price of similar electrical appliances. The specifications shall have as an objective the conservation of energy resources, which objectives shall be secondary only to provisions necessary for public safety, and shall consider initial costs to the consumer, including installation and maintenance costs. The commission shall certify all intermittent ignition devices which meet the specifications. In lieu of using specifications developed under this section specifically for this state, the commission may, if it deems such action to be in the public interest, adopt appropriate national specifications developed by a trade association or other recognized national group.

Sec. 4. NEW SECTION. NOTIFICATION OF MANUFACTURERS. Within ninety days after an intermittent ignition device has been certified by the commission, the commission shall notify all gas appliance manufacturers doing business in the state concerning the prohibition of pilot lights for the particular gas appliance for which the intermittent ignition device was certified. The commission shall inform the manufacturers of the actions necessary to comply with this Act.

Sec. 5. NEW SECTION. SEAL OF CERTIFICATION. The commission shall create a seal of certification and shall distribute the seals to every manufacturer, distributor and dealer who requests them. The seal shall be affixed to every new appliance sold at retail in the state for which an intermittent ignition device has been certified. In lieu of using a seal developed under this section the commission may, if it deems such action to be in the public interest,

authorize use of the seal of an appropriate trade association or other recognized national group.

Sec. 6. NEW SECTION. PENALTY. Persons convicted of violating the provisions of section two (2) of this Act shall be guilty of a simple misdemeanor.

Sec. 7. NEW SECTION. DECORATIVE GAS LAMPS.

1. Commencing January 1, 1979 a person shall not sell or offer for sale in this state a decorative gas lamp manufactured after December 31, 1978.

2. As used in this section "decorative gas lamp" means a device installed for the purpose of producing illumination by burning natural, mixed or liquid petroleum gas and utilizing either a mantle or an open flame, but does not include portable camp lanterns or gas lamps.

3. Persons convicted of violating this section shall be guilty of a simple misdemeanor.

Sec. 8. This Act is effective January 1, 1979.

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 182, Sixty-seventh General Assembly.

KEVIN P. LIGHT
Acting Secretary of the Senate

Approved _____, 1978

ROBERT D. RAY
Governor

Ramon

Substitute for HOUSE BILL No. 2698

AN ACT concerning public utilities; relating to the jurisdiction of the state corporation commission over certain public utilities for certain purposes; amending K.S.A. 66-131 and 66-133, and K.S.A. 1977 Supp. 66-104 and repealing the existing sections.

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

New Section 1. Every municipally owned or operated electric or gas utility, and every electric or gas utility operating wholly and solely within the legal boundaries of any municipality and within three (3) miles of any municipal boundary, shall be deemed a "public utility" as defined in K.S.A. 1977 Supp. 66-104, as amended, for the purpose of filing tariffs and rules and regulations restricting connections or attachments to their systems of residential, commercial or industrial structures with respect to such heat loss standards and energy efficiency ratios for air-conditioners and heat pumps as the state corporation commission shall from time to time adopt.

Sec. 2. K.S.A. 1977 Supp. 66-104 is hereby amended to read as follows: 66-104. The term "public utility," as used in this act, shall be construed to mean every corporation, company, individual, association of persons, their trustees, lessees or receivers, that now or hereafter may own, control, operate or manage, except for private use, any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages or for the transmission of telegraph messages in or through any part of the state, or the conveyance of oil and gas through pipelines in or through any part of the state, except pipelines less than fifteen (15) miles in length and not operated in connection with or for the general commercial supply of gas or oil, or for the operation of any trolley lines, street, electrical or motor railway doing business in any county in the state; also all dining car companies doing business within the state, and all companies for the production, transmission, delivery or furnishing of heat, light, water or power: ~~*Provided,* That~~. No cooperative, cooperative society, nonprofit or mutual corporation or association which is engaged solely in furnishing telephone service to subscribers from one telephone line without owning or operating its own separate central office facilities, shall be subject to the jurisdiction and control of the commission as provided herein, except that it shall not construct or extend its facilities across or beyond the territorial boundaries of any telephone company or cooperative without first obtaining approval of the commission. As used herein, the term "transmission of telephone messages" shall include the transmission by wire or other means of any voice, data, signals or facsimile communications, including all such communications now in existence or as may be developed in the future.

The term "public utility" shall also include that portion of every municipally owned or operated electric or gas utility located outside of and more than three (3) miles from the corporate limits of such municipality, but nothing in this act shall apply to a municipally owned or operated utility, or portion thereof, located within the corporate limits of such municipality or located outside of such corporate limits but within three (3) miles thereof *except as provided in section 1.*

Except as herein provided, the power and authority to control and regulate all public utilities and common carriers situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people, shall be vested exclusively in such city, subject only to the right to apply for relief to the corporation commission as hereinafter provided in K.S.A. 66-133 *and to the provisions of section 1.* A transit system principally engaged in rendering local transportation service in and between contiguous cities in this and another state by means of street railway, trolley bus and motor bus lines, or any combination thereof, shall be deemed to be a public utility as that term is used in this act and, as such, shall be subject to the jurisdiction of the commission.

Sec. 3. K.S.A. 66-131 is hereby amended to read as follows: 66-131. No common carrier or public utility, including that portion of any municipally owned utility defined as a public utility by K.S.A. *1977 Supp.* 66-104 as amended, governed by the provisions of this act shall transact business in the state of Kansas until it shall have obtained a certificate from the corporation commission that public convenience will be promoted by the transaction of said business and permitting said applicants to transact the business of a common carrier or public utility in this state: ~~*Provided,* That~~. In no event shall such jurisdiction authorize the corporation commission to review, consider or effect the facilities or rates charged for services or in any way the operation of such municipally owned or operated electric or gas utility within the corporate limits or outside but within three (3) miles of the corporate limits of any city, or facilities, or rates charged for services or in any way the operation of facilities or their replacements now owned by any such utility *except as provided in section 1.* No prescribed rates, orders or other regulatory supervision of the corporation commission shall be contrary to any lawful provision of any revenue bond ordinance authorizing the issuance of revenue bonds to finance all or any part of the municipally owned or operated electric or gas utility so subjected to the jurisdiction of the corporation commission. This section shall not apply to any common carrier or public utility governed by the provisions of this act now transacting business in this state, nor shall this section apply to the facilities and operations of any municipally owned or operated utility supplying electricity or gas outside of the corporate limits of any municipality where such facilities and operations are in existence on the effective date of this act, but any extension of such facilities or any new facilities located outside of and more than three (3) miles from the municipality's corporate limits, shall be subject to the requirements of this section, nor shall this section apply to any municipally owned or operated electric or gas utility furnishing electricity or gas to a facility owned or jointly owned by such municipality and located outside the corporate limits of such municipality.

Sec. 4. K.S.A. 66-133 is hereby amended to read as follows: 66-133. Every municipal council or commission shall have the power and authority, subject to any law in force at the time *and to the provisions of section 1,* to contract with any public utility or common carrier, situated and operated wholly or principally within any city or principally operated for the benefit of such city or its people, by ordinance or resolution, duly considered and regularly adopted:

(1) As to the quality and character of each kind of product or service to be furnished or rendered by any public utility or common carrier, and the maximum rates and charges to be paid therefor to the public utility or common carrier furnishing such product or service within said municipality, and the terms and conditions, not inconsistent with this act or any law in force at the time under which such public utility or common carrier may be permitted to occupy the streets, highways or other public property within such municipality.

(2) To require and permit any public utility or common carrier to make such additions or extensions to its physical plant as may be reasonable and necessary for the benefit of the public, and may designate the location and nature of such additions and extensions at the time within which such shall be completed, and the terms and conditions under which the same shall be constructed.

(3) To provide a reasonable and lawful penalty for the noncompliance with the provisions of any ordinance or resolution adopted in pursuance with the provisions hereof: ~~*Provided, however,* That~~. No ordinance or resolution granting or extending

any right, privilege or franchise shall be in force or effect until thirty days after the same shall have been duly published; nor if any complaint be made, as hereinafter provided for, shall said ordinance or resolution be in effect while any proceedings to review before said commission or action or appeal in any court in relation thereto shall be pending.

Upon any complaint being made, within fifteen days after the publication of any such ordinance or resolution, to the corporation commission by any such public utility or common carrier, or by ten or more taxpayers of any such municipality a bond to pay the costs of the hearing having first been filed by the complainant with and approved by the said commission, that any right, privilege or franchise granted, or ordinance or resolution or part of any ordinance or resolution adopted, by any municipal council or commission is unreasonable, or against public policy, or detrimental to the best interests of the city, or contrary to any provisions of law, the corporation commission shall set a date for the hearing of such complaint, not less than ten days after date of filing thereof, and shall cite the parties interested to appear on a date named, which date shall be not less than ten days after the fixing of the date of the hearing, and on that date, or at a time agreed upon by the interested parties, or a date fixed by the corporation commission, the complainant shall present such evidence as they or it may have in support thereof, and show why such complaint should be sustained, and the corporation commission may inquire into the allegations in such complaint, and may subpoena witnesses, and take testimony to ascertain the truth of the allegations contained therein in contemplation of bringing an action as hereinafter provided; and if said commission shall find that any provision of any such ordinance or resolution is unreasonable, or against the public welfare or public interest, or has reason to believe that the same may be contrary to law, said corporation commission shall, within ten days, advise and recommend such changes in the ordinance or resolution as may be necessary to meet the objections set forth in the complaint and protect the public interest, and to remove any unreasonable provision therefrom; and if such municipal council or commission shall not within twenty days thereafter amend such ordinance or resolution to conform to the recommendations of said corporation commission, the corporation commission may, in the name of the state of Kansas, within thirty days after such finding, commence proceedings against such municipal council or commission and common carrier or public utility governed by the provisions of this act in any court of competent jurisdiction, to set aside any ordinance or resolution, or part thereof, because of its unreasonableness or illegality, or because the same is not for the promotion of the welfare and best interests of said municipality, which action and proceedings shall be in conformity with the provisions of this act.

Sec. 5. K.S.A. 66-131 and 66-133, and K.S.A. 1977 Supp. 66-104 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the official state paper.

I hereby certify that the above BILL originated in the HOUSE, and passed that body.

_____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE _____

_____
President of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.

CHAPTER 260

(H.B. 363)

AN ACT relating to state purchasing.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 45.360 is amended to read as follows:

(1) The executive department for finance and administration shall purchase, or shall delegate and control the purchase of, the combined requirements of all spending agencies of the state including, but not limited to, interests in real property, contractual services, rentals of all types, supplies, materials, equipment, and services, except that competitive bids may not be required:

(a) For contractual services where no competition exists, such as telephone service, electrical energy, and other public utility services;

(b) When in the judgment of the executive department for finance and administration food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies can be purchased otherwise to the best advantage of the state; and instructional materials available from only one (1) source;

(c) Where rates are fixed by law or ordinance;

(d) For library books;

(e) For commercial items that are purchased for resale;

(f) For professional, technical, or artistic services (Contracts exempted by this provision shall be referred to the department of personnel for review and approval);

(g) For all other commodities, equipment and services which, in the reasonable discretion of the executive department for finance and administration, are available from only one (1) source; and

(h) Interests in real property.

(2) Nothing in this section shall deprive the executive department for finance and administration from negotiating with vendors who maintain a general service administration price agreement with the United States of America or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between general service administration and the vendor affected.

(3) The executive department for finance and administration shall have supervision over all purchases by the various spending agencies, except as otherwise provided by law, and shall prescribe rules and regulations to govern purchasing by or for all such agencies, subject to the approval of the *secretary* [commissioner] of the executive department for finance and administration, and shall publish a manual of procedures to be distributed to agencies and to be revised upon issuance of amendments to such procedures. No purchase or contract shall be binding on the state or any agency thereof unless approved by the department or made under general regulations which the executive department for finance and administration may prescribe.

(4) The executive department for finance and administration shall adopt regulations to require agencies to take and maintain inventories of plant and equipment. The executive department for finance and administration shall conduct periodic physical audits of inventories.

(5) The executive department for finance and administration shall require all agencies to furnish an estimate of specific needs for supplies, materials, and equipment to be purchased by competitive bidding for the purpose of permitting scheduling of purchasing in large volume. It shall establish and enforce schedules for purchasing supplies, materials, and equipment. In addition, all agencies shall submit to the executive department for finance and administration prior to the beginning of each fiscal year an estimate of all needs for supplies, materials, and equipment during that year which will have to be acquired through competitive bidding.

(6) The executive department for finance and administration shall have power, with the approval of the *secretary* [commissioner] of the executive department for finance and administration, to transfer between departments, to salvage, to exchange, and to condemn supplies, equipment, and real property.

(7) The executive department for finance and administration shall sell or otherwise dispose of all property (including any interest in real property) of the state which is not needed or has become unsuitable for public use, or would be more suitable consistent with the public interest for some other use, as determined by the *secretary* [commissioner] of the executive department for finance and administration. The determination of the *secretary* [commissioner] of the executive department for finance and administration shall be set forth in an order, and shall be reached only after review of a written request by the agency desiring to dispose of the property. Such request shall describe the property and state the reasons why the agency believes disposal should be effected. All instruments required by law to be recorded which convey any interest in any such real property so disposed of shall be executed and signed by the *secretary* [commissioner] of the executive department for finance and administration and approved by the governor. Unless the *secretary* [commissioner] of the executive department for finance and administration deems it in the best interest of the state to proceed otherwise, all such property (including any interests in real property) shall be sold either by invitation of sealed bids or by public auction, provided however that the selling price of any interest in real property shall not be less than the appraised value thereof as determined by the department [of revenue], or *the* department of transportation for such requirements of that department.

(8) Except as provided in KRS chapters 175, 176, 177 and 180, the executive department for finance and administration shall purchase or otherwise acquire all real property determined to be needed for state use, upon the approval of the *secretary* [commissioner] of the executive department for finance and administration as to the determination of need and as to the action of purchase or other acquisition, provided that the amount paid shall not exceed the appraised value as determined by the department [of revenue], *or the* department of transportation (for such requirements of that department), or value set by eminent domain procedure.

(9) Real property or any interest therein may be purchased, leased, or otherwise acquired from any officer or employe of any agency of the state upon a finding by the executive department for finance and administration, based upon a written application by the head of the agency requesting the purchase, and approved by the *secretary* [commissioner] of the executive department for finance and administration and the governor, that the employe has not either himself or through any other person influenced or attempted to influ-

ence either the agency requesting the purchase of the property or the executive department for finance and administration in connection with such acquisition. In any case in which such an acquisition is consummated, the said request and finding shall be recorded and kept by the secretary of state along with the other documents recorded pursuant to the provisions of KRS chapter 56.

(10) The executive department for finance and administration shall maintain records of all purchases and sales made under its authority and shall make periodic summary reports of all transactions to the *secretary* [commissioner] of the executive department for finance and administration, the governor, and the general assembly. The executive department for finance and administration shall also report trends in costs and prices, including savings realized through improved practices, to the above authorities.

(11) For capital construction projects, the bidding may be on a total design-bid basis; a package system commonly referred to as "turn key"; phase bidding commonly referred to as "fast track"; or construction management, whichever in the judgment of the *secretary* [commissioner] of the executive department for finance and administration offers the lowest real cost to the taxpayer. Bids when delegated to and are received by construction managers shall be reviewed by the engineering staff to assure quality and value, and compliance with bid procedures. All specifications shall be written to promote competition.

(12) The executive department for finance and administration shall attempt in every practicable way to insure the state's supplying its real needs at the lowest possible cost.

(13) The executive department for finance and administration shall have control and supervision over all purchases of energy consuming equipment, supplies and related equipment purchased or acquired by any agency of the state as provided in KRS 45.360 to 45.990, and shall designate by regulation the manner in which an energy consuming item will be purchased so as to promote energy conservation and acquisition of energy efficient products.

Approved March 30, 1978

Signed into law June 30, Chapter 462

STATE OF NEW YORK

12382

IN ASSEMBLY

March 30, 1978

Introduced by M. of A. ORAZIO—read once and referred to the Committee on Environmental Conservation

AN ACT to amend the energy law, in relation to energy efficient devices and making certain corrective changes

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision four of section 5-107 of the energy law is hereby amended to read as follows:

4. Promulgate energy use standards after consultation with the commissioner of the office of general services, for the purchase, lease, use or maintenance of state *buildings* and equipment [buildings].

§ 2. Such law is hereby amended by adding a new article sixteen to read as follows:

ARTICLE 16

ENERGY EFFICIENT DEVICES

Section 16-108. Energy efficiency of residential and commercial hot water heaters.

§ 3. Section 5-108 of such law, as added by chapter four hundred thirty-nine of the laws of nineteen hundred seventy-seven, is hereby renumbered section 16-108 and amended to read as follows:

§ 16-108. Energy efficiency of residential and commercial hot water heaters. 1. As used in this section:

a. Recovery efficiency shall mean the ratio of the heat absorbed by the water to the heat input delivered to the heating unit during the period that the water temperature is raised from the inlet temperature to the final temperature.

b. Standby losses shall mean heat losses occurring while maintaining design water temperature over periods when no hot water is being drawn from the water tank.

2. No person shall advertise, display for sale, or sell in this state any new electric, gas-fired or oil-fired hot water heater, to be used in this state for domestic or sanitary purposes unless it shall meet the performance standards contained below:

a. For automatic electric *storage* water heaters, the standby loss shall not exceed four watt-hours per hour per square foot of tank surface area unless superseded by more stringent standards determined by the state energy office.

b. For automatic gas-fired or oil-fired water heaters, unless superseded by more stringent standards determined by the state energy office, the minimum

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

LBD8-20-495p

recovery efficiency shall be seventy-five percent and *for automatic gas-fired or oil-fired storage water heaters* the standby loss shall not exceed a percent of the energy input equal to 2.3 plus the quotient of 67 divided by the rated volume in gallons of the heater.

c. Standby losses and recovery efficiencies shall be determined by methods described by the American National Standard Institute, Inc., hitherto known as ANSI in its publications ANSI C72.1-72 and ANSI [221.10.3-74] *Z21.10.3-74* unless superseded by methods established by the state energy office.

3. If the commissioner shall determine that no hot water heater of a certain class, size or type is available with such efficiency to meet the requirements of this section, he may extend the effective date for compliance of such class until such hot water heater is available, but in no event later than January first, nineteen hundred eighty.

4. Such hot water heater and its packing carton, if such carton is provided, shall carry in a conspicuous position a non-transferable sign or label stating that such hot water heater meets the minimum energy efficiency requirements of New York state.

[3] *5.* A knowing violation of this section shall be punishable by a fine not to exceed one thousand dollars.

§ 4. Separability. If any provision of this act shall be held invalid in whole or in part or inapplicable to any person or situation, all other provisions thereof shall nevertheless remain fully effective and the application of any such provisions to other persons not similarly situated or other situations shall not be affected.

§ 5. This act shall take effect immediately.

CHAPTER NO. 655

HOUSE BILL NO. 1033

By Bissell

Substituted for: Senate Bill No. 961

By Baird (Roane)

AN ACT to adopt life-cycle costing in state procurement policies; to assist counties and municipalities in the development and implementation of energy efficiency standards for procurement policies; to provide mandatory energy standards in procurement policies for the political subdivisions of the state.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This Act shall be known as and may be cited as the Life-Cycle Cost and Procurement Act of 1977.

SECTION 2. It is hereby declared to be the policy of the state and its political subdivisions to use the life cycle costs of commodities as developed and disseminated by the federal government when purchased by the state or its political subdivisions where feasible as provided in the Act.

SECTION 3 For the purposes of this Act:

(a) "State" means the State of Tennessee.

(b) "Political subdivisions" means any city, town, municipality or county within the state.

(c) "Commissioner" means the Commissioner of the Department of General Services.

(d) "Major energy-consuming product" means any article so designated by the Board of Standards in consultation with the Tennessee Energy Office.

(e) "Tennessee Energy Office" means the Tennessee Energy Office or its successor.

(f) The "Board of Standards" means the Board established as set forth in Tennessee Code Annotated, Title 12, Chapter 3.

(g) "Energy Efficiency Standard" means a performance standard which prescribes the relationship of the energy use of a product to its useful output of services.

SECTION 4. The commissioner, to the maximum extent feasible, shall determine which commodities and products purchased by the state may be purchased according to energy efficiency standards. The commissioner shall have the duty to recommend those commodities and products to the board of standards for adoption and use in state purchasing procedures. Only those products which have received a life cycle cost and/or energy efficiency standard by the federal government shall be purchased according to life cycle cost and/or energy efficiency standard.

SECTION 5. (a) The board of standards, in consultation with the director of the Tennessee Energy Authority, shall adopt rules and regulations relative to energy-efficiency standards for major energy-consuming products to be procured by the state.

(b) Where federal energy-efficiency standards exist, the board of standards, in consultation with the director of the Tennessee Energy Authority, shall, where feasible, adopt standards at least as stringent as the federal standards.

(c) For the purpose of implementing this Act only, the director of the Tennessee Energy Authority shall advise and consult with the board of standards as an ex-officio member.

SECTION 6. Where energy-efficiency standards are established, the board of standards shall adopt

rules requiring life cycle costs to be used by the commissioner in contracting for major energy-consuming products. In determining life cycle costs, the board of standards and the commissioner may consider the acquisition cost of the product, the energy consumption and the projected cost of energy over the useful life of the product, and the anticipated resale or salvage value of the product.

SECTION 7. Except where private act or state law prohibits, every political subdivision shall adopt and incorporate in its procurement policies energy efficiency standards and life cycle costing employed by the state in its procurement policies.

SECTION 8. (a) Executory contracts for the purchase of commodities by a political subdivision included in this Act shall be voidable by the circuit courts upon the bringing of an action by an aggrieved party.

(b) The court may void the contract upon the showing by the aggrieved party that:

(1) the party is a seller of the commodity;

(2) the party is doing business in the state;

(3) the commodity to be sold has an energy efficiency rating and life cycle cost lower than the commodity contracted for by the purchaser;

(4) the purchaser is a political subdivision, and the standard for the commodity has been adopted for one (1) year by the board of standards and has not been incorporated or adopted by the political subdivision, and

(5) the aggrieved party is ready, willing and able, without any other legal constraints, to sell the commodity to the purchaser.

SECTION 9. The departments of Finance and Administration, General Services, and the Tennessee Energy Office shall provide technical assistance to aid in the development or implementation of energy efficiency standards for procurement policies to political subdivisions that request assistance.

SECTION 10. The appropriate state agencies shall cooperate and coordinate their efforts in the development and implementation of energy efficiency standards for procurement policies to the fullest extent possible with the Tennessee Municipal League, the Municipal Technical Advisory Service, the County Technical Advisory Service, the Tennessee County Services Association, and any other appropriate state or local agency or group.

SECTION 11. Nothing in this Act shall be construed to prohibit the adoption of an energy efficiency standard by a political subdivision when that standard has not been adopted by rules of the board of standards or where the standard proposed to be adopted by the political subdivision is more stringent than the standard adopted by the board of standards.

SECTION 12. The provisions of this Act shall apply only to those commodities and products which have received a life cycle cost and/or energy efficiency standard developed and disseminated by the federal government.

Nothing in this Act shall be construed as conferring upon the board of standards or any other unit or agency of the state or its political subdivisions the power to develop life cycle costs and/or energy efficiency standards. It is the intent of the General Assembly that the state adopt purchasing guidelines for those commodities and products which have a life cycle cost and/or energy efficiency standard developed by the federal government.

SECTION 13. The provisions of the Uniform Administrative Procedures Act shall apply to the Act.

SECTION 14. This Act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: March 1, 1978

Ned R. McWherter,
SPEAKER OF THE HOUSE OF REPRESENTATIVES

John S. Wilder,
SPEAKER OF THE SENATE

APPROVED: March 20, 1978

Ray Blanton,
GOVERNOR

STATE OF WISCONSIN

1977 Assembly Bill 353 **Date published*:** May 19, 1978

CHAPTER 369 , LAWS OF 1977

AN ACT to create 101.60 and 196.97 of the statutes, relating to establishing a natural gas conservation program including prohibiting pilot lights under the department of industry, labor and human relations and prohibiting nonessential uses of natural gas under the public service commission, granting rule-making authority subject to legislative review, and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 101.60 of the statutes is created to read:

101.60 Pilot lights prohibited on gas appliances. (1) In this section:

(a) "Class of gas appliances" means a group of gas appliances all of which perform a similar function.

(b) "Gas appliance" means any furnace or heater requiring electrical supply for operation, air conditioner, refrigerator, stove having an electrical supply cord, dishwasher, dryer, swimming pool heater or other similar appliance or device used in a private residence or private dwelling, which uses a gaseous fuel for operation and is automatically ignited for operation by means of a pilot light or other ignition device.

(c) "Intermittent ignition device" means an ignition device which is actuated only when a gas appliance is in operation.

(d) "Manufacturer" means any person who manufactures, produces or assembles gas appliances.

(e) "Nationally recognized standards and testing procedures" means those standards adopted by the American national standards institute and those testing procedures developed by the American gas association laboratories or underwriters laboratories, or such other standards and testing procedures that are recognized nationally by the gas appliance industry.

(f) "Pilot light" means any gas-operated device that remains continually lighted in order to ignite a gas appliance to begin normal operation.

(2) The department shall, on or before July 1, 1978, develop the specifications for certifying intermittent ignition devices. Development of the specifications shall proceed with the cooperation of representatives designated by the department from the affected gas appliance industry and consumers. The development of specifications shall make the fullest possible use of nationally recognized standards and testing procedures for intermittent ignition devices.

(3) The specifications for certification shall be developed with consideration for:

(a) The conservation of primary energy resources.

(b) Provisions necessary for public health and safety.

(c) Initial consumer costs, including installation and maintenance costs.

(d) Any other criteria determined necessary by the department.

(4) The department shall demonstrate that an intermittent ignition device operates according to the established specifications. Based upon this demonstration, the department may determine that an intermittent ignition device is feasible and may so certify the device.

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* Section 990.05, *1975 Wisconsin Statutes*: **Laws and acts; time of going into force.** "Every law or act which does not expressly prescribe the time it takes effect shall take effect on the day after its publication."

(5) Within 90 days after an intermittent ignition device has been certified by the department, the department shall notify all gas appliance manufacturers doing business in this state of the prohibition of affected pilot lights, including the effective date of the prohibition, and shall inform manufacturers of ignition devices available which comply with established specifications.

(6) (a) No person may sell, distribute or install or cause to be sold, distributed or installed in this state a new gas appliance that is not equipped with a certified intermittent ignition device, beginning 24 months after any intermittent ignition device has been certified by the commission under sub. (5) as feasible for the class of gas appliances to which the gas appliance belongs, but no earlier than July 1, 1980.

(b) Commencing 24 months after an intermittent ignition device has been certified by the department, but no earlier than July 1, 1980, the department shall have all the powers conferred by s. 101.02 for purposes of enforcing this section.

(c) The department may seek a forfeiture or initiate a civil action for a temporary or permanent injunction for any violation of this section or any rule promulgated under this section.

(d) Any person who violates this section or any rule promulgated under this section shall be subject to a forfeiture of not more than $400 for each day of violation.

(7) Commencing 3 years after the effective date of this act (1977), the department shall include annually in the report required under s. 15.04 (4), a description of its enforcement activities under this section.

(8) The department shall make rules as it deems necessary to carry out its duties under this section.

(9) This subsection does not apply to emergency rules adopted under s. 227.027.

(a) Prior to any public hearing on a proposed rule under this section, or if no public hearing is required, prior to notification of the standing committees, the department shall submit the proposed rule to the legislative council for review. The legislative council shall act as a clearing house for rule drafting and cooperate with the department and the revisor to:

1. Review the statutory authority under which the department intends to adopt the rule. The legislative council shall notify the department, the joint committee for the review of administrative rules and the appropriate standing committee when the statutory authority is eliminated or significantly changed by repeal, amendment, court decision or for any other reason.

2. Ensure that the procedures for the promulgation of a rule required by this subsection and ch. 227 are followed.

3. Review proposed rules for form, style and placement in the administrative code.

4. Review proposed rules to avoid conflict with or duplication of existing rules:

5. Review proposed rules to provide adequate references to relevant statutes, related rules and forms.

6. Streamline and simplify the rule-making process.

7. Review proposed rules for clarity, grammar and punctuation and to ensure plain language.

8. Review proposed rules to determine potential conflicts and to make comparisons with federal regulations.

(b) The legislative council shall work with and assist the appropriate standing committees throughout the rule-making process. The legislative council may issue recommendations concerning any proposed rule which the department submits under this section.

(c) The department shall notify appropriate standing committees when proposed rules under this section are in final draft form by submitting a notice to the presiding officer in each house. Each presiding officer shall refer the notice to one standing committee. The department may withdraw a proposed rule by notifying the presiding officer in each house of the legislature of its intention not to promulgate the rule.

(d) The notice shall include the proposed rule in a form complying with s. 227.024 (1).

(e) 1. A committee may be convened upon the call of its chairperson or a majority of its members to review a proposed rule. A committee may meet separately or jointly with the other committee to

which the notice is referred, direct the department to attend the meeting and hold public hearings to review the proposed rule.

2. The standing committee review period lasts for 30 days after the notice is submitted and if within the 30-day period a standing committee directs the department to meet with it to review the proposed rule, the standing committee review period is extended for 30 days from the date of that request.

3. The department may not promulgate a proposed rule during the standing committee review period unless both committees approve the rule prior to the expiration of that period.

4. Either standing committee may disapprove the proposed rule or part of a proposed rule by taking action in executive session to disapprove the rule within the standing committee review period. If both committees fail to take this action, the proposed rule is not disapproved and the department may promulgate the rule.

(f) 1. If either standing committee disapproves a proposed rule or part of a proposed rule, the proposed rule or its part shall be referred to the joint committee for the review of administrative rules.

2. The joint committee review period lasts for 30 days after the proposed rule is referred and the joint committee shall meet and take action in executive session during that period.

3. The department may not promulgate a proposed rule or its part which is disapproved by a standing committee unless the proposed rule is approved by the joint committee for the review of administrative rules or until the bill in subd. 5 fails of enactment. The department may promulgate portions of the rule which were not suspended, if the committee disapproved only parts of the rules.

4. The joint committee for the review of administrative rules may reverse the standing committee disapproval by taking action to approve the rule within the joint committee review period. The joint committee may uphold the standing committee disapproval by taking action to disapprove the rule within the joint committee review period. The joint committee may remand the proposed rule to the department for further consideration or public hearings or both. If the joint committee disapproves a proposed rule, the department may not promulgate the proposed rule until the bill in subd. 5 fails of enactment.

5. When the joint committee for the review of administrative rules disapproves a proposed rule or portion of the proposed rule, the committee shall as soon as possible place before the legislature, a bill to support the disapproval. If such bill is defeated, or fails of enactment in any other manner, the proposed rule or portion of the proposed rule may be promulgated. If the bill becomes law, the proposed rule or portion of the proposed rule, may not be promulgated unless a properly enacted law specifically authorizes the adoption of that rule.

SECTION 2. 196.97 of the statutes is created to read:

196.97 Nonessential uses of natural gas. (1) No gas utility doing business in this state or other person may install, connect or cause to be installed or connected to the distribution system any device which constitutes a nonessential use of natural gas, unless such devices have been ordered and received by any person prior to the effective date of each rule specifying a nonessential use of natural gas under sub. (2), including item inventories held by retailers or wholesalers.

(2) The commission shall, by rule, specify criteria for determining a nonessential use of natural gas for purposes of this section. The commission shall, by rule, specify each nonessential use of natural gas under this section. The commission may review any nonessential use of natural gas specified under this subsection at any time. Every rule promulgated under this subsection shall be transmitted to the joint committee for review of administrative rules for review by the joint committee.

(3) The commission may make rules as it deems necessary to carry out the purposes of and to enforce this section. The commission shall provide for exemptions for nonessential uses of natural gas for reasons of health, safety or unusual hardship.

(4) This subsection does not apply to emergency rules adopted under s. 227.027.

(a) Prior to any public hearing on a proposed rule under this section, or if no public hearing is required, prior to notification of the standing committees, the commission shall submit the proposed rule to the legislative council for review. The legislative council shall act as a clearing house for rule drafting and cooperate with the commission and the revisor to:

1. Review the statutory authority under which the commission intends to adopt the rule. The legislative council shall notify the commission, the joint committee for the review of administrative rules

and the appropriate standing committee when the statutory authority is eliminated or significantly changed by repeal, amendment, court decision or for any other reason.

2. Ensure that the procedures for the promulgation of a rule required by this subsection and ch. 227 are followed.

3. Review proposed rules for form, style and placement in the administrative code.

4. Review proposed rules to avoid conflict with or duplication of existing rules;

5. Review proposed rules to provide adequate references to relevant statutes, related rules and forms.

6. Streamline and simplify the rule-making process.

7. Review proposed rules for clarity, grammar and punctuation and to ensure plain language.

8. Review proposed rules to determine potential conflicts and to make comparisons with federal regulations.

(b) The legislative council shall work with and assist the appropriate standing committees throughout the rule-making process. The legislative council may issue recommendations concerning any proposed rule which the commission submits under this section.

(c) The commission shall notify appropriate standing committees when proposed rules under this section are in final draft form by submitting a notice to the presiding officer in each house. Each presiding officer shall refer the notice to one standing committee. The commission may withdraw a proposed rule by notifying the presiding officer in each house of the legislature of its intention not to promulgate the rule.

(d) The notice shall include the proposed rule in a form complying with s. 227.024 (1).

(e) 1. A committee may be convened upon the call of its chairperson or a majority of its members to review a proposed rule. A committee may meet separately or jointly with the other committee to which the notice is referred, direct the commission to attend the meeting and hold public hearings to review the proposed rule.

2. The standing committee review period lasts for 30 days after the notice is submitted and if within the 30-day period a standing committee directs the commission to meet with it to review the proposed rule, the standing committee review period is extended for 30 days from the date of that request.

3. The commission may not promulgate a proposed rule during the standing committee review period unless both committees approve the rule prior to the expiration of that period.

4. Either standing committee may disapprove the proposed rule or part of a proposed rule by taking action in executive session to disapprove the rule within the standing committee review period. If both committees fail to take this action the proposed rule is not disapproved and the commission may promulgate the rule.

(f) 1. If either standing committee disapproves a proposed rule or part of a proposed rule, the proposed rule or its part shall be referred to the joint committee for the review of administrative rules.

2. The joint committee review period lasts for 30 days after the proposed rule is referred and the joint committee shall meet and take action in executive session during that period.

3. The commission may not promulgate a proposed rule or its part which is disapproved by a standing committee unless the proposed rule is approved by the joint committee for the review of administrative rules or until the bill in subd. 5 fails of enactment. The commission may promulgate portions of the rule which were not suspended, if the committee disapproved only parts of the rules.

4. The joint committee for the review of administrative rules may reverse the standing committee disapproval by taking action to approve the rule within the joint committee review period. The joint committee may uphold the standing committee disapproval by taking action to disapprove the rule within the joint committee review period. The joint committee may remand the proposed rule to the commission for further consideration or public hearings or both. If the joint committee disapproves a proposed rule, the commission may not promulgate the proposed rule until the bill in subd. 5 fails of enactment.

5. When the joint committee for the review of administrative rules disapproves a proposed rule or portion of the proposed rule, the committee shall as soon as possible place before the legislature, a bill to support the disapproval. If such bill is defeated, or fails of enactment in any other manner, the proposed

rule or portion of the proposed rule may be promulgated. If the bill becomes law, the proposed rule or portion of the proposed rule, may not be promulgated unless a properly enacted law specifically authorizes the adoption of that rule.

(5) Any person who violates this section or any rule promulgated under this section shall be subject to a forfeiture of not more than $400 for each day of violation.

(6) Enforcement of this section shall be under s. 196.84.

Substitute House Bill No. 5045

PUBLIC ACT NO. 78-309

AN ACT AUTHORIZING RIGHT TURNS ON RED TRAFFIC LIGHTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subdivision (3) of subsection (b) of section 14-299 of the general statutes is repealed and the following is substituted in lieu thereof:

(3) Red alone: Vehicular traffic facing a steady red signal alone shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and remain standing until the next indication is shown; [when a sign has been erected in the appropriate place permitting a right turn on such red signal, vehicular traffic facing such red signal may cautiously enter the intersection to make a right turn as permitted by such sign after stopping as required in this subdivision. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection; pedestrians facing a steady red signal alone, except when directed by separate pedestrian-control signals, shall not enter the roadway. For purposes of uniformity, no right turn on red signal sign shall be erected by any municipality until the same has been approved by the state traffic commission] PROVIDED, ON OR AFTER JULY 1, 1979, VEHICULAR TRAFFIC TRAVELING IN THE TRAVEL LANE NEAREST THE RIGHT HAND CURB OR OTHER DEFINED EDGE OF THE ROADWAY, UNLESS A SIGN HAS BEEN ERECTED IN THE APPROPRIATE PLACE PROHIBITING THIS MOVEMENT, MAY CAUTIOUSLY ENTER THE INTERSECTION TO MAKE A RIGHT TURN ONTO A TWO-WAY STREET OR ONTO ANOTHER ONE-WAY STREET ON WHICH ALL THE TRAFFIC IS MOVING TO SUCH VEHICLE'S RIGHT AFTER SUCH VEHICLE HAS STOPPED AS REQUIRED IN THIS SUBDIVISION AND YIELDED THE RIGHT OF WAY TO PEDESTRIANS LAWFULLY WITHIN AN ADJACENT CROSSWALK AND TO OTHER TRAFFIC LAWFULLY USING THE INTERSECTION. PEDESTRIANS FACING A STEADY RED SIGNAL ALONE, EXCEPT WHEN DIRECTED BY SEPARATE PEDESTRIAN-CONTROL SIGNALS, SHALL NOT ENTER THE ROADWAY. THE COMMISSIONER OF TRANSPORTATION, IN THE CASE OF STATE HIGHWAYS AND THE TRAFFIC AUTHORITY, AS DEFINED IN SECTION 14-297, IN THE CASE OF HIGHWAYS MAINTAINED BY TOWNS, CITIES OR BOROUGHS, SHALL REVIEW ALL TRAFFIC CONTROL

SIGNALIZED INTERSECTIONS ON HIGHWAYS WITHIN THEIR RESPECTIVE JURISDICTIONS TO DETERMINE THOSE INTERSECTIONS WHERE SIGNS SHOULD BE ERECTED TO PROHIBIT RIGHT TURNS ON A STEADY RED SIGNAL AS HEREINBEFORE DESCRIBED AND CAUSE TO HAVE ERECTED SUCH SIGNS BY JUNE 30, 1979. FOR PURPOSES OF UNIFORMITY, EACH MUNICIPALITY SHALL REPORT THE RESULTS OF ITS REVIEWS TO THE STATE TRAFFIC COMMISSION AND SHALL NOT ERECT OR CAUSE TO BE ERECTED SIGNS PROHIBITING RIGHT TURNS ON A STEADY RED SIGNAL UNTIL SUCH SIGNS HAVE BEEN APPROVED BY THE STATE TRAFFIC COMMISSION.

Sec. 2. Section 14-300 of the general statutes is amended by adding subsections (c) and (d) as follows:

(NEW) (c) Except as provided in subsection (c) of section 4 of this act, at any crosswalk marked as provided in subsection (a) of section 14-300 or any unmarked crosswalk, provided such crosswalks are not controlled by police officers or traffic control signals, each operator of a vehicle shall yield the right of way, and slow or stop such vehicle if necessary to so yield the right of way, to any pedestrian crossing the roadway within such crosswalk, provided such pedestrian is within that half of the roadway upon which such operator of a vehicle is traveling or such pedestrian is crossing the roadway within such crosswalk from that half of the roadway upon which such operator is not traveling and such pedestrian is approaching at such a rate of speed or has approached so near to that half of the roadway upon which such operator is traveling so as to be in reasonable danger of being struck by the vehicle of such operator. No operator of a vehicle approaching from the rear shall overtake and pass any vehicle the operator of which has stopped at any crosswalk marked as provided in subsection (a) of this section or any unmarked crosswalk to permit a pedestrian to cross the roadway. The operator of any vehicle crossing a sidewalk shall yield the right of way to each pedestrian and all other traffic upon such sidewalk. A violation of this subsection shall be an infraction.

(NEW) (d) In any civil action arising under subsection (c) of this section or sections 3 to 5 inclusive, of this act, the doctrine of negligence per se shall not apply.

Sec. 3. (NEW) (a) Each pedestrian crossing a roadway at any point other than within a crosswalk

marked as provided in subsection (a) of section 14-300 of the general statutes or any unmarked crosswalk or at a location controlled by police officers shall yield the right of way to each vehicle upon such roadway. Each pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right of way to each vehicle upon such roadway.

(b) No pedestrian shall cross a roadway intersection diagonally unless authorized by a pedestrian-control signal or police officer. When authorized by a pedestrian-control signal or police officer to cross an intersection diagonally each pedestrian shall cross only in accordance with such signals or as directed by such police officer. No pedestrian shall cross a roadway between adjacent intersections at which traffic or pedestrian-control signals are in operation except within a marked crosswalk.

(c) Each pedestrian crossing a roadway within a crosswalk shall travel whenever practicable upon the right half of such crosswalk.

(d) A violation of any provision of this section shall be an infraction.

Sec. 4. (NEW) (a) No pedestrian shall walk along and upon a roadway where a sidewalk adjacent to such roadway is provided and the use thereof is practicable. Where a sidewalk is not provided adjacent to a roadway each pedestrian walking along and upon such roadway shall walk only on the shoulder thereof and as far as practicable from the edge of such roadway. Where neither a sidewalk nor a shoulder adjacent to a roadway is provided each pedestrian walking along and upon such roadway shall walk as near as practicable to an outside edge of such roadway and if such roadway carries motor vehicle traffic traveling in opposite directions each pedestrian walking along and upon such roadway shall walk only upon the left side of such roadway.

(b) No pedestrian shall suddenly leave a curb, sidewalk, crosswalk or any other place of safety adjacent to or upon a roadway and walk or run into the path of a vehicle which is so close to such pedestrian as to constitute an immediate hazard to such pedestrian. No pedestrian who is under the influence of alcohol or any drug to a degree which renders himself a hazard shall walk or stand upon any part of a roadway.

(c) Each pedestrian shall yield the right of way to any authorized emergency vehicle, as defined by section 14-1a of the general statutes, approaching such pedestrian and emitting any audible signal or displaying or making any visual signal reasonably indicating that such vehicle is being operated in an emergency situation. Nothing in this subsection shall be construed to relieve the driver of such an authorized emergency vehicle from any duty to drive with due regard for the safety of all persons using the highway or from the duty to exercise due care to avoid colliding with any pedestrian.

(d) Except as provided by this act, sections 14-299 and 14-300 of the general statutes as amended by section 1 of this act, each pedestrian upon a roadway shall yield the right of way to each vehicle upon such roadway.

(e) A violation of any provision of this section shall be an infraction.

Sec. 5. (NEW) Notwithstanding any provisions of the general statutes or any regulations issued thereunder, this act or any local ordinance to the contrary, each operator of a vehicle shall exercise due care to avoid colliding with any pedestrian or person propelling a human powered vehicle and shall give a reasonable warning by sounding a horn or other lawful noise emitting device to avoid a collision. A violation of any provision of this section shall be an infraction.

Sec. 6. (NEW) Nothing contained in this act shall be construed to limit the provisions of section 53-181 of the general statutes or to permit any pedestrian to walk upon or along any highway where pedestrians are prohibited by any provision of the general statutes or any regulations issued thereunder.

Sec. 7. The sum of two hundred seventy thousand dollars is appropriated to the department of transportation for the fiscal year ending June 30, 1979, from the sum appropriated to the finance advisory committee under section 1 of special act 78-17, for 1978 acts without appropriations, to cover the costs to said department to carry out the provisions of section 1 of this act.

Sec. 8. The sum of one hundred seventy thousand dollars is appropriated to the department of transportation for the fiscal year ending June 30, 1979, from the sum appropriated to the finance advisory committee under section 1 of special act 78-17, for 1978 acts without appropriations, to

reimburse the towns, cities and boroughs for costs incurred to carry out the provisions of section 1 of this act.

Certified as correct by

_____
Legislative Commissioner.

_____
Clerk of the Senate.

_____
Clerk of the House.

Approved _____, 1978

_____
Governor.

CHAPTER 156

(H.B. 23)

AN ACT relating to motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.338 is amended to read as follows:

Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and said lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(1) Green indication.

(a) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(b) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(c) Unless otherwise directed by a pedestrian-control signal, pedestrians facing any green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(2) Steady yellow indication.

(a) Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

(b) Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian-control signal, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

(3) Steady red indication.

(a) Vehicular traffic facing a circular red signal alone shall stop at a clearly marked stop line, but if none, then before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until a green indication is shown, except as follows:

1. The driver of a vehicle which is stopped as *required by subsection (3)(a)* [close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection in obedience to a red or stop signal, and] with the intention of making a right turn, may make such right turn, after stopping, unless an official sign has been erected prohibiting such movement, but shall yield the right of way to pedestrians and other traffic lawfully proceeding through the intersection.

2. The driver of a vehicle which is stopped as required by subsection (3)(a) whose vehicle is in the left lane of a one-way highway with the intention of making a left turn onto the left lane of another one-way highway with the flow of traffic, may make such left turn, after stopping, unless an official sign has been erected prohibiting such movement, but shall yield the right of way to pedestrians and other traffic lawfully proceeding through the intersection.

(b) Cities and counties may, by ordinance, and the bureau of highways may, by regulation, prohibit any such right *or left* turn against a steady red signal at any intersection, which prohibition shall be effective when an official sign prohibiting such movement is erected at the intersection.

(c) [(b)] Unless otherwise directed by a pedestrian-control signal, pedestrians facing a steady red signal alone shall not enter the roadway.

(4) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(5) To ensure that the provisions of this Act are fully understood by the citizens of the Commonwealth, an intensive campaign to inform all Kentuckians of this change shall be undertaken by the department of transportation's office of public information utilizing the statewide news media, especially Kentucky Educational Television (KET). This campaign shall begin the date this law becomes effective and shall be thirty (30) days in duration.

Approved March 29, 1978.

THE COMMONWEALTH OF MASSACHUSETTS

Advance Copy 1978 Acts and Resolves

PAUL GUZZI, Secretary of the Commonwealth

Chap. 350. AN ACT REGULATING RIGHT TURN ON RED AT A SIGNALIZED INTERSECTION.

Be it enacted, etc., as follows:

Section 8 of chapter 89 of the General Laws, as most recently amended by chapter 686 of the acts of 1977, is hereby further amended by adding the following paragraph:-

A city or town, or the department, on ways under their control, may erect and maintain signs permitting an operator of a motor vehicle facing a steady red indication in a traffic control signal to cautiously enter an intersection to turn right or to turn left from a one-way street into a one-way street, after stopping, unless otherwise directed by a police officer. Such operator shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection. Any rule, regulation, order, ordinance or by-law made by a board or officer of a city or town permitting such turns shall be subject to the provisions of section two of chapter eighty-five.

Approved July 8, 1978

Substitute House Bill No. 5442

PUBLIC ACT NO. 78-262

AN ACT ESTABLISHING A STATE ENERGY POLICY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) The general assembly finds that the state of Connecticut is severely disadvantaged by its lack of primary energy resources; that primarily as a result of past policies and tendencies, the state has become dependent upon petroleum as an energy source; that national energy policies do not preclude the recurrence of serious problems arising from this dependence during petroleum shortages; that the increase in oil prices since the 1973 oil embargo has had a major impact on the state; that the economy has suffered directly because of our dependence on petroleum with limited practical alternatives; that the state must address the problem by conserving energy and increasing the efficiency of energy utilization. The general assembly further finds that energy use has a profound impact on the society, economy and environment of the state, particularly in its interrelationship with population growth, high density urbanization, industrial well-being, resource utilization, technological development and social advancement and that energy is critically important to the overall welfare and development of our society. Therefore, the general assembly declares that it is the policy of the state of Connecticut that energy resources shall be conserved by avoiding unnecessary and wasteful consumption, that any consumption of energy resources be done in the most efficient manner feasible and that renewable energy resources, such as solar and wind energy, be utilized to the maximum practicable extent; that the state shall seek all possible ways to implement said policy through public education and through cooperative efforts involving the federal government, regional organizations, municipal governments, other public and private organizations and concerned individuals using all practical means and measures, including financial and technical assistance, in a manner calculated to promote the general welfare by creating and maintaining conditions under which energy can be utilized effectively and efficiently. The general assembly further declares that it is the continuing responsibility of the state to use all

means consistent with other essential considerations of state policy to improve and coordinate the plans, functions, programs and resources of the state to attain the widest range of beneficial uses of energy without harm to the environment, risk to health or safety or other undesirable or unintended consequences, to preserve wherever possible a society which supports a diversity and variety of individual choice, to achieve a balance between population and resource use which will permit the maintenance of adequate living standards and a sharing of life's amenities among all citizens, and to enhance the utilization of renewable resources. The general assembly declares that said energy policy is essential to the preservation and enhancement of the health, safety and general welfare of the people of the state.

Sec. 2. This act shall take effect July 1, 1978.

Certified as correct by

_____

Legislative Commissioner.

_____

Clerk of the Senate.

_____

Clerk of the House.

Approved _____, 1978

_____

Governor.

SPONSOR Rep. Darling, Byrd, Clendaniel
Gilligan, Burris, Smith

COMMITTEE _____

SIGNED BY THE GOVERNOR
JUL 18 1977

HOUSE OF REPRESENTATIVES

129TH GENERAL ASSEMBLY

FIRST SESSION - 197[redacted].
HOUSE JOINT RESOLUTION NO. 27 JUN 23 1977

RECOMMENDING THE ESTABLISHMENT OF A MANDATORY ENERGY SAVINGS PROGRAM FOR THE PUBLIC SCHOOLS IN THE STATE OF DELAWARE.

WHEREAS, the Committee on Energy of the House of Representatives of the 129th General Assembly of the State of Delaware has met several times since its organization in January; and

WHEREAS, among the problems in the serious energy shortage that were brought to the attention of the Energy Committee was the immediate need for a policy for energy conservation in the public schools; and

WHEREAS, House Concurrent Resolution No. 23 established a committee to work with the public schools in the development and enforcement of an energy saving program, which committee submitted a report to the House Energy Committee concerning needed energy saving procedures in the State public schools; and

WHEREAS, the stated report showed that public schools are currently consuming energy at a rate exceeding $8,000,000 a year, that there is no mandatory energy saving program in the public school system, that there is not a centralized data collection of energy used in the public school system, that energy reductions in the range of 15 to 20 percent are attainable in FY-78, and there exists adequate knowledge and expertise to implement an energy saving program under the guidance of a committee appointed for that specific purpose.

NOW, THEREFORE:

BE IT RESOLVED by the Senate and the House of Representatives of the 129th General Assembly of the State of Delaware, with the approval of the Governor, that all school districts be required to adopt and follow the energy saving program approved by the State Board of Education on March 17, 1977, "Energy Conservation Program for School Facilities."

BE IT FURTHER RESOLVED that all school districts be required to participate in a state-wide energy use reporting system.

BE IT FURTHER RESOLVED that the implementation of this program be under the direction of the Committee to Work with the Public Schools in the Development and Enforcement of an Energy Saving Program.

BE IT FURTHER RESOLVED that this committee report on a recurring basis to the House Energy Committee throughout FY-78.

Reps. Smith, Darling, Burris
Clendaniel & Gilligan
Sens. McDowell, Berndt, Knox,
Martin, McCullough, & Spence.

COMMITTEE _____

HOUSE OF REPRESENTATIVES

129TH GENERAL ASSEMBLY

FIRST SESSION - 1977

SIGNED BY THE GOVERNOR
MAY 26 1977

11 APR 19 1977

HOUSE JOINT RESOLUTION NO. ____

TO ADOPT ENERGY CONSERVATION AS A STATE POLICY AND TO SET GOALS FOR THE STATE OF DELAWARE.

WHEREAS, the energy crisis has dictated that all users of energy must continue to conserve energy; and

WHEREAS, since the Federal Government has failed to adopt an energy policy, it is the responsibility of the States to provide the leadership in setting energy conservation goals and establishing energy conservation programs.

BE IT RESOLVED by the House of Representatives of the 129th General Assembly, the Senate and the Governor concurring therein, that the State of Delaware adopt the conservation of energy as an official policy.

BE IT FURTHER RESOLVED that the State of Delaware, as a major energy user, set an example by:

(1) Reducing energy use in state buildings.

(2) Designing all new buildings and renovations to be energy saving.

(3) Giving consideration to energy conservation and life cycle costing in all its purchasing.

(4) Disposing of all items in an energy conserving manner.

(5) Reducing energy use by state operated vehicles by (a) purchasing more efficient vehicles, (b) driving fewer miles, (c) encouraging car pools, and (d) observing 55 mph maximum speed limits.

BE IT FURTHER RESOLVED that a copy of this resolution be distributed to all Divisions and Agencies and brought to the attention of all State employees, and that all State employees be requested to extend their fullest cooperation and show ingenuity to conserve energy in all their activities.

(To be made one and twelve copies)

THE SENATE

NINTH ..... LEGISLATURE, 19 78

STATE OF HAWAII

Vetoed By Governor

S.B. NO. 1596-78

A BILL FOR AN ACT

RELATING TO AN APPROPRIATION FOR A STUDY ON THE DEVELOPMENT OF AN EFFECTIVE USED OIL RECYCLING PROGRAM.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that there are approximately two million gallons of used oil generated each year on Oahu; that used oil is a valuable petroleum resource which can be recycled; that in spite of this potential for recycling, we are collecting less than ten per cent of the used oil for reprocessing as fuel oil; and that as a result, significant quantities of used oil are wastefully disposed of or improperly used by means which pollute the waters, land, and air and endanger the public health and welfare.

The legislature further finds that there are various impediments and problems to full recycling and utilization of used oil including, but not limited to, the following:

(1) The lack of an adequate market for the recycled product (there must be an adequate outlet for the reprocessed fuel oil otherwise reprocessors would be inundated with fuel which cannot be sold);

(2) In connection with number (1), consumer resistance to the use of the recycled product despite the fact that the product is priced below regular fuel oil and the product's heat content is equivalent to regular fuel;

(3) The lack of sufficient incentives to encourage the use of re-processed oil or in certain situations where its use appears to be appropriate, the lack of mandates requiring its use;

(4) The lack of an adequate mechanism including appropriate laws, to regulate the collection, storage, recycling, use, and disposal of used oil; and

(5) The lack of sufficient basic data and information to legislatively remove or mitigate impediments and to encourage the development of an effective used oil recycling program.

The purpose of this Act is to fund a study to obtain basic information needed to effectuate an used oil recycling program in Hawaii.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of $20,000, or so much thereof as may be necessary, to be expended by the

energy resources coordinator, for a study on the development of an effective used oil recycling program for Hawaii. Any unexpended or unencumbered balance of any appropriation made by the Act as of the close of business on June 30, 19 shall lapse into the general fund. The study shall include, but not be limited to, the following:

(1) Identification of all impediments (both current and potential) to the development and implementation of a used oil recycling program in Hawaii;

2) Determination of the feasibility of utilizing the reprocessed oil by the state and county governments including, among others, use in state and county controlled refuse and sewage sludge incinerators;

(3) Identification of other potential uses or markets for the recycled product including measures to develop such markets;

(4) Determination, in cooperation with the state department of health and other appropriate agencies, of possible health and safety problems associated with the use of reprocessed oil in view of the fact that most used oil contains heavy metals and organic compounds which are toxic;

S.B. NO. 1596-78

(5) Determination of public and oil industry resistance, if any, and reasons therefor; and

(6) Recommendation of appropriate legislative action to remove or mitigate the identified impediments; to adequately control the collection, storage, use and disposal of the recycled oil products; and to accelerate and encourage the development of an used oil recycling program for Hawaii.

The energy resources coordinator shall submit a report of the findings and recommendations to the legislature prior to the convening of the regular session of 1979.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: T. C. Yim

1/19/78

Session of 1978

House Concurrent Resolution No. 5047

By Special Committee on Energy

Re Proposal No. 19

12-7

A CONCURRENT RESOLUTION urging the secretary of transportation and the Kansas turnpike authority to provide for sites for parking of persons engaged in car pooling.

WHEREAS, Because of the need to conserve energy, it is necessary and desirable to encourage citizens to participate in car pooling; and

WHEREAS, Storage or parking of vehicles by persons engaged or desiring to engage in car pooling is a problem; and

WHEREAS, If parking could be established near junctions or central points along highways, such parking areas would afford places of assembly for participants in car pooling: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the legislature urges the secretary of transportation and the Kansas turnpike authority, in cooperation with other state agencies and authorities, to study and select suitable, safe sites on state property located along the routes of the roads and highways under their respective jurisdictions for parking for persons engaged in car pooling, to erect signs indicating the availability of such parking for persons engaged in car pooling and to promote the use thereof. The secretary and the authority are further requested to report to the 1979 legislature other possible sites which would require site preparation or acquisition and to make requests for appropriations or authority required therefor; and

Be it further resolved: That the secretary of state be directed to transmit enrolled copies of this resolution to the secretary of

transportation and the chairperson of the Kansas turnpike authority.

CHAPTER 232

(H.B. 215)

AN ACT relating to motor vehicles.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 189.271 is amended to read as follows:

(1) Notwithstanding any other provision of laws, the department of transportation may issue special permits to the owners, operators or lessees of motor vehicles for the purpose of hauling industrial materials whose gross weight, including vehicle and load, exceeds the limits prescribed by this chapter or which in other respects fail to comply with the requirements of this chapter. A separate permit shall be required for each vehicle. Such permits shall be issued for specified materials only and shall designate the portions of the state primary road system over which such vehicle may operate pursuant to the permit. Such permit shall be issued for a stated period of time not to exceed one (1) year and shall be upon such terms and conditions as the department may, in its discretion, require in the public interest. The department shall require, as a condition to the issuance of the permit, that the applicant pay a reasonable fee, to be fixed by the department, and shall require that an applicant convicted under provisions of KRS 189.990(2)(a) two or more times within a five-year period give bond, with approved surety, in an amount not to exceed $6,000 for each vehicle to indemnify the commonwealth of Kentucky against damage to highways or bridges resulting from the operation of any motor vehicle under the authorization of such permit. The operation of any motor vehicle in accordance with the terms of any such permit shall not constitute a violation of this chapter, if the operator has the permit, or a copy of it, authenticated as the department may require, in his possession.

(2) The department shall not issue a permit under this section for a vehicle whose gross weight, including vehicle and load, exceeds the maximum gross weight as provided in KRS 189.222.

[(3) After the expiration of four (4) years from June 21, 1974, the department shall not issue a permit under this section for a vehicle which does not comply with the axle weight and axle spacing requirements set forth in KRS 189.222(1).]

(3) [(4)] No person shall operate a motor vehicle in violation of the terms and conditions of any permit issued by the department pursuant to this section.

(4) [(5)] As used in this section, industrial materials shall mean all cargo, whether divisible or indivisible, which a motor vehicle transports in the usual and ordinary course of business and shall specifically include, but not be limited to, minerals or natural resources transported by a motor vehicle.

(5) [(6)] The department is hereby empowered to:

(a) Exercise general supervision of the administering and enforcement of this section.

(b) Adopt rules and regulations with respect to the issuance of a permit, including, but not limited to, rules and regulations concerning the duration of permits and weight limits for various types of vehicles, materials and highways.

(c) Adopt rules and regulations with respect to the amount, terms and conditions of the bond and the sufficiency of the surety of such bond required by this section.

(d) Issue, continue in effect, revoke, modify or deny, under such conditions as the department may prescribe, permits provided for under this section.

Section 2. KRS 281.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) The term "person" means any individual, firm, partnership, corporation, company, association or joint stock association, and includes any trustee, assignee, or personal representative thereof;

(2) The term "bureau" means the bureau of vehicle regulation;

(3) The term "city" means a municipality incorporated under the laws of this state;

(4) The term "state" means the commonwealth of Kentucky;

(5) The term "highway" means all public roads, highways, streets and ways in this state, whether within a municipality or outside of a municipality;

(6) The term "certificate" means a certificate of public convenience and necessity issued under this chapter to common carriers by motor vehicle and *irregular route common carriers and* a *nonprofit bus* certificate issued under this chapter [to irregular route common carriers] authorizing [their] operation thereunder;

(7) The term "permit" means a permit issued under this chapter to contract carriers by motor vehicle and to persons engaging in the business of U-drive-it;

(8) The term "interstate commerce" means commerce between any place in a state and any place in another state;

(9) The term "intrastate commerce" means commerce between any place in this state and any other place in this state.

Section 3. KRS 281.011 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) The term "carrier" or "motor carrier" means any person who owns, controls, operates, manages, or leases, except persons leasing to authorized carriers, any motor vehicle for the transportation of persons or property for hire upon any highway, and any person who engages in the business of U-drive-it. It shall include common and contract carriers by motor vehicle, city and suburban buses, *holders of nonprofit bus certificates,* driveaways and U-drive-its;

(2) The term "motor vehicle" means any motor propelled vehicle used for the transportation of persons or property on a public highway, including any such vehicle operated as a unit in combination with other vehicles, and including vehicles propelled by electric power obtained from overhead wires whether operating over rails or otherwise.

(3) The term "common carrier" means any person who holds himself out to the general public t engage in the transportation by motor vehicle of persons or property in intrastate or interstate commerce ov regular routes, except that persons holding irregular route common carrier authority granted by the interstate commerce commission, taxicabs, and local cartage vehicles are not required to move over regular routes, *and except that the holder of a nonprofit bus certificate shall not be construed to be a common carrier;*

(4) The term "irregular route common carrier" means any person who holds himself out to the general public to engage in the transportation by motor vehicle over irregular routes of specific commodities which have been, or will be, designated by the bureau as exempted commodities, including specific commodities removed from the exempted commodity list by the bureau where the right to engage in the transportation of same has been properly grandfathered into the appropriate authority under the applicable statutes;

(5) The term "contract carrier" means any person who, under individual contracts or agreements, engages in the transportation, other than transportation referred to in subsections (3) and (4) of this section by motor vehicle of passengers or property in interstate or intrastate commerce.

(6) The term "driver" or "chauffeur" means the person physically operating the motor vehicle;

(7) The term "regular seat" means a seat ordinarily and customarily used by one (1) passenger and in determining such seating capacity the manufacturer's rating may be considered.

Section 4. KRS 281.013 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1)(a) A "city bus certificate" means a certificate granting authority only for the operation of mot vehicles transporting passengers for hire between points within the corporate limits of a city and over regul routes;

(b) A "city bus" is a motor vehicle operated under one or more city bus certificates;

(c) The term "city bus license" means a license plate issued for a bus authorizing its operation under one or more city bus certificates or a combination of city bus certificates and suburban bus certificates;

(2)(a) A "suburban bus certificate" means a certificate granting authority only for the operation of motor vehicles carrying passengers for hire within the confines of either one or more cities and their suburban area, or a suburban area, over regular routes but not granting authority to engage in intracity transportation;

(b) A "suburban bus" is a motor vehicle operated under one or more suburban bus certificates;

(c) The term "suburban bus license" means a license plate issued for a bus authorizing its operation under one or more suburban bus certificates;

(3)(a) An "industrial bus certificate" means a certificate granting authority only for the operation of motor vehicles *which are not exempt under subsection (10) of Section 4 of this Act and which are used* exclusively *for* transporting employes of a given industry or industries for hire to and from their place of employment;

(b) An "industrial bus" is a motor vehicle operated under an industrial bus certificate;

(c) The term "industrial bus license" means a license plate issued for a bus authorizing its operation under an industrial bus certificate.

Section 5. KRS 281.605 is amended to read as follows:

The provisions of this chapter shall not apply, except as to safety regulations, to:

(1) Motor vehicles used as school buses and while engaged in the transportation of students, under the supervision and control and at the direction of school authorities;

(2) Motor vehicles, regardless of ownership, used exclusively:

(a) For the transportation of agricultural and dairy products, including fruit, livestock, meats, fertilizer, wood, lumber, cotton, products of grove or orchard, poultry and eggs, while owned by the producer of the products, including landlord where the relation of landlord and tenant or landlord and cropper is involved, from the farm to a market, warehouse, dairy or mill, or from one market, warehouse, dairy or mill to another market, warehouse, dairy or mill;

(b) For the transportation of agricultural and dairy products, livestock, farm machinery, feed, fertilizer, and other materials and supplies essential to farm operation, from market or shipping terminal to farm;

(c) For both the purposes described in paragraphs (a) and (b) of this subsection; or

(d) For the transportation of agricultural and dairy products from farm to regularly organized fairs and exhibits and return;

(3) Motor vehicles used exclusively as church buses and while operated in the transportation of persons to and from a church or place of worship or for other religious work under the supervision and control and at the direction of church authorities;

(4) Motor vehicles used exclusively for the transportation of property belonging to a nonprofit cooperative association or its members where the vehicle is owned or leased exclusively by the association;

(5) Motor vehicles owned in whole or in part by any person and used by such person to transport petroleum products and those incidental supplies used or sold in connection with the wholesale or retail sale or such petroleum products of which petroleum products or incidental supplies, such person is the owner, lessee, consignee, or bailee; provided, however, that such transportation is for the purpose of sale, lease, rent, or bailment, and is an incidental adjunct to an established private business owned and operated by such person in the furtherance of any commercial enterprise other than the business of transportation of property for hire;

(6) Motor vehicles used in pick-up or delivery service within a city or within a city and its commercial area for a carrier by rail;

(7) Motor vehicles used exclusively for the transportation of coal from the point at which such coal is mined to a railhead or tipple where the railhead or tipple is located at a point not more than fifty (50) air miles from the point at which the coal is mined;

(8) Motor vehicles used as ambulances in transporting wounded, injured, or sick persons or animals.

(9) Motor vehicles used by transit authorities as created and defined in KRS chapter 96A except as required by KRS 96A.170.

(10) Motor vehicles having a seating capacity of fifteen (15) or fewer passengers and while transporting persons between their places of residence, on the one hand, and, on the other, their places of employment, provided the driver himself is on his way to or from his place of employment, and further provided that any person who operates or controls the operation of vehicles hereunder of which said person is the owner or lessee, and any spouse of said person and any partnership or corporation with said person or his spouse having an interest therein doing such, shall be eligible to so operate an aggregate number of not more than one (1) vehicle on other than a nonprofit basis.

SECTION 6. A NEW SECTION OF KRS CHAPTER 281 IS CREATED TO READ AS FOLLOWS:

(1) The term "nonprofit bus certificate" means a certificate authorizing a private, nonprofit corporation or a community action corporation, not otherwise exempt from the provisions of this chapter, to operate motor bus or van equipment to transport passengers for hire, on other than a casual or occasional basis, between certain points within a given county or counties over regular or irregular routes, or a combination of such routes. A nonprofit bus system shall be deemed "for hire" if there is charged, contributed or received any compensation or grant of funds from the passengers themselves, individually or as a group, or from any out-

side source paying for or subsidizing, in whole or in part, the operating expenses attributable to the transportation services being provided, but a holder of a nonprofit bus certificate shall be deemed to be exempt from rates and services regulation by the bureau, as provided for by KRS 281.675 through 281.705, unless otherwise provided therein.

(2) If any intracity passenger service is proposed by an applicant for a nonprofit bus certificate, a letter or resolution of support from the affected city shall be filed with the application.

(3) Any nonprofit bus certificate issued by the bureau shall describe the passenger service or services authorized to be performed, including the types of passengers who may be transported if service is not to be held out to the general public, the points between which or the area within which such passengers may be transported, and whether regular or irregular route operations, or both, are authorized. If regular route operations are to be authorized, the certificate may merely set forth that such are permitted between certain points or within a certain area, leaving it to the certificate holder to develop its own specific route structures and schedules.

(4) Any private, nonprofit corporation or community action corporation engaged, as of the effective date of this Act, in the for-hire transportation of persons, as defined in subsection (1), pursuant to a valid certificate of public convenience and necessity or permit shall, upon application, be entitled to the issuance of a nonprofit bus certificate to thereafter authorize a continuation of the same operations. Any such corporation then having an application pending for a certificate of public convenience and necessity or permit shall be entitled to a conversion of such, consistent with principles of procedural due process, to one for a nonprofit bus certificate.

Section 7. KRS 281.625 is amended to read as follows:

(1) (a) Upon the filing of an application for a certificate or permit or for amendment or for sale, transfer or lease or for change in route or for abandonment of a certificate or permit, the bureau shall, within a reasonable time, fix the time and place for a hearing.

(b) Upon the filing of a petition for the removal of a commodity from the exempted list, the same shall be held in the bureau and accumulated with others filed, if any, and at the end of each quarter of the year, the bureau shall fix the time and place for a hearing on petitions filed in the preceding quarter.

(c) At least thirty (30) days before the hearing, the bureau shall mail written notice of the hearing, and the right to file a protest, in accordance with the regulations of the bureau, to the applicant and every authorized carrier, including railroads, serving any part of the route proposed to be served or abandoned by the applicant. The bureau may also give similar notice to any other person, who, in the opinion of the bureau, may be interested in or affected by the granting of the application.

(2) At the time fixed in the notice the bureau shall hold a public hearing on the application. Any person having interest in the subject matter may, in accordance with the regulations prescribed therefor, file a protest to the granting, in whole or in part, of the application.

(3) *If the application is for a nonprofit bus certificate and no protest is filed, the bureau may grant the certificate without a hearing, provided the provisions of subsection (3) of Section 7 of this Act are met.*

(4) The bureau, may, if the application is solely for rights previously granted by the interstate commerce commission, dispense with the holding of a hearing.

(5) [(4)] Persons engaged in the transportation in interstate commerce in Kentucky of any commodity exempted by the interstate commerce commission from regulation shall be subject to the same Kentucky requirements and regulations as if such persons were transporting commodities not exempted by the interstate commerce commission, except that in lieu of filing or registering with the bureau a certificate of public convenience and necessity as issued by the interstate commerce commission, such persons shall apply to the bureau for a permit or certificate restricted to interstate commerce and such a permit or certificate may be issued without a hearing.

(6) [(5)] If such applicant has been granted an irregular route common carrier certificate by the interstate commerce commission, the bureau may grant an irregular route common carrier certificate restricted to operation in interstate commerce, and on the granting of same, it shall notify the department of revenue of the applicant's operation.

(7) [(6)] The bureau shall promulgate regulations designating as exempted commodities those commodities or property which are normally and usually not transported by common carriers by motor vehicle and may grant an irregular route common carrier certificate upon application, to transport only such exempted commodities without the holding of a hearing; and the bureau may also remove any commodity so designated at any time with a hearing.

(8) [(7)] The bureau may grant a permit, upon application, to operate a U-drive-it without the holding of a hearing.

Section 8. KRS 281.630 is amended to read as follows:

(1) A certificate *of public convenience and necessity* shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation covered by the application, if it is found that the applicant is fit, willing and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements and the rules and regulations of the bureau thereunder, and further that the existing transportation service is inadequate, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity, and that the proposed operation, to the extent authorized by the certificate, will be consistent with the public interest and the transportation policy declared in this chapter; otherwise such application shall be denied, provided, however, that nothing herein shall be construed so as to require the bureau to give, to any existing carrier authorized to render service to, from or between any point on the route proposed to be served by the applicant, any notice regarding the quality or quantity of its service to, from or between such points or to require the bureau to give to such existing carrier any opportunity to improve its existing service or to render the service found to be needed before the issuance of a certificate to the applicant.

(2) In granting a certificate, *of public convenience and necessity*, the order, among other things, shall specify the route or routes of service and territory to be served, provided that where the certificate to be granted specifies a route or routes or portion of a route or routes common to a certificate or certificates authorizing the same type of operation held by the applicant, all such certificates shall constitute but a single operating authority over that portion of the route or routes common to the certificates. The order granting a certificate shall not limit the number of vehicles to be operated by the motor carrier except that, in the granting of a certificate for the operation of taxicabs, the order shall specify the maximum number of taxicabs to be operated thereunder.

(3) *A nonprofit bus certificate shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application if it appears from the application and any hearing held thereon that the applicant is fit, willing and able properly to render the proposed service and to conform to the applicable provisions of this chapter and the rules and regulations of the bureau thereunder, that the proposed service, to the extent authorized by the certificate, will not unreasonably compete with or divert business from any authorized carrier of passengers then adequately serving the same area, and further that the proposed operation, to the extent authorized by the certificate, will serve the public interest; otherwise such application shall be denied. If no protest to the application is filed, it shall be taken to mean that no unreasonable competition or diversion will occur, and the commissioner may, if satisfied from the application that the applicant is a fit one and that the proposed operation will serve the public interest, issue a nonprofit bus certificate without a hearing.*

(4) A carrier shall be entitled to have issued to it by the department as many certificates, and of such types, as will cover its entire authorized operation.

(5) [(4)] A permit shall be granted to any qualified applicant therefor authorizing in whole or in part the operations covered by the application, if it appears from the application and the hearing held thereon that the applicant is fit, willing and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of this chapter and the lawful requirements, rules and regulations of the bureau thereunder, and that the proposed operation to the extent authorized by the permit will be consistent with the public interest and the transportation policy declared in this chapter, and that it will not unreasonably impair the efficient public service of any authorized common carrier than adequately serving the same territory, and if it further appears that the existing transportation service is inadequate, and that it appears that the proposed service is needed; otherwise such application shall be denied. The bureau shall specify in the permit the business of the contract carrier covered thereby and the scope thereof, and shall attach to it at the time of is-

suance, and from time to time thereafter, such reasonable terms, conditions and limitations consistent with the character of the holder as a contract carrier as are necessary to carry out, with respect to the operations of such carrier, the requirements established by the bureau.

(6) [(5)] Amendment or change of route or abandonment of a certificate or permit shall be granted upon the same basis that an original certificate or permit is granted.

(7) [(6)] Any certificate or permit, *or portion thereof,* may be sold, assigned, leased or transferred, after a hearing and notice to interested parties as provided for in KRS 281.625 *and subject to such terms and conditions and such modifications as the bureau shall find to be just and reasonable,* provided the transferee is fit, willing and able to render the proposed service *and the proposed transaction, subject to such terms, conditions and modifications as the bureau may impose, will not* [, unless it would] be against the public interest, and provided further that the commissioner may approve the sale and transfer of a certificate or permit, *or portion thereof,* without a hearing if, after due notice of the proposed sale or transfer is given to all interested parties in accordance with the rules and regulations of the bureau, no protest is filed to the proposed sale or transfer and the commissioner believes that it will be in the public interest.

(8) [(7)] For the purpose of this section, a transfer of the controlling stock of a corporation owning a certificate or permit may be considered a transfer of said certificate or permit.

(9) [(8)] Upon the consummation of a merger or consolidation of motor carriers as effected under the provisions of KRS Chapter 271A, the surviving or new corporation, as the case may be, shall own and possess all of the certificates, permits, authorizations, licenses, rights, privileges, franchises and properties owned or possessed by each of such motor carriers; and if such merger or consolidation is set aside, the certificates, permits, authorizations, licenses, rights, privileges, franchises and properties acquired by the surviving or new corporation through the merger or consolidation shall become revested in the corporation from which acquired, unless disposed of, subject to such indebtedness and liens as may be equitable, and all other properties of the surviving or new corporation shall become vested in the constituent corporation in such manner as may be fair and equitable.

(10) [(9)](a) Notwithstanding the provisions of subsection *(4)* [(3)] of this section, where a motor carrier has been granted two (2) or more certificates or permits authorizing the same type of operation over a route or routes or a portion of a route or routes common to two (2) or more of the certificates or permits, the carrier shall be deemed to possess only one operating authority over that portion of the routes common to the certificates or permits.

(b) The bureau is authorized to recall any certificates and to reissue one or more certificates covering the exact authority.

Section 9. KRS 281.632 is amended to read as follows:

(1) To enable the provision of service for which there is an immediate and urgent need to or from a point or points or within a territory having no carrier service capable of meeting such need, the bureau, may, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or contract carrier by motor vehicle *or by an applicant for a nonprofit bus certificate,* as the case may be. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the bureau shall specify but for not more than an aggregate of one hundred eighty (180) days, and shall create no presumption that corresponding permanent authority will be granted thereafter.

(2) Pending the determination of an application filed with the bureau for approval of a consolidation or merger of the properties of two (2) or more motor carriers, or of a purchase, lease, or contract to operate the properties of one or more motor carriers, the bureau may, in its discretion, and without hearings or other proceedings, grant temporary approval, for a period not exceeding one hundred eighty (180) days, of the operation of the motor carrier properties sought to be acquired by the persons proposing in such pending application to acquire such properties, if it shall appear that failure to grant such temporary approval may result in destruction of or injury to such motor carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

Section 10. KRS 281.675 is amended to read as follows:

(1) Every rate, fare and charge demanded or received by any *certificate holder* [common carrier or irregular route common carrier] shall be just and reasonable, and every *holder of a certificate* [such carrier] shall furnish adequate, efficient, safe and reasonable service.

(2) Every contract made by a contract carrier for transportation service shall be just and reasonable, and shall be comparable to the rate charged by any common carrier for the same or similar service, and such contract carrier shall furnish adequate, efficient, safe and reasonable service.

Section 11. KRS 281.635 is amended to read as follows:

Notwithstanding anything contained in this chapter:

(1) All cities of the commonwealth are vested with the power to sell franchises or, where no franchise is sold, grant authorizations for the operation of city buses over their streets and highways; Provided, however, no person shall apply for or obtain any such franchise or authorization from any city without a prior finding by the bureau of vehicle regulation, after a hearing, that there is a demand and necessity for the service sought to be rendered, which finding shall be valid and effective for a period of one (1) year from and after the date thereof, exclusive of any delay due to the order of any court. Upon certification by the bureau to such city that there is a demand and necessity for the service sought to be rendered, any city may award any duly qualified person a franchise or authorization covering the proposed operation. Upon acquiring such a franchise or authorization, the holder thereof shall apply to the bureau of vehicle regulation for a city bus certificate which shall be issued to the holder of the franchise or authorization without a hearing. The governing body of any city of the first *five (5)* [three] classes which does not have a city bus service, may determine that there is a demand and necessity for a city bus service, and may thereafter apply to the bureau of vehicle regulation for a city bus certificate to be operated by said city which may be issued without a hearing, provided that the bureau determines that it will be in the public interest. Unless a certificate is exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court, the authority conferred by the issuance of the certificate of convenience and necessity shall be void.

(2) The applicant for a certificate or renewal of a certificate to operate a city bus shall at the time of application file with the bureau a map or maps showing the route or routes and territory proposed to be served, together with a time schedule, and shall thereafter, during the license year, file only such additional maps or time schedules as the commissioner may require.

(3) The governing body of any city of the first four (4) classes in the commonwealth in which city buses operate shall have supervisory and regulatory power over such city buses, while operating in such city, and shall have authority to enforce all ordinances or regulations pertaining to routes, services, time schedules and operation of said city buses and the drivers thereof, provided that any interested party may appeal to the bureau from any action, finding or order of any such city within thirty (30) days after the entry of such action, finding or order, and a hearing shall be held before the bureau in the same manner as other hearings are held as provided for in this chapter; Provided, however, That any such action, finding or order of any such city shall be sustained if there is substantial evidence or reason to support it; otherwise the bureau shall make such orders as it deems necessary and proper. However, where a carrier's entire operation is confined to intracity transportation within the corporate limits of a single city, there shall be no appeal to the bureau from the actions, findings or orders of such a city. Provided further, That where any city bus is subject to the regulatory powers of more than one (1) city and such regulations are in conflict or such as to impede the transportation facilities serving such cities, or the carrier is failing to furnish safe, adequate and convenient service to the public, the bureau may, upon complaint or on its own initiative, call a hearing and enter such orders as are necessary and proper.

(4) The governing body of any city of the first five (5) classes in the commonwealth in which taxicabs operate shall have supervisory and regulatory power over taxicabs certificated to operate in said city, and while operating in said city, and shall have authority to enforce all ordinances or regulations pertaining to the number and operation of taxicabs, provided that any interested party may appeal to the bureau from any action, finding or order of any city within thirty (30) days after the entry of such action, finding or order, and a hearing shall be held before the bureau in the same manner as other hearings are held as provided for in this chapter; Provided, however, That any such action, finding or order of any such city shall be sustained if there is substantial evidence or reason to support it; otherwise the bureau shall make such orders as it deems necessary and proper. However, where a carrier's entire operation is confined to intracity transportation within the corporate limits of a single city, there shall be no appeal to the bureau from the actions, findings or orders of such a city.

(5) The governing body of any city of the first five (5) classes in the commonwealth is hereby vested with the exclusive power to prescribe the qualifications with respect to the health, vision, sobriety, intelligence, ability, moral character and experience of the drivers of taxicabs certificated to operate in said city, and while operating in said city, and may issue permits for qualified drivers. However, any taxicab driver must also possess a Kentucky operator's license.

(6) Until such time as any city of the commonwealth enacts such ordinances or prescribes such rules and regulations as may be reasonably necessary to exercise the prior powers herein delegated to such cities respecting the supervision and regulation of city buses, taxicabs and taxicab drivers, the bureau shall possess such powers and may, by regulation, prescribe such rules as may be reasonably necessary to supervise and control city buses, taxicabs and taxicab drivers, having regard for the public safety and the public need for service.

(7) If any city fails to exercise any of the authority granted it herein, such authority shall be vested in the bureau.

(8) The bureau may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate that has or may be fixed by any contract, franchise or agreement between the holder of any city bus certificate and any city, and all rights and obligations arising out of such contract regulating any such rate shall be subject to the jurisdiction and supervision of the bureau, but no such rate shall be changed nor any contract, franchise or agreement affecting it be abrogated or changed until a hearing has been had.

Section 12. KRS 281.700 is amended to read as follows:

(1) No common carrier shall abandon or change any route or service, except upon an application heretofore provided for; except, however, if it becomes necessary, on account of the condition of the highways or other emergency, a common carrier may make temporary changes in route, service or schedules by notifying the bureau of such change. However, any carrier operating under a suburban bus certificate may make such changes in routes and schedules as may be necessary for the public convenience and shall not be required to notify the bureau of such changes, unless such changed condition is to continue for a period longer than ten (10) days, in which event the carrier shall notify the bureau of the additional time that it desires such change or changes to remain in effect, and the reason therefor, and the bureau may grant such extension of time without a hearing.

(2) If after the granting of a certificate *of public convenience and necessity, a nonprofit bus certificate* or a permit, operation is not begun within sixty (60) days thereof, said certificate or permit will become null and void, and cannot be reinstated; Provided, however, That the bureau may grant an additional time to begin such operation, provided application therefor is made within the sixty-day period.

(3) If, after *any* [a] motor carrier has operated in good faith, there is an abandonment of the whole or any part of said operation, the bureau may notify said motor carrier to immediately begin such operation, and if such motor carrier fails to do so within thirty (30) days thereof, the bureau may enter an order cancelling said certificate or permit, with or without a hearing, or it may enter an order requiring the motor carrier to operate such abandoned route.

Section 13. KRS 281.720 is amended to read as follows:

The bureau shall prescribe and furnish a distinguishing plate or plates, which shall at all times be displayed on each motor vehicle authorized to be operated under a certificate *of public convenience and necessity* or permit. Where a carrier is the holder of one or more city bus certificates, or the carrier holds both a city bus certificate or certificates and a suburban bus certificate or certificates, the bureau shall issue to it for each vehicle operated thereunder a city bus license plate which shall authorize the operation of said vehicle under either one or all the certificates so held. No person shall transfer such plates from one motor vehicle to another except by the authority and with the consent of the bureau.

Section 14. KRS 186.281 is amended to read as follows:

(1) On or before January 1 of each year, and as a condition precedent to the use of the highways, every motor carrier primarily engaged in transporting passengers for hire shall pay to the department of motor

transportation for the privilege of using the highways an annual tax upon each motor vehicle so used, as follows: Four dollars and fifty cents ($4.50) for each regular seat for the first thirty-one (31) seats, and eight dollars ($8.00) for all seats in excess of thirty-one (31); except as provided in subsection (2) of this section, *except that holders of nonprofit bus certificates shall be exempt from payment hereunder* and except that taxicabs, city buses, industrial buses, suburban buses, and U-Drive-Its, shall pay the fees set forth in subsection (4) of this section.

(2)(a) Any such motor carrier engaged in regular route interstate commerce or combined interstate and intrastate commerce and operating two (2) or more vehicles in Kentucky shall be required to pay only that portion of a tax imposed by subsection (1) as the number of miles operated by such fleet of motor vehicles in Kentucky bears to the total miles operated by such fleet in any license year, or portion thereof.

(b) Any such motor carrier shall prior to January 1 of each license year, and as a prerequisite to operating on the highways of this state, obtain a permit from the department of motor transportation and at that time shall pay its estimated tax hereunder, as determined by the department of motor transportation's applicable regulations, and execute bond for any additional tax which might be due, with or without surety thereon, as the department of motor transportation in its discretion and according to its regulations might require.

(c) The department of motor transportation is authorized and directed to promulgate such rules and regulations as may be necessary to effectuate the apportionment of taxes prescribed in subsection (2). Such regulations shall provide that the estimate of such taxes for any license year shall be that proportion that would have been due in the prior license year and shall further provide for a license year-end accounting with a system of credit or deficiency assessment in any amount by which the estimate differs from the tax due hereunder.

(3) Every motor carrier primarily engaged in transporting passengers for hire shall pay to the department of motor transportation for the privilege of using the highways, including deadhead mileage, a mileage tax as follows: Buses with one (1) to twenty (20) regular seats inclusive, none; buses with twenty-one (21) to twenty-nine (29) regular seats, inclusive, one-fourth (1/4) of a cent per mile; buses with thirty (30) to thirty-four (34) regular seats, inclusive, one-half (1/2) of a cent per mile; buses with thirty-five (35) to thirty-nine (39) regular seats, inclusive, three-fourths (3/4) of a cent per mile; buses with forty (40) regular seats or more, one cent per mile, *except that holders of nonprofit bus certificates shall be exempt from payment hereunder and* except that taxicabs, city buses, industrial buses, suburban buses and U-Drive-Its shall pay the fees set forth in subsection (4) of this section, in addition to all fees set forth in KRS 186.050 (1) if applicable.

(4) Taxicabs, city, suburban and industrial buses, and U-Drive-Its, shall pay the following annual license fees:

Each taxicab	$3.00 per seat
Each city bus	5.00 per vehicle
Each industrial bus	2.50 per seat
Each suburban bus	5.00 per vehicle
Each U-Drive-It	
passenger car	2.50 per seat

(5) All cities of the commonwealth are hereby authorized to impose an annual license tax on all taxicabs certificated by the department of motor transportation for operation in said city, which license tax shall not exceed thirty dollars ($30.00) per taxicab.

Approved March 30, 1978

S E N A T E O F M A R Y L A N D

81r2350 No. 440

By: Senators Hoyer, McGuirk, Bozick, Conroy, Malkus, Clark, Lapides, Hopkins, Gilchrist, Thomas, ~~and~~ Coolahan, Dorman, Wiser, Wagner, Bonvegna, ~~and Douglass,~~ Douglass, and Cushwa

Introduced and read first time: January 12, 1973

Assigned to: Economic Affairs

Committee report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: February 3, 1978

CHAPTER 230

AN ACT concerning

Used Oil Recycling

FOR the purpose of providing a system for the collection and disposal of used oil for recycling; defining certain terms; prohibiting certain actions; giving certain authority to the Secretary of Natural Resources; providing for penalties; and generally dealing with used oil disposal and recycling and used oil products.

BY adding to

Article - Natural Resources
Section 8-1411.1
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article - Natural Resources

8-1411.1.

(A) DEFINITIONS - IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(1) "USED OIL" MEANS A PETROLEUM-BASED OR SYNTHETIC OIL AS AN ENGINE LUBRICANT, ENGINE OIL, MOTOR OIL,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken by amendment.

OR LUBRICATING OIL FOR USE IN AN INTERNAL COMBUSTION ENGINE, OR ~~AS A PRODUCT FOR USE IN LUBRICATING~~ A LUBRICANT FOR MOTOR VEHICLE TRANSMISSIONS, GEARS, OR AXLES WHICH THROUGH USE, STORAGE OR HANDLING HAS BECOME UNSUITABLE FOR ITS ORIGINAL PURPOSE DUE TO THE PRESENCE OF IMPURITIES OR LOSS OF ORIGINAL PROPERTIES.

(2) "RECYCLE" MEANS TO PREPARE USED OIL FOR REUSE AS A PETROLEUM PRODUCT OR PETROLEUM PRODUCT SUBSTITUTE BY REFINING, RE-REFINING, RECLAIMING, REPROCESSING, OR OTHER MEANS OR TO USE USED OIL IN A MANNER THAT SUBSTITUTES FOR A PETROLEUM PRODUCT OR PETROLEUM PRODUCT SUBSTITUTE MADE FROM NEW OIL, PROVIDED THAT THE PREPARATION OR USE IS OPERATIONALLY SAFE, ENVIRONMENTALLY SOUND, AND COMPLIES WITH ALL LAWS AND REGULATIONS.

(B) CITATION - THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE MARYLAND USED OIL RECYCLING ACT.

(C) DECLARATION OF FINDINGS AND POLICY - THE LEGISLATURE FINDS THAT A SUBSTANTIAL NUMBER OF GALLONS OF USED OIL IS GENERATED EACH YEAR IN THE STATE. USED OIL IS A VALUABLE PETROLEUM RESOURCE WHICH CAN BE RECYCLED. IN SPITE OF THE POTENTIAL FOR RECYCLING, SIGNIFICANT QUANTITIES OF USED OIL ARE WASTEFULLY DISPOSED OF OR IMPROPERLY USED BY MEANS WHICH POLLUTE THE WATER, LAND, AND AIR, AND ENDANGER PUBLIC HEALTH AND WELFARE. USED OIL SHOULD BE COLLECTED AND RECYCLED TO THE MAXIMUM EXTENT POSSIBLE, BY MEANS WHICH ARE ECONOMICALLY FEASIBLE AND ENVIRONMENTALLY SOUND, IN ORDER TO CONSERVE IRREPLACEABLE PETROLEUM RESOURCES, PRESERVE AND ENHANCE THE QUALITY OF NATURAL AND HUMAN ENVIRONMENTS, AND PROTECT PUBLIC HEALTH AND WELFARE.

(D) PUBLIC EDUCATION - THE DEPARTMENT SHALL CONDUCT A PUBLIC EDUCATION PROGRAM TO INFORM THE PUBLIC OF THE NEEDS FOR AND THE BENEFITS OF COLLECTING AND RECYCLING USED OIL IN ORDER TO CONSERVE RESOURCES AND PRESERVE THE ENVIRONMENT. AS PART OF THIS PROGRAM, THE DEPARTMENT SHALL:

(1) REQUIRE PERSONS REGULARLY ENGAGED IN THE BUSINESS OF SELLING LUBRICATING OR OTHER OIL IN CONTAINERS FOR USE OFF THE PREMISES, TO POST AND MAINTAIN AT OR NEAR THE POINT OF DISPLAY OR SALE DURABLE AND LEGIBLE SIGNS INFORMING THE PUBLIC OF THE IMPORTANCE OF PROPER COLLECTION AND DISPOSAL OF USED OIL, AND HOW AND WHERE USED OIL MAY BE PROPERLY DISPOSED OF, INCLUDING, WHENEVER FEASIBLE, LOCATIONS AND HOURS OF OPERATION OF CONVENIENTLY LOCATED COLLECTION FACILITIES;

(2) ESTABLISH, MAINTAIN, AND PUBLICIZE A USED OIL INFORMATION CENTER THAT WILL EXPLAIN LOCAL, STATE, AND FEDERAL LAWS AND REGULATIONS GOVERNING USED OIL AND WILL INFORM HOLDERS OF QUANTITIES OF USED OIL ON HOW AND WHERE, AND IN WHAT MANNER USED OIL MAY BE PROPERLY DISPOSED OF;

(3) ENCOURAGE THE ESTABLISHMENT OF USED OIL COLLECTION AND RECYCLING PROGRAMS AND PROVIDE TECHNICAL ASSISTANCE TO PERSONS ORGANIZING THESE PROGRAMS; AND

(4) ENCOURAGE THE USE OF LABELING FOR OIL CONTAINERS TO INFORM THE USER OF THE IMPORTANCE OF PROPER COLLECTION AND DISPOSAL OF USED OIL.

(E) COLLECTION FACILITIES – THE DEPARTMENT ~~SHALL~~ MAY DESIGNATE MARYLAND STATE INSPECTION FACILITIES AND MAY DESIGNATE ANY OTHER FACILITIES IT DEEMS APPROPRIATE WHICH ARE SAFE AND CONVENIENTLY LOCATED AND WHICH AGREE TO SERVE AS COLLECTION FACILITIES FOR THE DEPOSIT OF USED OIL. THERE IS NO COST TO A PERSON MAKING THE DEPOSIT. EACH DESIGNATED FACILITY SHALL POST AND MAINTAIN A DURABLE AND LEGIBLE SIGN READILY VISIBLE IN AN APPROPRIATE PLACE WHICH INDICATES THE FACILITY IS DESIGNATED AS A USED OIL DISPOSAL LOCATION. THE DESIGNATED FACILITY SHALL INSTALL AND MAINTAIN ON THE PREMISES USED OIL COLLECTION CONTAINERS, PROPERLY SHELTERED AND PROTECTED TO PREVENT SPILLAGE, SEEPAGE, OR DISCHARGE OF THE USED OIL INTO THE WATER OF THE STATE, AND OF SUFFICIENT SIZE TO HANDLE RETURNS OF USED OIL AND USED OIL CONTAINERS. EACH DESIGNATED FACILITY REGULARLY SHALL REMOVE AND DISPOSE OR HAVE REMOVED AND DISPOSED BY USED OIL COLLECTORS, THE ACCUMULATED OIL IN A MANNER AS REQUIRED BY LAW.

(F) DISPOSAL – (1) EXCEPT AS PROVIDED UNDER §8–1413.2 OF THIS TITLE OR ANY OTHER PROVISIONS OF LAW, AFTER JANUARY 1, 1979, A PERSON MAY NOT DISPOSE OF OR CAUSE TO BE DISPOSED OF ANY USED OIL BY DISCHARGE, DUMP, OR DEPOSIT INTO SEWERS, DRAINAGE SYSTEMS, SURFACE OR GROUND WATERS, ANY WATERS IN THIS STATE, OR BY INCINERATION OR AS REFUSE, OR ONTO ANY PUBLIC OR PRIVATE LAND UNLESS SUCH LAND IS DESIGNATED BY THE STATE OR BY ANY OF ITS AGENCIES OR POLITICAL SUBDIVISIONS AS A COLLECTION FACILITY FOR SUCH DISPOSAL, DUMPING, OR DEPOSIT AND THE USED OIL IS PLACED IN A RECEPTACLE OR CONTAINER INSTALLED OR LOCATED ON SUCH PROPERTY.

(2) THE PROVISIONS OF THIS SUBSECTION DO NOT INCLUDE THE APPLICATION OF USED OIL TO ROADS FOR MAINTENANCE PURPOSES AS AUTHORIZED BY LAW, OR THE USE OF USED OIL AS A FUEL, OR THE USE OF USED OR RECYCLED OIL FOR MAINTENANCE OR LUBRICATION OF AGRICULTURAL EQUIPMENT.

(G) REPORT TO GENERAL ASSEMBLY – THE DEPARTMENT SHALL PREPARE AND SUBMIT AN ANNUAL REPORT TO THE GENERAL ASSEMBLY SUMMARIZING INFORMATION ON USED OIL COLLECTION AND RECYCLING, ANALYZING THE EFFECTIVENESS OF THE ACT'S PROVISIONS AND THEIR IMPLEMENTATION, AND MAKING RECOMMENDATIONS FOR ANY NECESSARY CHANGES IN THE PROVISIONS OR THEIR ADMINISTRATION.

(H) USED OIL PRODUCTS – (1) A PERSON MAY REPRESENT ANY PRODUCT MADE IN WHOLE OR IN PART FROM USED OIL TO BE SUBSTANTIALLY EQUIVALENT TO A PRODUCT MADE FROM NEW OIL FOR

A PARTICULAR END USE IF THE PRODUCT CONFORMS FULLY WITH THE SPECIFICATIONS APPLICABLE TO THAT PRODUCT MADE FROM NEW OIL ~~AND~~ OR IF SUBSTANTIAL EQUIVALENCY HAS BEEN DETERMINED IN ACCORDANCE WITH RULES PRESCRIBED BY THE FEDERAL TRADE COMMISSION UNDER SECTION 383(D)(1)(A) OF THE ENERGY POLICY AND CONSERVATION ACT, P.L. 94-163. OTHERWISE, THE PRODUCT MUST BE REPRESENTED AS MADE FROM PREVIOUSLY USED OIL.

(2) ALL OFFICIALS OF THIS STATE AND ANY OF ITS AGENCIES OR OF ANY POLITICAL SUBDIVISIONS AND PERSONS HOLDING CONTRACTS WITH THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS SHALL ENCOURAGE AND TO THE EXTENT POSSIBLE REQUIRE THE PROCUREMENT AND PURCHASE OF RECYCLED OIL PRODUCTS REPRESENTED AS SUBSTANTIALLY EQUIVALENT TO PRODUCTS MADE FROM NEW OIL IN ACCORDANCE WITH THIS SECTION WHENEVER SUCH PRODUCTS ARE AVAILABLE AT PRICES COMPETITIVE WITH THOSE OF NEW OIL PRODUCED FOR THE SAME PURPOSE.

(I) PENALTIES - (1) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION OR ANY RULE OR REGULATION ISSUED PURSUANT THERETO, IN ADDITION TO ANY OTHER PENALTIES SPECIFICALLY PROVIDED BY LAW, SHALL BE SUBJECT TO A CIVIL PENALTY NOT EXCEEDING $250 FOR EACH VIOLATION.

(2) ANY PERSON WHO COMMITS A SECOND OR SUBSEQUENT VIOLATION OF ANY PROVISION OF THIS SECTION OR ANY RULE OR REGULATION ISSUED PURSUANT THERETO, IN ADDITION TO ANY OTHER PENALTIES SPECIFICALLY PROVIDED BY LAW, IS GUILTY OF A MISDEMEANOR AND UPON CONVICTION IN A COURT OF COMPETENT JURISDICTION, IS SUBJECT TO A FINE NOT EXCEEDING $1,000 OR IMPRISONMENT NOT EXCEEDING TWO MONTHS, OR BOTH, WITH COSTS IMPOSED IN THE DISCRETION OF THE COURT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
President of the Senate.

_____
Speaker of the House of Delegates.

81r1078 HOUSE JOINT RESOLUTION No. 10
(PRE-FILED)

By: Delegates Taylor and Byrnes
Requested: October 14, 1977
Introduced and read first time: January 11, 1978
Assigned to: Environmental Matters

Committee report: Favorable
House action: Adopted
Read second time: January 31, 1978

RESOLUTION NO. JR 2

HOUSE JOINT RESOLUTION

A House Joint Resolution concerning

Federal Coal Conversion Act

FOR the purpose of requesting the Maryland Congressional Delegation to support the Federal Coal Conversion Act (HR 5146).

WHEREAS, The General Assembly recognizes that the State of Maryland simultaneously has an abundant supply of coal that can be used to produce energy to heat buildings and generate electricity and the technology to maintain air quality standards should coal burning facilities be installed in buildings, factories, and electric generating plants; and

WHEREAS, The United States Congress is currently considering HR 5146 known as the Federal Coal Conversion Act, which would require the large industrial firms which burn oil or gas to produce energy to convert to coal burning facilities; and

WHEREAS, While we are aware of the problems with the burning of coal for energy-producing purposes, it appears that in the near future as much coal as possible will have to be burned to meet our energy needs, even with the most spectacular success in conservation, public acceptance of nuclear power, and the development of solar and other energy resources; and

WHEREAS, The federal bill contains important provisions to help offset the high costs of installation of expensive coal burning and handling equipment, as well as the costs of the installation of the necessary air pollution control equipment; and

EXPLANATION:
Underlining indicates amendments to the resolution.
~~Strike out~~ indicates matter stricken by amendment.

WHEREAS, Most significantly, the proposed legislation will provide an excellent stimulus to Maryland's coal industry, which, in turn, will assist in the improvement of the State's economic posture; now, therefore, be it

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Maryland Congressional Delegation is urged to support the passage of HR 5146, the Federal Coal Conversion Act; and be it further

RESOLVED, That a copy of this Resolution be sent to the Maryland Congressional Delegation: Senators Charles McC. Mathias, Jr. and Paul S. Sarbanes, Senate Office Building, Washington, D.C. 20510; and Representatives Robert E. Bauman, Clarence D. Long, Barbara A. Mikulski, Marjorie S. Holt, Gladys N. Spellman, Goodloe E. Byron, Parren J. Mitchell, and Newton I. Steers, Jr., House Office Building, Washington, D.C. 20515.

Approved:

_____
Acting Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

Signed into law August 7, Chapter 740

STATE OF NEW YORK

S. 8147—A A. 10578—A

Cal. No. 1206

SENATE-ASSEMBLY

February 28, 1978

IN SENATE—Introduced by Sens. B. C. SMITH, ANDERSON, BERNSTEIN, DUNNE, GALIBER, HALPERIN, MARCHI, PADAVAN, PATERSON, PISANI, STAFFORD, WINIKOW—read twice and ordered printed, and when printed to be committed to the Committee on Conservation and Recreation—reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report and ordered reprinted, retaining its place in the order of second report

IN ASSEMBLY—Introduced by M. of A. KOPPELL—Multi-Sponsored by—M. of A. BIANCHI, CONNOR, DeSALVIO, FINNERAN, GRANNIS, HARENBERG, HOCHBRUECKNER, HOYT, McGEE, E. C. SULLIVAN, YEVOLI, ORAZIO—read once and referred to the Committee on Environmental Conservation—reported and referred to the Committee on Ways and Means—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, the energy law, the general business law, and the highway law, in relation to fostering the conservation of petroleum resources and the abatement of air and water pollution by the state, the political subdivisions and its citizens by providing for a statewide system of encouraging the reclamation, rerefining and reuse of used oils

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent. The legislature hereby finds and declares that about one hundred ten million gallons of oil are consumed in New York state each year, with about fifty-five million gallons being collectible waste oil. Over half of this waste oil is dumped into the state's environment and another third is burned as fuel. This waste oil, which contributes up to fifteen percent of all oil entering our waterways, contains many toxic substances, particularly heavy metals, and constitutes a hazard to the environment and to human health. Faced with the inflationary impact of increased oil costs and an accompanying shortage of lubricating oil, New York state can turn an environmental and health hazard into a valuable resource. At current prices, rerefined lubricating oil still provides a significant margin of profit. Rerefining of waste oil requires reconcentrating the oil for collection and delivery to a rerefinery. The present

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

LBD8-29-291A

uncoordinated collection system results in less than twenty percent of the waste oil reaching a rerefinery. Existing rerefining capacity can handle the waste oil generated in New York state. Rerefined products can be profitably produced and can be competitive with comparable virgin oil products with no economic dislocation and with definite advantages to the economy of the state. In order to promote resource recovery systems which preserve and enhance the quality of air, water, and land resources it is the purpose of this act to establish an effective program to promote the collection and rerefining of used oil. The state energy office should be able to accomplish the necessary promotion of rerefined products within existing manpower and budgetary levels by redirecting existing public relations activities.

Market acceptance of rerefined oil as a lubricant has been poor in the past despite evidence that it can be equivalent to virgin oil in all relevant properties. The National Bureau of Standards is currently reviewing the characteristics of and label requirements for waste oil. Appropriate federal government action should help to accelerate consumer acceptance of rerefined oil and improve its marketability.

With over ninety percent of all service stations in the state now having waste oil retention facilities, there will be a minimal need for capital investment by retailers of oil. The retailers would not be required to keep records of volume of oil inventory, on-premises sales, off-premises sales, or used oil sold or otherwise disposed of since used oil collectors would maintain sufficient similar records.

§ 2. Article twenty-three of the environmental conservation law is hereby amended by adding a new title twenty-three to read as follows:

TITLE 23

REREFINING OF USED OIL

Section 23-2301. Definitions.
23-2303. Official encouragement for the use of rerefined oil.
23-2305. Regulations of the commissioner.
23-2307. Used oil retention facilities required; installation and maintenance.
23-2309. Records.
23-2311. Reports.

§ 23-2301. Definitions.

For the purposes of this title:

1. The term "used oil" means all petroleum-based lubricating oils which have through use been contaminated by physical or chemical impurities which have not been removed by subsequent rerefining;

2. The term "rerefined oil" means used oil which has been refined to remove the physical and chemical contaminants so that it shall be suitable for lube stock or fuel oil acquired through use, which by itself or when blended with new oil or additives is substantially equivalent or superior to new oil intended for the same purposes, as specified in the American Petroleum Institute's engine service classifications;

3. The term "new oil" means all oil which has been refined from virgin oil and may or may not contain additives, but has never been used, and does not include used oil or rerefined oil;

4. The term "lubricating oil" means all petroleum-based oil which:

a. is suitable for use as a lubricant, or

b. is sold for use as a lubricant;

5. The term "fuel oil" means all oil which has been refined, rerefined, or otherwise processed for the purpose of being burned to produce heat;

6. The term "on-premises oil changing operation" means any establishment that drains or collects used oil and replaces the used oil with new or rerefined lubricating oil;

7. The term "service establishment" means every automobile service station including gas only outlets and any other retail outlet and boat marina selling at least five hundred gallons of lubricating oil annually and having an on-premises oil changing operation;

8. The term "used oil collector" means any industrial waste scavenger as defined in title three of article twenty-seven of this chapter who controls a system which functions to retrieve or collect used oil for sale or transfer to oil rerefining facilities, or for other methods of disposal, but shall not include service establishments; and

9. The term "rerefiner" means any person who rerefines used oil to remove its physical and chemical contaminants.

§ 23-2303. Official encouragement for the use of rerefined oil.

All state and local officials shall act within their authority to encourage the use of rerefined oil. Such action shall include, but not be limited to:

1. Review of any laws, rules and regulations, ordinances or specifications which exclude the use of rerefined oil products that meet the standards as specified in the American Petroleum Institute's engine service classifications for oil products; and

2. Educating the private sectors of the economy as to the merits of rerefined oil, and the need for its use in order to reduce the drain on the nation's oil reserves and minimize the disposal of used oil in ways harmful to the environment.

§ 23-2305. Regulations of the commissioner.

The commissioner shall, after holding a public hearing with due notice, promulgate rules and regulations governing used oil collectors and rerefiners, in conformance with article twenty-seven of this chapter, to carry out the requirements of this title.

§ 23-2307. Used oil retention facilities required; installation and maintenance.

1. Every service establishment, and every other person, industrial operation, airport, trucking terminal, state or local government facility generating at least five hundred gallons of used oil annually, shall, no later than September first, nineteen hundred seventy-nine, provide and maintain used oil retention facilities, properly sheltered and protected to prevent spillage, seepage or discharge of used oil into storm or sanitary sewers or into the waters of the state. The used oil shall be periodically removed from the retention facility by an industrial waste scavenger duly registered with the department of environmental conservation. Industrial waste scavengers may dispose of used oil only by delivery to a rerefiner except where otherwise permitted by the commissioner. Rules and regulations defining proper design and maintenance of a retention facility may be promulgated by the commissioner.

2. Every service establishment shall be required to accept at no additional charge, used oil in quantities not exceeding five gallons per day from any individual; provided, however, this requirement does not apply if the used oil retention facility is temporarily filled to capacity.

§ 23-2309. Records.

Every used oil collector and rerefiner shall maintain complete records, in conformance with article twenty-seven of this chapter.

§ 23-2311. Reports.

The commissioner shall in consultation with the commissioners of the state energy office and transportation, submit a report to the governor and legislature not later than April first of each year, containing, but not limited to, the following information:

1. The amount of lubricating oil sold throughout the state in the previous year;

2. The amount and location of used oil collected and the amount received in the previous year;

3. The significance of used oil as a contributor to air and water pollution and other environmental problems;

4. The problems of the oil rerefining industry in carrying out the purposes of ttthis title, and possible solutions thereto, including but not limited to, new technological

requirements, marketing techniques and deficiencies and suggested tax incentive programs;

5. The estimated impact which the provisions of this title and other relevant provisions of law have had upon the conservation of petroleum resources; and

6. Proposals for further legislative action to aid in carrying out the purposes of this title.

§ 3. Article seventy-one of such law is hereby amended by adding a new title twenty-two to read as follows:

TITLE 22

ENFORCEMENT OF TITLE 23 OF ARTICLE 23

Section 71-2201. Enforcement of title 23 of article 23 of this chapter.

§ 71-2201. Enforcement of title 23 of article 23 of this chapter.

Administrative and civil sanctions. Any person who violates any of the provisions of, or who fails to perform any duty imposed by title 23 of article 23 except the duty to accept used oil pursuant to section 23-0307 or any rule or regulation promulated pursuant thereto, or any term or condition of any certificate or permit issued pursuant thereto, or any final determination or order of the commissioner made pursuant to this section shall be liable for a civil penalty not to exceed one thousand dollars for each such violation and an additional penalty of not more than five hundred dollars for each day during which such violation continues, to be assessed by the commissioner after a hearing or opportunity to be heard pursuant to the provisions of section 71-1709 of this chapter, and, in addition thereto, such person may by similar process be enjoined from continuing such violation and any permit or certificate issued to such person may be revoked or suspended or a pending renewal application denied.

2. Any person who refuses to accept used oil as required pursuant to subdivision two of section 23-2307 shall be liable for a civil penalty not to exceed one hundred dollars.

§ 4. Section 5-105 of the energy law is hereby amended by adding a new subdivision eighteen-a to read as follows:

18-a. To implement a program of public information to inform the public and private sectors of the state as to the merits of rerefined oil, and the need for its use in order to reduce the drain on the nation's oil reserves and minimize the disposal of used oil in ways harmful to the environment and to promote petroleum resource conservation, recovery and reuse by industry and the general public of the state.

§ 5. Subdivision five of section three hundred ninety-one-a of the general business law, as added by chapter one thousand thirty-one of the laws of nineteen hundred sixty-five, is hereby amended to read as follows:

5. Shall expose for sale, offer for sale, sell or store, in any manner so as to deceive or tend to deceive the purchaser as to the nature, origin, quality, grade or identity of the product so sold or offered for sale or shall sell, expose for sale, offer for sale, sell or store, in any manner so as to deceive or tend to deceive the purchaser of any lubricating oil, lubricants, mixtures of lubricants, any part of which had been once used for lubrication purposes and subsequently reclaimed, refined, **[**re-refined**]** *rerefined* or reconditioned without clearly indicating or setting forth such fact by means of the words **[**"reclaimed oil"**]** *"rerefined oil"* on the container pump or other distributing device used, *provided, however, that the provisions of this subdivision shall not apply to sales of any rerefined lubricating oils, lubricants or mixtures of lubricants which conform to performance standards as specified in the American Petroleum Institute's engine service classifications*; or

§ 6. Such law is hereby amended by adding a new section three hundred ninety-one-h to read as follows:

§ 391-h. Lubricating oils; container; notice required. On and after September first, nineteen hundred seventy-nine, it shall be unlawful for any person, firm or corporation to sell or expose for sale at wholesale or retail any lubricating oil

packaged in containers intended for sale at retail unless such container shall have imprinted thereon a notice in like or similar terms to the following:

"Notice

Used oil contains contaminants that are hazardous to the environment. In states where law prohibits the improper disposal of used lubricating oil, in order to assure proper disposal, please deposit used oil in the nearest available used oil retention facility".

A knowing violation of this section shall be punishable by a fine not to exceed five hundred dollars.

§ 7. The highway law is hereby amended by adding a new section ten-b to read as follows:

§ 10-b. Use of used oil for dust control. The commissioner shall, within one year from the effective date of this section, promulgate standards pertaining to the maximum permissible concentration of contaminants in filtered, rerefined, or untreated used oil that is used for dust control. Any person or other legal entity who sells such oil for such purpose shall certify, in a manner to be prescribed by the commissioner, that such oil meets these standards.

§ 8. This act shall preempt any local law or ordinance which interferes with the provisions contained therein.

§ 9. This act shall take effect September first, nineteen hundred seventy-eight.

(Special Session)

(Amended House Joint Resolution No. 1)

JOINT RESOLUTION

Relative to the Governor's January 23, 1977 declaration of a statewide energy emergency for natural gas.

WHEREAS, major distributors of natural gas in Ohio have stated there is a significant shortage of natural gas available to Ohio for the remainder of the winter season of 1976-1977, and

WHEREAS, natural gas is a principal energy source vital to Ohio's educational, commercial, industrial, residential, and social life, and

WHEREAS, Governor James A. Rhodes has declared, pursuant to section 122.86 of the Revised Code, a statewide energy emergency due to a lack of natural gas availability, and

WHEREAS, Speaker Vernal G. Riffe, Jr., and President Pro Tempore Oliver Ocasek have called a Special Session of the Ohio General Assembly to assist the Governor during this natural gas emergency situation, and

WHEREAS, industrial and commercial consumers of natural gas are presently subject to curtailment orders of supplies of natural gas while residential consumers, who consume in excess of 50% of Ohio's natural gas supply, are under no curtailment orders; now therefore be it

Resolved, that the General Assembly urges all Ohio individuals and all Ohio businesses who are consumers of natural gas to comply with the Governor's voluntary program to conserve Ohio's available existing natural gas supplies; and be it further

Resolved, that the General Assembly urges all retail stores, restaurants, grocery stores, taverns, recreational facilities, theaters, shopping malls and office buildings which do not use natural gas to heat their establishments, to join in this statewide effort to conserve by turning back their thermostats to 60° and by letting the public clearly know what energy sources are being used to heat their establishments; and be it further

Resolved, that the General Assembly, the Governor, and other elected officials work together with the President of the United States to solve this winter's natural gas shortage.

Vernal G. Riffe, Jr.,

Speaker _____ *of the House of Representatives.*

Richard F. Celeste,

President _____ *of the Senate.*

Adopted January 25, 1977.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 26th day of January A.D. 1977.

TED W. BROWN,
Secretary of State.

File No. 1.

78S1232A

State of Rhode Island, &c.

IN GENERAL ASSEMBLY

JANUARY SESSION, A. D. 19 78

RESOLUTION

REINSTATING THE LIFE OF AND EXTENDING THE REPORTING DATE OF THE SPECIAL LEGISLATIVE COMMISSION TO STUDY AND EVALUATE ECONOMICALLY FEASIBLE ENERGY CONSERVATION ALTERNATIVES, AS ENACTED BY RESOLUTION NO. 287 PASSED BY THE GENERAL ASSEMBLY AT ITS JANUARY SESSION, A.D. 1977, AND EFFECTIVE MAY 11, 1977, ENTITLED "RESOLUTION CREATING A SPECIAL LEGISLATIVE COMMISSION TO STUDY AND EVALUATE ECONOMICALLY FEASIBLE ENERGY CONSERVATION ALTERNATIVES."

RESOLVED, That the special legislative commission created by resolution No. 287 passed by the general assembly at its January session, A.D. 1977, and effective May 11, 1977, entitled "Resolution creating a special legislative commission to study and evaluate economically feasible energy conservation alternatives," is hereby reinstated and the same members are hereby appointed; and it is hereby authorized to continue its study and make a report to the general assembly on or before February 28, 1979; and be it further

RESOLVED, That the time for reporting authorized by resolution No. 287 passed by the general assembly at its January session, A.D. 1977, and effective May 11, 1977 be and the same is hereby rescinded.

NO. 228. AN ACT TO AMEND 32 V.S.A. § 5977(d), TO ADD 10 V.S.A. § 263(d), AND TO PROVIDE FOR CERTAIN APPROPRIATIONS FROM THE GENERAL AND HIGHWAY FUND JUNE 30, 1977 BALANCES.

(H.673)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. Appropriations

The sum of $12,406,000.00 is appropriated or utilized from the Fiscal Year 1977 general fund balance for the following stated purposes:

(a) $100,000.00 is appropriated to the Vermont state colleges for the purposes of acquiring equipment necessary for the improvement of academic instruction. This appropriation shall be expended under the supervision of the joint fiscal committee.

(b) $1,500,000.00 is appropriated to the Vermont state colleges for the following purposes:

(1) $500,000.00 to establish a contingency reserve fund for the sole purpose of meeting the cash needs during the phased retirement of the accumulated operating deficit. Such fund shall be maintained by the commissioner of finance and shall be disbursed in the form of advances authorized by the joint fiscal committee. Such advances shall be repaid to the contingency reserve fund in an orderly manner and upon final retirement of the accumulated operating deficit the original appropriation of $500,000.00 shall revert to the general fund.

(2) $430,000.00 to limit a resident tuition increase to $50.00 for the 1978-1979 academic year.

(3) $200,000.00 to be applied to the accumulated operating deficit.

(4) $370,000.00 to fund the projected deficit for the 1978-1979 academic year. Vermont state colleges shall submit to the next legislature a report on curriculum structure and funding. This report shall outline:

(1) a plan of course and program offerings in all sections of the system which eliminates unnecessary duplication, and

(2) a financial plan which will avoid deficit spending and permit orderly, regular retirement of the accumulated operating deficit.

(c) $500,000.00 is appropriated to the state buildings division for deferred building maintenance at the Vermont state colleges. Projects may be funded in accordance with the priority listing submitted to the general assembly by the Vermont state colleges board of trustees.

(d) $1,000,000.00 is appropriated to the state buildings division for the purpose of correcting architectural barriers in the elementary and secondary schools of Vermont. Such sum may be used to match federal funds. The director of state buildings shall consult with the commissioner of education on this matter and shall submit to the joint fiscal committee for approval a plan for expenditure of these funds. The plan shall detail criteria for funding projects and methods of funding including state-local ratios. Up to $84,000.00 of this total is available for use by the director of state buildings in administration of this section.

(e) $200,000.00 is appropriated to the department of education to supplement the remaining bond appropriation balance for vocational education facilities. These funds shall be used to fund the Franklin northeast area vocational center.

(f) $175,000.00 is appropriated to the department of education for new and replacement equipment for approved vocational programs.

(g) $911,000.00 is appropriated to the state treasurer to replace funds advanced to the Vermont industrial development authority under the provisions of 10 V.S.A. section 223.

(h) $2,000,000.00 is appropriated to the Vermont industrial development authority to carry out the purposes of 10 V.S.A. chapter 12, subchapter 5.

(i) $1,650,000.00 is appropriated to a special whey pollution abatement authority account to be established by the commissioner of finance. Disbursements from this account shall be made upon the recommendation of the governor and shall be for the following purposes:

Debt service requirements due on May 15, 1978 and November 15, 1978	$788,700.00
Debt service requirements for calendar year 1979	460,075.00
Plant and sewerage treatment system modification and working capital supplementation	401,225.00

(j) $1,600,000.00 is appropriated to the property tax relief trust fund in accordance with the provisions of 32 V.S.A. section 5976.

(k) $2,600,000.00 is appropriated to the teachers' retirement system pension accumulation fund authorized under 16 V.S.A. section 1944(c) for the purpose of reducing the state's accrued liability of contribution. This voluntary advance payment is not to be interpreted to imply any intent to increase the benefits payable from the fund.

(l) $10,000.00 is appropriated to the department of health for payment to the Medical Center Hospital of Vermont for continuation of the kidney disease program.

(m) $30,000.00 is appropriated to fund a governor's commission on public education. This commission shall be charged to review, analyze, and report to the governor and the 1979 general assembly on the present status of and the future direction for Vermont public education. These funds

shall be used to supplement resources and services otherwise made available to the state of Vermont for this commission.

(n) $10,000.00 or so much thereof as is necessary is appropriated to the department of agriculture to pay Stanley Scribner of Moretown for damages to his land and crops caused by the removal of an ice jam on the Winooski river. Payment shall be made by the department upon proof of loss and verification of the claim by the claims commission established under 32 V.S.A. section 931.

(o) $3,500.00 or so much thereof as is necessary is appropriated to the veterans' home for the purpose of demolition and removal of the farm barn and appurtenant buildings.

(p) $1,500.00 is appropriated to the department of agriculture for the purpose of construction of exhibit booths at the Vermont Maple Festival at St. Albans.

(q) $115,000.00, or so much thereof as may be necessary is appropriated for the purpose of applying automatic data processing systems to the Vermont Statutes Annotated. The state information systems, in consultation with the legislative council shall develop or acquire computer programs most appropriate for facilitating legislative drafting and research and legal research whether within or outside of the state information system. The state information systems shall publicly solicit bids for the program selected and may enter into contracts for such services.

Any data processing and computer services provided under this section may be made available to the public at reasonable times and for a reasonable cost as determined by the council. Costs for use of the services

may be assessed against all state agencies except the statutory commission. Funds collected for use of the services shall be depos. in the general fund of the state.

Sec. 2. Appropriations

The sum of $3,432,703.00 is appropriated from the Fiscal Year 1977 highway fund balance for the following stated purposes:

(a) $808,000.00 is appropriated to the agency of transportation to provide the highway garage revolving fund with monies to acquire heavy equipment. This appropriation shall be used for the acquisition or replacement of graders, loaders, rollers and/or tractor mowers.

(b) $2,334,703.00 is appropriated to the agency of transportation to repair or replace bridges on the town highway system in accordance with a plan developed by the secretary of transportation and approved by the governor. Participating towns in this bridge program shall provide twenty percent of the cost which may be allocated from funds distributed to them in accordance with 19 V.S.A. section 17(f), (g) and (h).

(c) $30,000.00 is appropriated to the agency of transportation for the repair and maintenance of the steel bridge over the West River in the town of Jamaica providing access to Jamaica State Park.

(d) $10,000.00 is appropriated to the agency of transportation as matching funds for a federal grant of $90,000.00 from the federal department of transportation to establish a demonstration van pool revolving fund. This fund shall be used to support van pools for employees traveling to and from work. A group of employees who organize an approved van pool shall be eligible to apply for a non-interest bearing loan to cover the

costs of acquiring equipment, providing insurance coverage and registration. The term of the loan shall not exceed four years and shall be repayable in equal monthly installments or such other method as recommended by the agency of transportation. The fund balance of the revolving fund at the end of the demonstration period, June 30, 1980, shall be credited to the highway fund. The agency of transportation shall submit a plan of operations and administration of the revolving fund program to the joint fiscal committee for review prior to implementation and the agency shall submit a report of operations to the general assembly on or before January 10, 1979.

(e) $250,000.00 is appropriated to the agency of transportation to fund five welcome centers. The location and design of the centers shall be determined in consultation with the agency of development and community affairs and the travel information council. Plans for funding these facilities shall be reviewed prior to implementation by the general assembly or, if not in session, the joint fiscal office.

Sec. 3. Federal Funds

To the extent that federal funds become available, they may be used to supplement the appropriations made in this act.

Sec. 4. Availability

The appropriations made in this act shall not revert at June 30 but shall continue until the purposes of these appropriations are accomplished.

Sec. 5. 32 V.S.A. § 5977(d) is amended to read:

(d) The commissioner shall not pay any claims to claimants who were under 65 years of age on the last day of the taxable year for which the

claim is made until the total amount of all timely-filed claims has been paid under subsection (c) of this section. After payment of the claims under subsection (c) of this section the balance of the property tax relief trust fund shall be available to pay the claims of claimants under the age of 65 on the last day of the taxable year for which the claim is made. Such balance shall be determined as of June 30 annually, less the sum of $20,000.00 annually for payment of late-filed claims approved by the commissioner under section 5970 of this title and less the sum of $200,000.00 provided for administrative expenses under section 5976(a) of this title.

Sec. 6. 10 V.S.A. § 263(d) is added to read:

(d) The authority may develop and incorporate into loan instruments formulae which require prepayment of loans when the profits attained by the borrower warrant prepayment.

Sec. 7. This act shall take effect from passage.

Approved: April 17, 1978

LD0176

HOUSE JOINT RESOLUTION NO. 9

Offered January 12, 1978

Requesting the Governor to direct the Adjutant General of the Virginia National Guard to assist in the implementation of a State Winterization Program.

Patrons--Diamonstein, Parker, L. W., and Quillen

Referred to the Committee on Militia and Police

WHEREAS, the Federal Winterization Program was established to convert homes of the elderly and low income citizens to a reasonable standard of energy efficiency and is presently funded by the Community Services Administration and the Federal Energy Administration through the State Office of Housing; and

WHEREAS, such program will be administered on the State level by the State Energy Office; and

WHEREAS, such program requires that ninety per centum of all funds be utilized for the purchase of materials thereby necessitating State aid and assistance for the installation, storing and transportation of such supplies; and

WHEREAS, Community Action Agencies, Comprehensive Training and Employment Associations, and other agencies and individuals have volunteered to install such materials; and

WHEREAS, assistance and facilities are still needed for the storage and transportation of such materials; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Governor is requested to direct the Adjutant General of the Virginia National Guard to assist the State Energy Office in implementing the State Winterization Program by utilizing armories and other facilities for storing winterization materials and assisting in the transportation of such materials to their final site destination.

LD2992

HOUSE JOINT RESOLUTION NO. 128

Offered February 6, 1978

Requesting the Governor to designate October as Energy Conservation Month in the Commonwealth.

Patron–Hall

Referred to the Committee on General Laws

WHEREAS, the energy crisis situation in Virginia as well as the nation has not abated but has become more serious, particularly during the winter months; and

WHEREAS, citizen awareness of the energy crisis through education is of utmost importance in conserving energy and in alleviating this difficult situation; and

WHEREAS, October of nineteen hundred seventy-seven was observed in the Commonwealth by executive mandate as Energy Conservation Month thus serving as a stimulus for energy conservation by the citizens of the Commonwealth; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the General Assembly desires to emphasize to the citizens of this Commonwealth the importance of energy conservation. To this end, the General Assembly requests the Governor to proclaim the month of October of this year and in all succeeding years as Energy Conservation Month.

Official Use By Clerks	
Agreed to By The House of Delegates	**Agreed to By The Senate**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
_____	_____
Clerk of the House of Delegates	Clerk of the Senate

State of Arizona
House of Representatives
Thirty-third Legislature
Second Regular Session
1978

CHAPTER 160

HOUSE BILL 2324

AN ACT

RELATING TO POWER; PROVIDING THAT THE ARIZONA ATOMIC ENERGY COMMISSION MAY PRESCRIBE CERTAIN FEES FOR LICENSES; PROVIDING FOR A RADIOACTIVE MATERIAL PROCESSING OPERATIONS LICENSE FUND; PROVIDING FOR THE CONTROL AND MAINTENANCE OF RADIOACTIVE MATERIAL PROCESSING OPERATIONS; PROVIDING FOR ACQUISITION OF LANDS, BUILDINGS AND GROUNDS; PROVIDING FOR FINANCIAL QUALIFICATIONS, EXEMPTIONS, FINANCIAL SECURITY AND RELEASE; PROVIDING FOR A RADIATION AND PERPETUAL CARE FUND; PRESCRIBING THE DEPOSITS IN SUCH FUNDS AND REIMBURSEMENTS; PROVIDING FOR CONTINUING APPROPRIATIONS; PRESCRIBING LICENSE APPLICATION REQUIREMENTS; AMENDING SECTION 30-672, ARIZONA REVISED STATUTES; AMENDING TITLE 30, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 30-674, AND AMENDING TITLE 30, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 4.

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

Section 1. Section 30-672, Arizona Revised Statutes, is amended to read:

30-672. Licensing and registration of sources of radiation; exemptions

A. The commission shall provide by rules or regulations for general or specific licensing of by-product, source, special nuclear materials, or devices or equipment utilizing such materials. Such rules or regulations shall provide for amendment, suspension or revocation of such licenses. The commission shall require from the applicant satisfactory evidence that the applicant is familiar with the rules and regulations promulgated by the commission pursuant to paragraph 1, subsection B of section 30-654 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs and symbols, storage, waste disposal and shipment of radioactive materials. The commission may further require that, prior to the issuance of the license, such employees or other personnel of an

applicant who may deal with sources of radiation receive a course of instruction approved by the commission concerning the rules and regulations of the commission. The commission shall, in addition, require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that his proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The commission is authorized to require registration or licensing of other sources of radiation if it has been determined necessary to protect public health or safety.

C. The commission may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section when it finds that the exemption of such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. A person licensed in this state to practice as a dentist, chiropodist or veterinarian or licensed in this state to practice medicine, surgery, osteopathy, chiropractic, naturopathy or any other system or method of healing shall not be required by the commission to obtain any other license for the use of an X-ray machine but shall be governed by their own licensing acts.

E. Rules and regulations promulgated pursuant to this chapter may provide for recognition of other state or federal licenses as the commission may deem desirable, subject to such registration requirements as the commission may prescribe.

F. Any licenses issued by the commission shall state therein the nature, use and extent of use of the source of radiation. If at any time subsequent to the issuance of a license, the licensee desires any change in such nature, use or extent, the licensee shall seek an amendment or a new license under the provisions of this section.

G. THE COMMISSION MAY PRESCRIBE THE FEE FOR EACH LICENSE FOR RADIOACTIVE MATERIAL PROCESSING OPERATIONS IN SUCH AMOUNT AS MAY BE NECESSARY TO COVER REASONABLE EXPENSES INCURRED IN PROCESSING THE LICENSEE'S APPLICATION, BUT NOT TO EXCEED SIXTY THOUSAND DOLLARS PER LICENSE.

Sec. 2. Title 30, chapter 4, article 2, Arizona Revised Statutes, is amended by adding section 30-674, to read:

30-674. Radioactive material processing operations license fund

A. FEES RECEIVED UNDER THIS CHAPTER SHALL BE PAID TO THE STATE TREASURER WHO SHALL PLACE SUCH FEES IN A SPECIAL FUND KNOWN AS THE RADIOACTIVE MATERIAL PROCESSING OPERATIONS LICENSE FUND.

B. MONIES DEPOSITED IN SUCH FUND SHALL BE EXEMPT FROM THE PROVISIONS OF SECTION 35-190.

C. ALL MONIES DEPOSITED IN SUCH FUND SHALL BE EXPENDED IN ADMINISTERING THE PROVISIONS OF THIS CHAPTER.

D. ALL FEES DEPOSITED INTO THIS FUND PRIOR TO JUNE 30, 1979 ARE HEREBY APPROPRIATED TO THE COMMISSION.

Sec. 3. Title 30, chapter 4, Arizona Revised Statutes, is amended by adding article 4, to read:

ARTICLE 4. CONTROL AND MAINTENANCE OF RADIOACTIVE MATERIAL PROCESSING OPERATIONS

30-691. Definition; limitation

A. IN THIS ARTICLE, "RADIOACTIVE WASTE MATERIAL" MEANS ANY RESIDUE REMAINING AFTER THE PROCESSING OF SOURCE MATERIAL AS DEFINED IN PARAGRAPH 11 OF SECTION 30-652.

B. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS ARTICLE, NO LICENSE SHALL BE GRANTED FOR DISPOSING OF ANY RADIOACTIVE WASTE MATERIAL THAT ORIGINATED AS WASTE FROM WITHOUT THE STATE.

30-692. Acquisition of lands, buildings and grounds

A. ANY SITE USED FOR THE CONCENTRATION AND STORAGE OR DISPOSAL OF RADIOACTIVE WASTE MATERIAL SHALL REPRESENT A CONTINUING AND PERPETUAL RESPONSIBILITY IN THE INTERESTS OF THE PUBLIC HEALTH, SAFETY AND GENERAL WELFARE, AND SHALL ULTIMATELY BE REPOSED IN THE STATE WITHOUT REGARD FOR THE EXISTENCE OR NONEXISTENCE OF ANY PARTICULAR STATE AGENCY, INSTRUMENTALITY, DEPARTMENT, DIVISION OR OFFICER.

B. LANDS, BUILDINGS AND GROUNDS WHICH ARE ACQUIRED PURSUANT TO THIS SECTION AS SITES FOR THE CONCENTRATIONS AND PERMANENT STORAGE OR DISPOSAL OF RADIOACTIVE WASTE MATERIALS MAY BE ACQUIRED IN FEE SIMPLE AND DEDICATED IN PERPETUITY TO SUCH PURPOSE. ALL RIGHTS, TITLE AND INTEREST IN, OF AND TO ANY RADIOACTIVE WASTE MATERIALS ACCEPTED BY THE ARIZONA ATOMIC ENERGY COMMISSION FOR PERMANENT STORAGE OR DISPOSAL AT SUCH FACILITIES, SHALL UPON ACCEPTANCE BECOME THE PROPERTY OF THE STATE AND SHALL BE ADMINISTERED, CONTROLLED, AND DISPOSED OF, INCLUDING TRANSFER BY SALE, LEASE, LOAN OR OTHERWISE, BY THE COMMISSION IN THE NAME OF THIS STATE.

C. THE COMMISSION MAY ACQUIRE BY PURCHASE, GIFT OR BY CONDEMNATION UNDER TITLE 12, CHAPTER 8, ARTICLE 2 OR 3, ANY LANDS, BUILDINGS OR GROUNDS WHERE RADIOACTIVE BY-PRODUCT MATERIALS AND WASTES PRODUCED BY INDUSTRIAL, MEDICAL, AGRICULTURAL, SCIENTIFIC OR OTHER ORGANIZATIONS CAN BE CONCENTRATED, STORED OR OTHERWISE DISPOSED IN A MANNER CONSISTENT WITH THE PUBLIC HEALTH AND SAFETY.

D. THE COMMISSION MAY ACCEPT, RECEIVE, AND RECEIPT FOR MONIES OR LANDS, BUILDINGS AND GROUNDS FOR AND IN BEHALF OF THIS STATE, GIVEN BY THE FEDERAL GOVERNMENT UNDER ANY FEDERAL LAW TO THIS STATE OR BY ANY OTHER PUBLIC OR PRIVATE AGENCY, FOR THE ACQUISITION OR OPERATION OF ANY SITE FOR THE CONCENTRATION AND STORAGE OR DISPOSAL OF RADIOACTIVE WASTES. SUCH FUNDS RECEIVED BY THE COMMISSION PURSUANT TO THIS SECTION SHALL BE DEPOSITED IN THE RADIATION AND PERPETUAL CARE FUND. SUCH FUNDS OR PROPERTIES SHALL BE USED ONLY FOR THE PURPOSES FOR WHICH THEY ARE CONTRIBUTED.

E. THE COMMISSION MAY LEASE SUCH PROPERTIES AS IT MAY ACQUIRE UNDER THE PROVISIONS OF THIS SECTION TO A PRIVATE FIRM OR FIRMS FOR THE PURPOSE OF OPERATING SITES FOR THE CONCENTRATION AND STORAGE OR DISPOSAL OF RADIOACTIVE WASTES OR FOR ANY OTHER PURPOSE NOT CONTRARY TO THE PUBLIC INTERESTS.

F. THE OPERATION OF ANY SITE ACQUIRED FOR THE CONCENTRATION AND STORAGE OF RADIOACTIVE WASTES SHALL BE UNDER THE DIRECT SUPERVISION OF

THE COMMISSION AND SHALL BE IN ACCORDANCE WITH REGULATIONS PROMULGATED AND ENFORCED BY THE COMMISSION TO PROTECT THE PUBLIC HEALTH AND SAFETY.

G. THE COMMISSION MAY ENTER INTO SUCH CONTRACTS AS IT MAY DEEM NECESSARY FOR CARRYING OUT THE PROVISIONS OF THIS SECTION.

30-693. Financial qualifications; exemptions; financial security; release

A. EACH LICENSEE SHALL AS A CONDITION OF ITS LICENSE:

1. ARRANGE FOR AND PAY ALL OF THE COSTS OF MANAGEMENT, CONTROL, STABILIZATION AND DISPOSAL OF TAILINGS AND FOR DECOMMISSIONING THE LICENSED ACTIVITY.

2. ON THE TERMINATION OF ALL LICENSED ACTIVITIES, CONVEY TO THIS STATE ALL RIGHT, TITLE AND INTEREST HELD BY THE LICENSEE TO THE LANDS, BUILDINGS AND GROUNDS DESIGNATED AS SITES FOR THE CONCENTRATION AND PERMANENT STORAGE OR DISPOSAL OF RADIOACTIVE WASTE MATERIALS RESULTING FROM THE LICENSED ACTIVITY PURSUANT TO SUBSECTION G OF SECTION 30-672, TOGETHER WITH REQUISITE RIGHTS OF INGRESS AND EGRESS, AND ALL RIGHTS, TITLE AND INTEREST IN, OF AND TO ALL RADIOACTIVE WASTE MATERIALS SITUATED ON SUCH PROPERTIES OR, AT THE ELECTION OF THE LICENSEE, TO OTHERWISE MAKE SAFE OR DISPOSE OF ANY RADIOACTIVE WASTE MATERIALS IN ITS POSSESSION ON THE TERMINATION OF ALL LICENSED ACTIVITIES IN ACCORDANCE WITH THE REGULATIONS OF THE COMMISSION.

B. EACH APPLICANT FOR A LICENSE OR ANY RENEWAL OF A LICENSE SHALL DEMONSTRATE AND THE COMMISSION SHALL PRIOR TO ISSUANCE OF ANY LICENSE OR RENEWAL OF A LICENSE FIND THAT SUCH APPLICANT IS FINANCIALLY QUALIFIED TO CONDUCT THE LICENSED ACTIVITY, INCLUDING ANY REQUIRED DECOMMISSIONING AND DISPOSAL OF RADIOACTIVE MATERIAL. THE LICENSEE SHALL SUBMIT TO THE COMMISSION CURRENT PROOF OF ITS FINANCIAL QUALIFICATIONS AT SUCH INTERVALS AS THE COMMISSION SHALL BY REGULATION OR LICENSE REQUIRE.

C. EACH LICENSEE SHALL POST FINANCIAL SECURITY ACCEPTABLE TO THE COMMISSION TO ASSURE PERFORMANCE BY THE LICENSEE OF ITS OBLIGATIONS UNDER THIS ARTICLE. SUCH ACCEPTABLE FINANCIAL SECURITY MAY INCLUDE ONE OR MORE OF THE FOLLOWING:

1. A BOND EXECUTED BY A SURETY COMPANY OR COMPANIES AUTHORIZED TO DO BUSINESS IN THIS STATE WHICH SHALL NOT BE TERMINABLE DURING THE TERM OF THE LICENSE.

2. A LETTER OF CREDIT ISSUED BY A FINANCIAL INSTITUTION AUTHORIZED TO DO BUSINESS IN THIS STATE.

3. A CASH BOND.

4. THE GUARANTEE OF A LICENSEE WHOSE FINANCIAL QUALIFICATIONS MEET THE REQUIREMENTS OF THE COMMISSION OR WHO FURNISHES COLLATERAL SATISFACTORY TO THE COMMISSION, WHICH COLLATERAL MAY BE IN THE FORM OF A SUITABLE GUARANTEE BY ANY PERSON, IF SUCH PERSON HAS FINANCIAL QUALIFICATIONS THAT MEET THE REQUIREMENTS OF THE COMMISSION.

D. THE AMOUNT OF THE FINANCIAL SECURITY SHALL BE DETERMINED BY THE COMMISSION IN ACCORDANCE WITH CRITERIA ESTABLISHED BY REGULATION WHICH SHALL INCLUDE:

1. CONSIDERATION OF THE NEED FOR AND SCOPE OF ANY DECOMMISSIONING ACTIVITY REASONABLY REQUIRED TO PROTECT THE HEALTH AND SAFETY OF THE PUBLIC.

2. REASONABLE ESTIMATES OF THE COSTS OF SUCH DECOMMISSIONING AS PROVIDED IN SECTION 30-695, SUBSECTION B.

3. THE NET WORTH OF THE SUM REQUIRED FOR THE PERPETUAL MAINTENANCE AND SURVEILLANCE OF ANY RADIOACTIVE WASTE MATERIALS RESULTING FROM THE LICENSED ACTIVITY.

4. ALL SUMS TO BE ACCRUED OR PAID BY THE LICENSEE INTO THE RADIATION AND PERPETUAL CARE FUND.

E. UPON THE SATISFACTION BY A LICENSEE OF ALL OF ITS OBLIGATIONS UNDER SUBSECTION A OF THIS SECTION, THE FINANCIAL SECURITY FURNISHED UNDER THIS SECTION SHALL BE RELEASED.

F. ALL MONIES RECEIVED BY THE COMMISSION AS A RESULT OF ANY FORFEITURE OR ENFORCEMENT OF ANY FINANCIAL SECURITY FURNISHED PURSUANT TO THIS SECTION SHALL BE DEPOSITED IN THE RADIATION AND PERPETUAL CARE FUND.

30-694. Radiation and perpetual care fund; investment; purposes; exemption from lapsing

A. A SPECIAL FUND CALLED THE RADIATION AND PERPETUAL CARE FUND IS ESTABLISHED IN WHICH THE COMMISSION SHALL DEPOSIT ALL SUMS AND COLLATERAL RECEIVED BY IT PURSUANT TO SECTIONS 30-692, 30-693 AND 30-695, WHICH SHALL BE HELD IN TRUST FOR CARRYING OUT THE PURPOSES OF THIS ARTICLE.

B. ALL SUMS SO DEPOSITED IN THE FUND SHALL BE INVESTED AND REINVESTED IN THE SAME MANNER AS THE FUNDS OF THE STATE RETIREMENT SYSTEM, AND ALL EARNINGS AND INTEREST FROM SUCH INVESTMENTS SHALL BE DEPOSITED TO THE CREDIT OF THE FUND AND SHALL BE AVAILABLE FOR THE SAME PURPOSES AS ALL OTHER SUMS DEPOSITED IN THE FUND.

C. ALL MONIES AND COLLATERAL IN THE RADIATION AND PERPETUAL CARE FUND ARE APPROPRIATED TO AND MAY BE EXPENDED BY THE COMMISSION AS REQUIRED FOR THE DECOMMISSIONING, STABILIZATION, MAINTENANCE, SURVEILLANCE, CONTROL, STORAGE OR DISPOSAL OF RADIOACTIVE MATERIALS ACQUIRED BY THE COMMISSION FOR THE PROTECTION OF THE PUBLIC HEALTH AND SAFETY PURSUANT TO SECTION 30-692 OR THE DECOMMISSIONING OF ANY LICENSED ACTIVITY OR REFUNDS PURSUANT TO SECTION 30-695.

D. MONIES AND COLLATERAL IN THE FUND SHALL NOT BE USED FOR NORMAL OPERATING EXPENSES OF THE COMMISSION AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.

30-695. Deposits in radiation and perpetual care fund; reimbursements

A. IF THERE IS A POSSIBILITY THAT ANY LICENSED ACTIVITY WILL RESULT IN RADIOACTIVE WASTE MATERIALS WHICH WILL REQUIRE MAINTENANCE, SURVEILLANCE OR OTHER CARE ON A CONTINUING OR PERPETUAL BASIS AFTER TERMINATION OF THE LICENSED ACTIVITY OR WILL REQUIRE DECOMMISSIONING ACTIVITY, THE COMMISSION MAY REQUIRE THE LICENSEE OF SUCH ACTIVITY TO PAY ANNUALLY TO THE COMMISSION FOR DEPOSIT IN THE RADIATION AND PERPETUAL CARE FUND, AN AMOUNT EQUAL TO THE SUM OF:

1. THE NET WORTH OF THE FUND REQUIRED TO PRODUCE INVESTMENT EARNINGS SUFFICIENT TO PAY THE COST OF MAINTENANCE AND SURVEILLANCE OF THE LANDS, BUILDINGS, GROUNDS AND RADIOACTIVE WASTE MATERIALS TO BE CONVEYED TO THE STATE PURSUANT TO SECTION 30-692, LESS THE NET WORTH OF ALL PAYMENTS PREVIOUSLY MADE BY THE LICENSEE TO THE COMMISSION FOR SUCH PURPOSES, DIVIDED BY THE NUMBER OF YEARS THE LICENSED ACTIVITY IS REASONABLY EXPECTED TO CONTINUE.

2. WITH RESPECT TO A WASTE DISPOSAL ACTIVITY, THE COST OF ANY DECOMMISSIONING ACTIVITY, ESTIMATED AS OF DECEMBER 31 OF THE YEAR PRECEDING EACH ANNUAL PAYMENT, LESS THE TOTAL OF ALL PAYMENTS PREVIOUSLY MADE TO THE COMMISSION BY THE LICENSEE FOR THE DECOMMISSIONING ACTIVITY, DIVIDED BY THE NUMBER OF YEARS THE LICENSED ACTIVITY IS REASONABLY EXPECTED TO CONTINUE.

B. ANY ESTIMATES OF COSTS OR ACTIVITIES REQUIRED TO BE MADE PURSUANT TO THIS SECTION SHALL BE SUBJECT TO CHANGES AND REVIEW BY THE COMMISSION ACCORDING TO THE NEED, NATURE AND COST OF ANY DECOMMISSIONING ACTIVITY AND THE MAINTENANCE AND SURVEILLANCE OF RADIOACTIVE WASTE MATERIALS REQUIRED FOR PUBLIC HEALTH AND SAFETY. ANY CHARGES IMPOSED FOR MAINTENANCE AND PERPETUAL CARE SHALL BE ESTABLISHED AT THE LOWEST LEVEL CONSISTENT WITH EXISTING TECHNOLOGY. ANY CHANGE THAT RESULTS IN ANY INCREASE IN SUCH COSTS SHALL NOT BE APPLIED RETROACTIVELY, BUT SUCH CHANGES MAY RESULT IN INCREASES IN SUBSEQUENT ANNUAL PAYMENTS. WITH RESPECT TO URANIUM MILLING OR PROCESSING OPERATIONS TOTAL CUMULATIVE CHARGES SHALL NOT EXCEED A MAXIMUM CHARGE OF FIVE CENTS PER TON OF ORE OR MATERIAL MILLED OR PROCESSED.

C. IN COMPUTING THE NET WORTH OF ANY FUND OR PAYMENTS FOR THE PURPOSE OF THIS SECTION OR SECTION 30-693 THE INTEREST RATE SHALL BE EQUAL TO THE AVERAGE ANNUAL RATE OF INVESTMENT EARNINGS, INCLUDING INVESTMENT APPRECIATION, OF THE STATE RETIREMENT SYSTEM OVER THE FIVE YEARS PRECEDING ANY NET WORTH DETERMINATION AND THE TERM SHALL BE THE NUMBER OF YEARS THE LICENSED ACTIVITY IS EXPECTED TO CONTINUE AFTER SUCH DETERMINATION.

D. AT SUCH TIME AS ANY LICENSEE HAS SATISFIED ALL OR PART OF ITS OBLIGATIONS UNDER SECTION 30-693, SUBSECTION A, THE COMMISSION SHALL PROMPTLY REFUND TO SUCH LICENSEE FROM THE RADIATION AND PERPETUAL CARE FUND ANY EXCESS OF THE AMOUNT OF PARAGRAPH 1 OF THIS SUBSECTION OVER THE AMOUNT OF PARAGRAPH 2 OF THIS SUBSECTION:

1. THE SUM OF SUBDIVISIONS (a) AND (b) OF THIS PARAGRAPH:

(a) ALL PAYMENTS MADE BY THE LICENSEE TO THE COMMISSION PURSUANT TO THIS ARTICLE.

(b) ALL INVESTMENT EARNINGS ON SUCH PAYMENTS.

2. THE AMOUNT THEN DETERMINED TO BE REQUIRED FOR THE CONTINUING MAINTENANCE AND SURVEILLANCE OF THE LANDS, BUILDINGS AND GROUNDS AND RADIOACTIVE WASTE MATERIALS CONVEYED TO THE STATE PURSUANT TO SECTION 30-692.

30-696. License application requirements

THE COMMISSION, WITH THE ASSISTANCE OF APPROPRIATE STATE AGENCIES, SHALL REVIEW THE RADIOACTIVE MATERIALS LICENSE APPLICATION. THE REVIEW SHALL DOCUMENT, AT A MINIMUM:

1. ALTERNATIVES CONSIDERED FOR SITING OF ANY URANIUM MILLING OR MILL TAILINGS DISPOSAL FACILITIES;

2. ALTERNATIVE DESIGNS OR SCHEMES FOR MILL TAILINGS MANAGEMENT AND DISPOSAL;

3. AN ASSESSMENT OF THE RADIOLOGICAL IMPACTS OF URANIUM MILLING OPERATIONS AND MILL TAILINGS MANAGEMENT TECHNIQUES; AND

4. AN ASSESSMENT OF POTENTIAL IMPACTS ON GROUNDWATER OF URANIUM MILLING OPERATIONS AND MILL TAILINGS MANAGEMENT TECHNIQUES.

RESULTS OF THE REVIEW SO CONDUCTED SHALL BE PUBLISHED AND MADE AVAILABLE TO THE PUBLIC AND REQUESTING STATE AGENCIES.

Sec. 4. Emergency

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor - June 4, 1978

Filed in the Office of the Secretary of State - June 5, 1978

Substitute House Bill No. 5656

PUBLIC ACT NO. 78-214

AN ACT CONCERNING DEVELCPMENT, UTILIZATION AND REGULATION OF SOURCES OF RADIATION.

Be it enacted by the Senate and House cf Representatives in General Assembly convened:

Section 1. (NEW) The department of environmental protection shall: (1) Review the plans for and operation of safety programs at nuclear plants; (2) make recommendations to the Nuclear Regulatory Commission concerning third-party inspection of components and construction of nuclear plants for the purpose of improving quality assurance plans and programs; (3) require the immediate reporting to said department by nuclear facilities of any incidents required to be reported to the Nuclear Regulatory Commission; (4) monitor radiation originating from nuclear plants and perform tests to detect any build-up of radioactivity in the soil, water, plants or animals of the state; (5) review the training and education of workers at nuclear plants to insure awareness of the possible risks of cancer and future genetic effects; (6) represent the interests of the state in federal and state regulatory hearings and other administrative actions concerning nuclear plants which affect the state; (7) intervene in federal proceedings and petition federal agencies for revision of existing regulations where appropriate; (8) conduct periodic on-site evaluations of the effectiveness and enforcement of federal regulations for the packaging and transportation of radioactive material; (9) study plans for, and hazards inherent in the decommissioning of Connecticut nuclear plants including the possible future use of land now in use by a nuclear power facility; (10) study the storage problems posed by high level wastes; (11) study and, in cooperation with the state police, monitor the security of nuclear plants to assure that the dangers from sabotage and terrorism are minimized; (12) monitor sources of ionizing radiation, microwave radiation and radioactive materials within the state; (13) review the state emergency plan for radiation safety and (14) investigate out-of-state potential radiological hazards which may have a significant adverse effect upon the health or safety of the people of the state.

Sec. 2. (NEW) The joint standing committee on the environment and the joint standing committee

on regulated activities and energy shall study the existing atomic energy and radiation policies and programs of the state. On or before December 31, 1978, said joint committees shall submit to the general assembly recommendations, including drafts of any proposed legislation, concerning comprehensive and coordinated state policies and programs for atomic energy and radiation.

Sec. 3. The sum of fifty thousand dollars is appropriated to the department of environmental protection, for the fiscal year ending June 30, 1979, from the sum appropriated to the finance advisory committee under section 1 of special act 78-17 of the current session, for 1978 acts without appropriations, to carry out the purposes of section 1 of this act.

Sec. 4. This act shall take effect July 1, 1978.

Certified as correct by

_____

Legislative Commissioner.

_____

Clerk of the Senate.

_____

Clerk of the House.

Approved _____, 1978

_____

Governor.

(H.C.R. No. 59)

A CONCURRENT RESOLUTION

AUTHORIZING AND DIRECTING THE LEGISLATIVE COUNCIL TO UNDERTAKE AND COMPLETE A STUDY OF THE WAYS TO ACHIEVE ADDITIONAL SUPPLIES OF POWER FOR THE CITIZENS OF IDAHO.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, it is evident that the forces at work in the economy and society of this great country have not yet resolved the problems that relate to the supply and consumption of energy; and

WHEREAS, it is incumbent upon the political processes to work with the great forces that can be brought to bear from the private sector in order to provide energy sources at reasonable prices; and

WHEREAS, there are areas of opportunity that have not yet been fully explored to accomplish these goals.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Forty-fourth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Legislative Council is hereby authorized and directed to undertake and complete a study which shall investigate and explore the possibilities of providing nuclear energy to Idaho citizens, the conditions under which such energy may be made available, and the time frame in which such energy may reasonably be expected to produce results.

BE IT FURTHER RESOLVED that the study shall include an examination of the organization of Idaho state government, both executive and legislative, in order to make recommendations as to the proper role, placement, and function of governmental activities dealing with energy policies.

BE IT FURTHER RESOLVED that the Legislative Council shall submit its report and findings, and recommendations, to the First Regular Session of the Forty-fifth Idaho Legislature.

Adopted by the House March 14, 1978.
Adopted by the Senate March 17, 1978.

HOUSE FILE 82

AN ACT

PLACING WITH THE DEPARTMENT OF HEALTH THE AUTHORITY FOR REGULATING THE INSTALLATION AND USE OF RADIATION EMITTING EQUIPMENT AND PROVIDING A PENALTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. DEFINITIONS. As used in this Act, unless the context otherwise requires:

1. "Commissioner" means the commissioner of public health or a designee.

2. "Department" means the state department of health.

3. "Materials" means substances other than equipment which are capable of emitting radiation but does not include drugs as defined in chapter two hundred three A (203A) of the Code.

4. "Radiation" means energy forms capable of causing ionization including alpha particles, beta particles, gamma rays, X-rays, neutrons, high-speed protons, and other atomic particles, but does not include sound or radio waves, or visible light, or infrared or ultraviolet light.

Sec. 2. NEW SECTION. APPLICABILITY. The provisions of this Act apply to all equipment or materials which are located in this state and which are designed to emit radiation. The provisions of this Act shall not supersede or duplicate the

authority and programs of any other agency of the state or the United States government. To avoid duplication and promote coordination of radiation protection activities, the department may enter into agreements pursuant to chapter twenty-eight E (28E) of the Code with other state and federal agencies, or with private organizations or individuals, to administer the provisions of this Act.

Sec. 3. NEW SECTION. POWERS AND DUTIES. The department shall be responsible for regulating the installation and use of radiation-producing equipment and materials in this state. The department shall:

1. Inspect at the time of installation, reinstallation or major component change and periodically inspect thereafter, all equipment and materials located in this state, for the purpose of detecting, abating, or eliminating excessive exposure hazards. The inspection shall include but shall not be limited to an evaluation of the equipment as well as the immediate environment to insure that in using equipment and materials all unnecessary hazards for patients, personnel, and other persons who may be exposed to radiation produced by the equipment or materials are avoided. The department shall establish rules prescribing operating procedures for equipment and materials which insure minimum radiation exposure to patients, personnel, and other persons in the immediate environment. The inspection shall include inspection of the tube housing, beam restricting devices, filtration, exposure switches, control panel, and exposure timing switch. The inspector shall certify that protections against electrical hazards as well as the mechanical supporting and restraining devices used are adequate and that a device to monitor radiation exposure is available. All defects and deficiencies noted by the inspector shall be fully disclosed and discussed with the responsible persons at the time of inspection.

2. Establish minimum criteria and safety standards for the installation, operation and use of radiation emitting

equipment and materials.

3. Establish minimum training standards for operators. All operators of equipment and users of material who are licensed by the state to practice medicine, osteopathy, chiropractic, podiatry, dentistry, dental hygiene or veterinary medicine shall be deemed to have satisfied the minimum training standards.

4. Establish a system for the registration of the possession of radiation emitting equipment and materials in the state.

5. Establish and collect fees for the registration and for the periodic inspection of radiation emitting equipment and materials. Fees shall be in amounts sufficient to defray the cost of administering the provisions of this Act. All fees collected shall be remitted to the treasurer of state who shall deposit the funds in the general fund of the state.

6. Adopt, publish and amend rules, in accordance with the provisions of chapter seventeen A (17A) of the Code as may be necessary for the implementation and enforcement of the provisions of this Act.

Sec. 4. NEW SECTION. PENALTIES. It is unlawful to operate or utilize radiation emitting equipment or material in violation of the provisions of this Act or of any rule adopted pursuant to this Act. Persons convicted of violating the provisions of this Act shall be guilty of a simple misdemeanor.

Sec. 5. NEW SECTION. ENFORCEMENT. Upon determination by the commissioner that this Act or any rule adopted pursuant to this Act has been or is being violated, the commissioner may order that the radiation emitting equipment or materials not be used until the necessary corrective action has been taken. Should the equipment or materials continue to be used in violation of the order of the commissioner, the commissioner may request the county attorney or the attorney general to make an application in the name of the state to the district court of the county in which the violations may have occurred

for an order to enjoin such violations or practices.

Sec. 6. This Act is effective January 1, 1979.

DALE M. COCHRAN
Speaker of the House

ARTHUR A. NEU
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 82, Sixty-seventh General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved _____, 1978

ROBERT D. RAY
Governor

CHAPTER 419

(H.R. 70)

A CONCURRENT RESOLUTION directing the formation of a Special Advisory Committee on Nuclear Waste Disposal.

WHEREAS, the 1976 Kentucky General Assembly directed a study of the effects of nuclear waste disposal in the Commonwealth; and

WHEREAS, the Special Advisory Committee created to conduct the Nuclear Waste Study has made numerous findings and recommendations, many of which will require several years for implementation; and

WHEREAS, the 1976 Special Advisory Committee has completed its term of office and has ceased to exist; and

WHEREAS, the 1978 Kentucky General Assembly is most desirous of continuing to ensure that the problems of nuclear waste disposal are solved in a manner which protects the health and safety of the citizens of the Commonwealth;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky, the Senate concurring therein:

Section 1. That the Legislative Research Commission be directed to appoint a Special Advisory Committee on Nuclear Waste Disposal to be composed of no less than ten (10) members. The committee shall include the Representative from the 70th Legislative district and the Senator from the 28th Senatorial district who shall act as chairman and vice-chairman by mutual agreement. In addition, the committee shall include one Representative each from the Departments of Human Resources, Natural Resources and Environmental Protection and Finance and Administration, two (2) members of the University faculty recognized as experts in nuclear science, a Representative of the Kentucky Environmental Quality Commission and two (2) lay members representing the general public.

Section 2. That the Special Advisory Committee shall assume an oversight role on behalf of the Kentucky General Assembly on all matters pertaining to nuclear waste disposal during the 1978-80 Interim. The Committee shall meet no less than three (3) times a year and shall report its findings and recommendations to the Legislative Research Commission and the 1980 General Assembly no later than January 1, 1980.

Section 3. It is estimated that the operation of the committee and the provision of staff services will cost approximately $20,000, such monies to be provided from the regular budget of the Legislative Research Commission.

Approved March 30, 1978

ENROLLED

Regular Session, 1973

ACT NO. 327

HOUSE BILL NO. 420

BY MESSRS. TAUZIN, HENRY, ALARIO, ALEXANDER, BIGBY, BRADY, CAIN, CHAMPAGNE, CONNOR, COOPER, CROSBY, DEEN, DIEZ, DISCHLER, DOUCET, DREW, DUPUIS, DYER, FERNANDEZ, FOWLER, GUIDRY, GUNTER, HAIK, HOGAN, J. JACKSON, JASPER, M.J. LABORDE, LAPLANTE, LEITEMAN, LONG, MORRISON, RICE, RUSSO, SIRACUSA, F.C. THOMPSON, R.S. THOMPSON, ULLO AND VIDRINE

AN ACT

To amend Title 51 of the Louisiana Revised Statutes of 1950 by adding thereto a new Section, to be designated as R.S. 51:1072, relative to prohibiting the transportation of high level radioactive wastes into the state for disposal or storage in this state or elsewhere.

Be it enacted by the Legislature of Louisiana:

Section 1. Section 1072 of Title 51 of the Louisiana Revised Statutes of 1950 is hereby enacted to read as follows:

§1072. Prohibition of transportation of high level radioactive waste including spent fuel rods; penalty

A. Notwithstanding any law, order, or regulation to the contrary, no high level radioactive wastes, including spent fuel rods from nuclear reactors, shall be transported into the state for disposal or storage in this state or elsewhere.

B. Whoever violates the provisions of this Section shall be punished by a fine of one thousand dollars, or imprisonment for six months, or both, and vehicles or equipment used in connection with the violation shall be seized and disposed of in accordance with law.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

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Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

H O U S E O F D E L E G A T E S

Bir1535 No. 428
(PRE-FILED)

By: Delegate Arnick (Departmental - H&MH)
Requested: November 7, 1977
Introduced and read first time: January 11, 1978
Assigned to: Environmental Matters

Committee report: Favorable with amendments
House action: Adopted with floor amendments
Read second time: February 28, 1978

CHAPTER 125

AN ACT concerning

Nuclear Materials - Storage

FOR the purpose of enabling the Secretary of Health and Mental Hygiene to vary the time limitation on temporary storage of nuclear plant fuel in certain instances for a certain period of time.

BY repealing and reenacting, with amendments,

Article 43 - Health
Section 689B (b)
Annotated Code of Maryland
(1971 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 43 - Health

689B.

(b) It is unlawful to establish any permanent storage facility, burial ground or other installation for the long term storing of waste nuclear materials or their by-products while awaiting radioactive decay, within the State. This subsection does not prohibit temporary storage of used nuclear plant fuel as necessary incident to its subsequent shipment out of the State except that temporary storage shall not exceed two years. THE SECRETARY MAY GRANT A VARIANCE FROM THE TWO-YEAR TIME LIMITATION IF HE DETERMINES THAT THE VARIANCE IS NECESSARY AND IN THE PUBLIC INTEREST.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

HOWEVER, THE VARIANCE MAY NOT EXCEED A PERIOD OF 1 YEAR AFTER THE 2-YEAR TIME LIMITATION HAS BECOME EFFECTIVE. THE SECRETARY'S AUTHORITY AS TO THIS VARIANCE SHALL EXPIRE ON JUNE 30, 1979.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

HOUSE JOINT RESOLUTION No. 89
(81r3468)

Introduced by Delegates Levin, Needle, and Alperstein

Read and Examined by Proofreader:

_____
Proofreader.

_____
Proofreader.

Sealed with the Great Seal and presented to the Acting Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

_____
Speaker.

RESOLUTION NO. JR 38

A House Joint Resolution concerning

Tanks Containing Hazardous Materials

FOR the purpose of requesting certain State agencies to conduct a joint study to make certain determinations about State efforts to ensure the safety of tanks containing hazardous materials; and requesting those agencies to make a joint report to the General Assembly no later than a certain date.

It is an unpleasant reality of our technological civilization that many useful and necessary industrial, commercial, and agricultural activities require the use and storage of substances which are explosive or inflammable, produce noxious fumes when exposed to air, or may otherwise present substantial danger to human health and safety or to property if improperly contained. The government of this State has an obligation to ensure that tanks containing hazardous materials are designed, constructed, maintained, and placed so as to reduce to the greatest extent practicable the dangers associated with them.

Several State agencies now have responsibilities or have promulgated regulations in this area. These agencies include the Division of Labor and Industry of the Department

EXPLANATION:
Underlining indicates amendments to the resolution.
~~Strike-out~~ indicates matter stricken by amendment.

of Licensing and Regulation; the Environmental Health Administration of the Department of Health and Mental Hygiene; ~~and~~ the Water Resources Administration of the Department of Natural Resources and the Department of Public Safety and Correctional Services. The General Assembly of Maryland finds that a need exists to coordinate State efforts and to ascertain whether proper safety standards have been set and are being enforced; now, therefore, be it

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Department of Licensing and Regulation, the Department of Health and Mental Hygiene, and the Department of Natural Resources are requested to conduct a joint study to determine:

(a) How State efforts to ensure the safety of tanks containing hazardous materials can best be coordinated and how responsibilities in this area can most effectively be assigned;

(b) What standards should be promulgated for the proper design, construction, maintenance, and placement of tanks containing hazardous materials;

(c) What classes of tanks require inspection and at what intervals, considering the size, type, and location of the tanks, the types of hazardous materials contained in them, and other relevant factors; and

(d) How safety standards can be enforced most effectively; and be it further

RESOLVED, That these agencies are requested to make a joint report to the General Assembly no later than December 31, 1978; and be it further

RESOLVED, That copies of this Joint Resolution be sent to the Honorable William A. Urie, Secretary of Licensing and Regulation, One South Calvert Street, Baltimore, Maryland 21202; the Honorable Neil Solomon, Secretary of Health and Mental Hygiene, 201 West Preston Street, Baltimore, Maryland 21201; ~~and~~ the Honorable James B. Coulter, Secretary of Natural Resources, Tawes State Office Building, Annapolis, Maryland 21401; and the Honorable Robert J. Lally, Secretary, Department of Public Safety and Correctional Services, 1 Investment Place, Towson, Md. 21204.

Approved:

_____

Acting Governor.

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Speaker of the House of Delegates.

_____

President of the Senate.

EMERGENCY BILL

S E N A T E O F M A R Y L A N D

81r0868 No. 473

By: Senator Stone
Introduced and read first time: January 17, 1978
Assigned to: Economic Affairs

Committee report: Favorable
Senate action: Adopted with floor amendments
Read second time: March 3, 1978

CHAPTER 810

AN ACT concerning

Hazardous Waste ~~— Landfill~~

FOR the purpose of prohibiting ~~the installation of certain landfills within a certain distance of residential property~~ until a certain date the Maryland Port Administration from disposing or causing the disposal of designated hazardous substances in disposal structures, systems, or geographic areas which were not utilized for that purpose before a certain date; and providing this Act is an emergency measure.

BY ~~adding to~~ repealing and reenacting, with amendments,

Article – Natural Resources
Section ~~8-1413.3~~ 8-1413.2(q)
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article – Natural Resources

~~8-1413.3.~~

~~THE DEPARTMENT OR THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE MAY NOT ISSUE A PERMIT FOR THE INSTALLATION OF ANY HAZARDOUS WASTE SANITARY LANDFILL UNLESS THE LANDFILL IS AT LEAST 1,500 FEET FROM ANY RESIDENTIAL PROPERTY.~~

8-1413.2.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

(g) Except as provided in Section 8-1413 and regulations adopted pursuant to this subtitle, a person only may dispose of designated hazardous substances in a facility. UNTIL JULY 1, 1979, THE MARYLAND PORT ADMINISTRATION MAY DISPOSE OF, OR CAUSE TO BE DISPOSED, DESIGNATED HAZARDOUS SUBSTANCES ONLY IN A DISPOSAL STRUCTURE, SYSTEM, OR GEOGRAPHIC AREA UTILIZED FOR DISPOSAL ON OR BEFORE JANUARY 1, 1978.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of the public health and safety and having been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, the same shall take effect from the date of its passage.

Approved:

_____

Acting Governor.

_____

President of the Senate.

_____

Speaker of the House of Delegates.

CHAPTER 455

An Act to amend and reenact § 44-146.19 of the Code of Virginia, relating to powers and duties of political subdivisions.

[S 511]

Approved APR 1 1978

Be it enacted by the General Assembly of Virginia:

1. That § 44-146.19 of the Code of Virginia is amended and reenacted as follows:

§ 44-146.19. Powers and duties of political subdivisions.—(a) Each political subdivision within the State shall be within the jurisdiction of and served by the Office of Emergency Services and be responsible for local disaster preparedness and coordination of response. Each political subdivision may maintain in accordance with State emergency preparedness plans and programs an agency of emergency services which, except as otherwise provided under this chapter, has jurisdiction over and services the entire political subdivision.

(b) Each political subdivision shall have a director of emergency services who, after the term of the person presently serving in this capacity has expired and in the absence of an executive order by the Governor, shall be the following:

(1) In the case of a city, the mayor or city manager, who shall have the authority to appoint a coordinator of emergency services activities with consent of council;

(2) Notwithstanding the provisions of § 15.1-50 of the Code of Virginia, in the case of a county, a member of the board of supervisors selected by the board or the chief administrative officer for the county, who shall have the authority to appoint a coordinator of emergency services activities with the consent of the governing body;

(3) A coordinator of emergency services may be appointed by the council of any town to insure integration of its organization into the county emergency services organization;

(4) In the case of towns with a population in excess of five thousand having an emergency services organization separate from that of the county, the mayor or town manager shall have the authority to appoint a coordinator of emergency services with consent of council.

(c) Whenever the Governor has declared a state of emergency, each political subdivision within the disaster area may, under the supervision and control of the Governor or his designated representative, enter into contracts and incur obligations necessary to combat such threatened or actual disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such disaster. In exercising the powers vested under this section, under the supervision and control of the Governor, the political subdivision may proceed without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, incurring of obligations, employment of temporary workers, rental of equipment, purchase of supplies and

materials, levying of taxes, and appropriation and expenditure of public funds.

(d) The director of each local organization for emergency services may, in collaboration with other public and private agencies within this State, develop or cause to be developed mutual aid arrangements for reciprocal assistance in case of a disaster too great to be dealt with unassisted. Such arrangements shall be consistent with State plans and programs and it shall be the duty of each local organization for emergency services to render assistance in accordance with the provisions of such mutual aid arrangements.

(e) Each local and interjurisdictional agency ~~should~~ *shall* prepare and keep current a local or interjurisdictional emergency operations plan for its area. The plan shall include, but not be limited to, responsibilities of all local agencies and shall establish a chain of command. *Each political subdivision having a nuclear power station or other nuclear facility within ten miles of its boundaries shall, if so directed by the Office of Emergency Services, prepare and keep current an appropriate emergency plan for its area for response to nuclear accidents at such station or facility.*

_____

President of the Senate

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Speaker of the House of Delegates

Approved:

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Governor

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SENATE RESOLUTION 427

By: Senators Gillis of the 20th, Walker of the 19th, Kennedy of the 4th and others

A RESOLUTION

Establishing the Senate Study Committee on Energy Materials' Requirements, Consumption, Transportation, Supplies, Technologies, Organization, Legislation and Financing; and for other purposes.

WHEREAS, the State of Georgia has an abundant supply of natural resources which may be used to create energy to replace oil from foreign countries; and

WHEREAS, the prosperity and well-being of the people, industries, businesses and government of the State of Georgia are vitally dependent upon energy resources, materials, processes and their prices; and

WHEREAS, the energy crisis is worsening daily, with no promise of significant developments for any relief from its very adverse effects prudently expected; and

WHEREAS, the State of Georgia has a history and tradition richly filled with people who can and do work and innovate to address our common problems and the elimination of such problems, and to see and create our new opportunities when such new opportunities are required for the advancement and well-being of our citizens in all fields, both private and public.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE that there is hereby created a special Study Committee of the Senate to be known as the Senate Study Committee on Energy to be composed of the members of the Senate Committee on

Natural Resources and Environmental Quality and five additional Senators to be appointed by the President of the Senate. The Chairman of the Committee on Natural Resources and Environmental Quality shall serve as Chairman of said Study Committee.

The Committee shall conduct a study of Georgia's energy materials' requirements, consumption, transportation, supplies, technologies, organization, legislation and financing.

The members of the Study Committee shall receive the expenses and allowances provided by law for members of interim legislative committees but shall receive the same for not more than ten days unless additional days are authorized by the President of the Senate.

The funds necessary to carry out the provisions of this Resolution shall come from funds appropriated to or otherwise made available to the legislative branch of government.

The Committee shall make a report of its findings and recommendations on or before the date the General Assembly convenes in regular session in January, 1979, at which time the Committee shall stand abolished.

(To be made one and twelve copies)

THE SENATE

.....NINTH..... LEGISLATURE, 19 ...78

STATE OF HAWAII

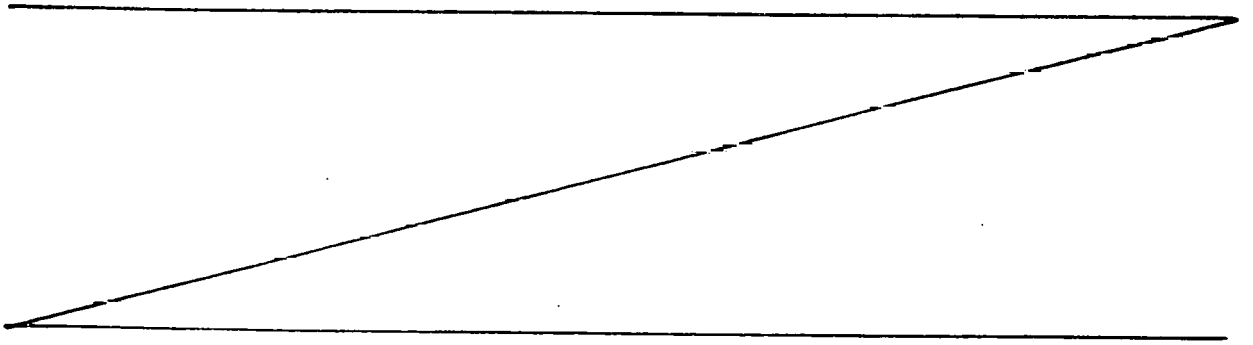
S.B. NO. 1581-78
S.D. 1
H.D. 2
Act 131

A BILL FOR AN ACT

RELATING TO AN APPROPRIATION FOR RESEARCH, DEVELOPMENT, DEMONSTRATION, AND UTILIZATION OF ALTERNATE ENERGY SOURCES FOR HAWAII.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. (a) There is appropriated out of the general obligation bond fund the sum of $3,845,000, or so much thereof as may be necessary, for the funding of research and development, applications, and demonstrations directed toward the development and utilization of alternate energy resources. The projects proposed for funding are based on recommendations made by the special energy task forces established by the senate committee on energy/natural resources during the summer of 1977. The program areas, funding levels, source of fund, and expending agencies are as follows:



HFIN 489 733

PROGRAM AREA	FUNDING (Thousands) FY 1978-79	SOURCE OF FUNDING	EXPENDING AGENCY
CIP			
BIOMASS			
1. HC&S Ethanol Plant	$ 500	C	UOH
2. Corn-Ethanol Program	330	C	AGR
3. Energy Tree Farms	500	C	LNR
4. Other Biomass R&D (CIP)	200	C	UOH
Subtotal	1,530		
GEOTHERMAL			
1. State Geothermal Match	200	C	UOH
OCEAN ENERGY			
1. Off-shore Pipes/Barges	1,225	C	UOH
SOLAR/WIND			
1. Solar Irrigation Demo	100	C	AGR
2. Solar Ag. Application	100	C	AGR
3. State Bldg. Solar HW	100	C	PED
4. Photovoltaic Demo	50	C	UOH
5. State Solar Air Cond.	100	C	UOH
6. Engineering Analysis	150	C	UOH
7. Wind-Direct Pumping Demo.	50	C	AGR
8. Wind-Electric Demo.	40	C	UOH
9. Wind-Hydro Demo.	200	C	UOH
Subtotal	890		
Total CIP	3,845		

(b) For the purpose of this Act:

"Expending agency" means the executive department which is authorized to expend specified appropriations made by this Act. Abbreviations, where used to denote the expending agency shall mean the following:

AGR Department of Agriculture;

LNR Department of Land and Natural Resources;

PED Department of Planning and Economic Development;

UOH University of Hawaii.

The source of funding letter symbol "C" means the general obligation bond fund.

SECTION 2. To insure maximum utilization of State fur , to eliminate duplication of effort, and to minimize overlapping of programs, each expending agency designated in section 1 of this Act shall coordinate its planned expenditures with the Energy Resources Coordinator. Federal, county, and private funds shall be sought for projects where feasible.

SECTION 3. The director of finance is authorized to issue general obligation bonds of the State to yield the amount of $3,845,000 appropriated by this Act. The appropriations for capital investment projects authorized by this Act which are unencumbered as of June 30, 1982 shall lapse as of that date; provided that the lapsing date shall not apply to projects necessary to qualify for federal aid financing and reimbursement.

HFIN 489 735

SECTION 4. This Act shall take effect on July 1, 1978.

CHAPTER 206

(S.B. No. 1616)

AN ACT

APPROPRIATING MONEYS FROM THE ACCOUNTS ENUMERATED TO THE OFFICE OF THE GOVERNOR FOR THE OFFICE OF ENERGY TO BE EXPENDED FOR DESIGNATED PROGRAMS ACCORDING TO DESIGNATED EXPENSE CLASSES FROM THE LISTED ACCOUNTS FOR THE PERIOD JULY 1, 1978, THROUGH JUNE 30, 1979.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Office of the Governor for the Office of Energy the following amounts, to be expended for the designated programs according to the expense classes designated therein from the listed accounts for the period July 1, 1978, through June 30, 1979:

PROGRAM	FOR PERSONNEL COSTS	FOR OPERATING EXPENDITURES	FOR CAPITAL OUTLAY	TOTAL
A. ENERGY CONSERVATION:				
FROM:				
Federal Energy Administration Account	$ 119,100	$ 385,300	$ 1,600	$ 506,000
B. ENERGY MANAGEMENT AND RESEARCH:				
FROM:				
General Account	$ 85,700	$ 39,200	$ 2,900	$ 127,800
GRAND TOTAL	$ 204,800	$ 424,500	$ 4,500	$ 633,800

Approved March 22, 1978.

AN ACT in relation to natural resources, research, data collection and environmental studies.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Establishes Illinois Institute of Natural Resources.

(a) There is hereby established within the Executive Branch of the State Government an institute to be known as the Illinois Institute of Natural Resources.

(b) It shall be the duty of the Institute to investigate practical problems, implement studies, conduct research and provide assistance, information and data relating to the technology and administration of environmental protection; energy; the natural history, entomology, zoology and botany of this State; the geology and natural resources of this State; the water resources and weather of this State; and the archeological and cultural history of this State. The Institute shall obtain, store, and process relevant data; recommend technological, administrative, and legislative changes and developments; cooperate with other federal, state or local governmental research agencies, facilities or institutes in the selection of projects for study; cooperate with the Board of Higher Education and with the public and private colleges and universities in this State in developing relevant interdisciplinary approaches to problems; evaluate curricula at all levels of education and provide assistance to instructors; and sponsor an annual conference of leaders in government, industry, health and education to evaluate the state of this State's environment, natural resources and energy supply and consumption.

(c) The Institute shall assume the functions of the former Institute for Environmental Quality and the former Division of Energy within the Department of Business and Economic Development; and, beginning on January 1, 1979,

within the Institute structure there shall be three divisions carrying out functions of the Scientific Surveys -- State Geological Survey Division, State Natural History Survey Division and State Water Survey Division -- formerly in the Department of Registration and Education -- under the authority of the Board of Natural Resources and Conservation as defined in this Act, and beginning on January 1, 1979, a division carrying out the functions of the former Museums Division in the Department of Registration and Education under the authority of the Board of the Illinois State Museum as defined in this Act. The Institute shall have such other units as are necessary to carry out other functions.

Section 2. Director. (a) the Institute shall be under the supervision and control of a Director who shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term of 2 years, commencing with the third Monday in January of each odd-numbered year.

(b) The Director, in accordance with the Personnel Code, shall employ such personnel, provide such facilities, and contract for such outside services as may be necessary to carry out the purposes of this Act. Maximum use shall be made of existing federal and state agencies, facilities and personnel in conducting research under this title.

(c) As soon as practical the Director shall establish within the Institute a Solid Waste Management Task Force to make surveys and recommendations regarding the development of regional systems of solid waste and refuse collection, handling and disposal; for coordinating municipal and industrial solid waste disposal programs; to expedite development of systems for the re-cycling and re-use of refuse and solid waste materials; and to make periodic reports and recommendations for submission to the Pollution Control Board by the Institute at such intervals as to assure compliance with the purposes of The Environmental Protection Act. The Pollution Control Board shall make rules and

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regulations on these subjects based upon such recommendations. The Task Force shall be composed of Institute, municipal, county, state and industrial representatives technically qualified in the area of solid waste management.

Section 3. Powers and Duties. (a) In addition to its other powers, the Institute has the following powers:

(1) To administer for the State any energy programs and activities under federal law, regulations or guidelines, and to coordinate such programs and activities with other State agencies, units of local government, and educational institutions.

(2) To represent the State in energy matters involving the federal government, other states, units of local government, and regional agencies.

(3) To prepare energy contingency plans for consideration by the Governor and the General Assembly. Such plans shall include procedures for determining when a foreseeable danger exists of energy shortages, including shortages of petroleum, coal, nuclear power, natural gas, and other forms of energy, and shall specify the actions to be taken to minimize hardship and maintain the general welfare during such energy shortages.

(4) To cooperate with State colleges and universities and their governing boards in energy programs and activities.

(5) To obtain, store, process, and provide data and information related to the powers and duties of the Institute under this Section. Nothing herein shall be deemed to give authority to the Institute to require reports from non-governmental sources or entities.

(6) To accept, receive, expend, and administer, including by contracts and grants to other State agencies, any energy-related gifts, grants, cooperative agreement funds, and other funds made available to the Institute by the federal government and other public and private sources.

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(b) In addition to its other powers and duties, the Institute shall have the following powers and duties which shall be performed by the surveys and museum:

(1) To investigate and study the natural resources of the State and to prepare printed reports and furnish information fundamental to the conservation and development of natural resources and for that purpose the officers and employees thereof may, pursuant to rule adopted by the Institute, enter and cross all lands in this State, doing no damage to private property.

(2) To cooperate with and advise departments having administrative powers and duties relating to the natural resources of the State, and to cooperate with similar departments in other states and with the United States Government.

(3) To conduct a natural history survey of the state, giving preference to subjects of educational and economical importance.

(4) To publish, from time to time, reports covering the entire field of zoology and botany of the State.

(5) To supply natural history specimens to the State educational institutions and to the public schools.

(6) To investigate the entomology of the State.

(7) To investigate all insects dangerous or injurious to agricultural or horticultural plants and crops, livestock, to nursery trees and plants, to the products of the truck farm and vegetable garden, to shade trees and other ornamental vegetation of cities and villages, to the products of the mills and the contents or warehouses, and all insects injurious or dangerous to the public health.

(8) To conduct experiments with methods for the prevention, arrest, abatement and control of insects injurious to persons or property.

(9) To instruct the people, by lecture, demonstration or bulletin, in the best methods of preserving and protecting

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their property and health against injuries by insects.

(10) To publish, from time to time, articles on the injurious and beneficial insects of the State.

(11) To study the geological formation of the State with reference to its resources of coal, ores, clays, building stones, cement, materials suitable for use in the construction of roads, gas, mineral and artesian water and other products.

(12) To publish, from time to time, topographical, geological and other maps to illustrate resources of the State.

(13) To publish, from time to time, bulletins giving a general and detailed description of the geological and mineral resources, including water resources, of the State.

(14) To cooperate with United States Geological Survey in the preparation and completion of a contour topographic map and the collection, recording and printing of water resource data including stream flow measurements and to collect facts and data concerning the volumes and flow of underground and surface waters of the State and to determine the mineral qualities of water from different geological formations and surface waters for the various sections of the State.

(15) To publish, from time to time, the results of its investigations of the mineral qualities, volumes and flow of underground and surface waters of the State to the end that the available water resources of the State may be better known and to make mineral analyses of samples of water from municipal or private sources giving no opinion from those analyses of the hygenic, physiological or medicinal qualities of such waters.

(16) To act as the central data repository and research coordinator for the State in matters related to water resources.

(17) To distribute, in its discretion, to the various

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educational institutions of the State, specimens, samples, and materials collected by it after the same have served the purposes of the Institute.

(18) To cooperate with the Illinois State Academy of Science and to publish a suitable number of the results of the investigations and research in the field of natural science to the end that the same may be distributed to the interested public.

(19) To maintain a State museum, and to collect and preserve objects of scientific and artistic value, representing past and present fauna and flora, the life and work of man, geological history, natural resources, and the manufacturing and fine arts; to interpret for and educate the public concerning the foregoing.

(20) To cooperate with the Illinois State Museum Society for the mutual benefit of the museum and the society, with the museum furnishing necessary space for the society to carry on its functions and keep its records, and, upon the recommendation of the Museum Director with the approval of the Board of State Museum Advisors and the Director of the Institute, to enter into agreements with the Illinois State Museum Society for the operation of a sales counter and other concessions for the mutual benefit of the museum and the society.

(21) To accept grants of property and to hold property to be administered as part of the State museum for the purpose of preservation, research or interpretation of significant areas within the State for the purpose of preserving, studying and interpreting archaeological and natural phenomena.

(22) To contribute to the support of public museums in this State. For the purposes of this Section, "public museum" means a facility operating for the purpose of acquiring, conserving, preserving, studying, interpreting, enhancing, and in particular, organizing and continuously

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exhibiting specimens, artifacts, articles, documents and other things of historical, anthropological, archaeological, industrial, scientific or artistic import, to the public for its instruction and enjoyment, and operated by or located upon land owned by a unit of local government.

The Institute shall formulate rules and regulations relating to the allocation of any funds appropriated by the General Assembly for the purpose of contributing to the support of public museums in this State.

(23) Beginning January 1, 1979, to perform all other duties and assume all obligations of the Department of Registration and Education pertaining to the State Water Survey, the State Geological Survey and the State Natural History Survey, and the State museum.

(24) To maintain all previously existing relationships between the State Water Survey, State Geological Survey and State Natural History Survey and the public and private colleges and universities in Illinois.

Section 4. Economic Impact Studies. (a) The Institute shall prepare and publish a comprehensive study of the economic impact of the existing rules and regulations of the Pollution Control Board, in accordance with the criteria established in this subsection (a) of Section 4. Each economic impact study shall include, but not be limited to the following:

(1) An evaluation of the environmental costs, and benefits of the rules and regulations to the people of the State of Illinois, including the health, welfare and social costs and benefits.

(2) An evaluation of the economic impact of the rules and regulations on the people of the State of Illinois, including but not limited to the effect of said rules and regulations of the following:

(A) cost of goods, and services,

(B) availability of goods, and services,

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(C) availability of employment.

(3) An evaluation of the economic impact of the rules and regulations on Illinois agriculture, including but not limited to the following:

(A) cost of food,

(B) availability of food, and

(C) availability of employment.

(4) An evaluation of the economic impact of the rules and regulations on units of local government, including but not limited to the following:

(A) effect on local taxes,

(B) effect on local services, and

(C) effect on local community expansion.

(5) An evaluation of the economic impact of the rules and regulations on commerce and industry, including but not limited to the following:

(A) effect on prices,

(B) effect on expansion of industry in Illinois,

(C) effect on the availability of adequate supplies of energy, and

(D) effect on the attraction of new industry.

The economic impact studies shall be completed by the Institute with the guidance and counsel of the Economic Technical Advisory Committee. The Economic Technical Advisory Committee shall propose, for the economic study provided for in this amendatory Act, such rules and regulations of the Pollution Control Board in effect on the effective date of this amendatory Act as the Committee has reasonable cause to believe may, as applied, have an adverse economic impact, based on standards set forth in this subsection. The Director of the Institute shall select, from among those rules and regulations proposed for study by the Committee, those for which he determines the study is most necessary and appropriate, in consideration of the Institute's budgetary constraints. Upon completion of the

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economic impact studies, the Institute shall publish its findings and conclusions with the supporting data used to reach said findings and conclusions, and the Institute shall file said economic studies with the Board.

To allow for adequate public exposure and response, each study shall be made available to the public at least 30 days prior to the Institute's formal presentation to the Board. Existing rules and regulations proposed by the Economic Technical Advisory Committee for economic impact studies and selected by the Director will remain in full force and effect during the preparation and review of said studies unless modified by an order of the Pollution Control Board.

(b) Within a reasonable time but not longer than 120 days after each economic study has been filed with the Pollution Control Board, as provided herein, the Pollution Control Board shall conduct public hearings throughout the State to receive comments from the public regarding the study. The hearings shall be conducted as provided in Section 26 et seq. of the Environmental Protection Act. Upon conclusion of the hearings, the Pollution Control Board shall publish its findings and conclusions on the areas covered by the study and the testimony received by the Pollution Control Board. The Pollution Control Board shall also specifically determine whether, as a result of their findings and conclusions, any regulations of the Pollution Control Board shall be modified or eliminated. If the Pollution Control Board concludes that modification or elimination may be necessary, it shall propose such modifications as regulations and conduct further hearings on said modifications as provided in this Act. Any such proposed modification shall not require any additional economic study by the Institute pursuant this Act.

In addition, the Institute shall, with the guidance and counsel of the Economic Technical Advisory Committee, prepare an economic impact study for all proposed regulations, for

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which hearings are required and authorized by the Pollution Control Board. This study shall include, but not be limited to, those factors set forth in subsection (a). The Institute shall file said economic impact study with the Pollution Control Board prior to the adoption of any new regulations and the Pollution Control Board shall conduct hearings on said study as provided in the Environmental Protection Act.

The Institute shall study the economic impact of selected existing and proposed environmental control regulations on a continuous basis. The Institute shall report to the Pollution Control Board and the General Assembly on the economic impact of selected existing and proposed regulations annually.

Section 5. Economic Technical Advisory Committee. There shall be established an advisory body within this Institute and which shall be known as Economic Technical Advisory Committee. The Economic Technical Advisory Committee shall be composed of seven members, appointed by the Governor, with the advise and consent of the Senate as follows: one shall be engaged in a field which is directly related to agriculture; one shall be engaged in the management of a private manufacturing concern; one shall be representative of labor; one shall be engaged in local government; one shall be a person engaged in commerce; one shall be a person engaged in public health services; and one shall be selected at large. The appointments shall be for 3 years and until their successors are selected and qualified, except that the terms of those first appointed shall expire as follows: 3 at the end of one year; 2 at the end of 2 years; and 2 at the end of 3 years.

The members of the Economic Technical Advisory Committee shall serve without compensation but they shall be reimbursed for their actual and necessary expenses while engaged in the performance of their duties.

Section 6. Board of Natural Resources and Conservation.

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Beginning January 1, 1979, within the Institute there shall be a Board of Natural Resources and Conservation, composed of 8 persons. Said Board shall be composed of the Director of the Institute, who shall be ex-officio chairman thereof, the president of the University of Illinois, or his representative, the president of Southern Illinois University or his representative, and one expert each in animal biology, geology, engineering, chemistry and plant biology, qualified by 10 years' experience in practicing or teaching their several professions. Members of the Board shall be appointed by the Governor, with the advice and consent of the Senate. Said Board, acting through five or more subcommittees, each of which shall be composed of the Director of the Institute, the president of the University of Illinois or his representative, the president of Southern Illinois or his representative, and the expert advisor specially qualified in each of the fields of investigation, shall: consider matters pertaining to natural history, geology, water and water resources, forestry, and allied research, investigation and scientific work; select and appoint, without reference to the State civil service law, members of the scientific staff, prosecuting such research, investigational and scientific work; co-operate with the University of Illinois in the use of scientific staff and equipment; and co-operate with the various departments in research, investigational and scientific work useful in the prosecution of the work of any department.

Section 7. Board of the Illinois State Museum. Beginning on January 1, 1979, within the Institute there shall be a Board of the Illinois State Museum, composed of 7 persons. Said Board shall be composed of 6 representatives of the natural sciences, anthropology, art and business, qualified by 10 years' experience in practicing or teaching their several professions, and the Director of the Institute ex-officio. Members of the Board shall be appointed by the

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Governor, with the advice and consent of the Senate. Said Board shall: Advise the Director of the Institute in all matters pertaining to maintenance, extension and usefulness of the Illinois State Museum; make recommendations concerning the appointment of a new museum director whenever a vacancy occurs in that position; fix the salaries of the administrative, scientific and technical staff of the Illinois State Museum; and review the budget and approve budget requests of the Illinois State Museum and make recommendations with reference thereto to the Governor through the Director of the Institute. The approval of the Board of the Illinois State Museum is necessary for the appointment of and the salary changes in the administrative, scientific and technical staff of the Illinois State Museum.

Section 8. Transfer Provision. (a) All books, records, papers, documents, property, and pending business pertaining to: the functions enumerated in Section 3 of this Act previously performed by the Illinois Institute for Environmental Quality; or, the Department of Registration and Education and assumed by the Institute; or, the Division of Energy of the Department of Business and Economic Development; or, the Department of Business and Economic Development under "The Illinois Coal and Energy Development Bond Act", approved August 19, 1975, as amended and "The Comprehensive Solar Energy Act of 1977", approved August 30, 1977, as amended, shall be delivered and transferred to the Institute within 30 days after the effective dates of this Act of 1979.

(b) All rules and regulations promulgated by the Department of Registration and Education and its functions relating to Section 3 of this Act now assumed by the Institute or the Department of Business and Economic Development pursuant to its authority under "The Illinois Coal and Energy Development Bond Act", approved August 19, 1975, as amended, and "The Comprehensive Solar Energy Act of

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1977", approved August 30, 1977, as amended, shall remain in full force and effect.

(c) On January 1, 1979, employees of the Department of Registration and Education and its functions relating to Section 3 of this Act now assumed by the Institute and, on July 1, 1978 employees of the Illinois Institute for Environmental Quality and the Division of Energy of the Department of Business and Economic Development are transferred to the Institute and shall retain their status and rights under the Personnel Code or any collective bargaining agreement as in existence on the effective date of this amendatory Act of 1978.

Section 9. Section 14a of "An Act in relation to the regulation of the rivers, lakes and streams of the State of Illinois", approved June 10, 1911, as amended, is amended to read as follows:

(Ch. 19, par. 61a)

Sec. 14a. It is the express intention of this legislation that close cooperation shall exist between the Pollution Control Board, Environmental Protection Agency, Illinois Institute of Natural Resources ~~for Environmental Quality~~ and the Department of Transportation and that every resource of state government shall be applied to the proper preservation and utilization of the waters of Lake Michigan.

The Environmental Protection Agency shall work in close cooperation with the City of Chicago and other affected units or government to: (1) terminate discharge of pollutional waste materials to Lake Michigan from vessels in both intra-state and inter-state navigation, and (2) abate domestic, industrial, and other pollution to assure that Lake Michigan beaches in Illinois are suitable for full body contact sports, meeting criteria of the Pollution Control Board.

The Environmental Protection Agency shall regularly conduct water quality and lake bed surveys to evaluate the

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ecology and the quality of water in Lake Michigan. Results of such surveys shall be made available, without charge, to all interested persons and agencies. It shall be the responsibility of the Director of the Environmental Protection Agency to report annually or at such other times as the Governor shall direct; such report shall provide hydrologic, biologic, and chemical data together with recommendations to the Governor and members of the General Assembly.

In meeting the requirements of this Act, the Pollution Control Board, Environmental Protection Agency and Illinois Institute of Natural Resources ~~for Environmental Quality~~ are authorized to be in direct contact with individuals, municipalities, public and private corporations and other organizations which are or may be contributing to the discharge of pollution to Lake Michigan.

Section 10. Sections 3, 4, 5, 6 and 11 of "The Illinois Coal and Energy Development Bond Act", approved August 19, 1974, as amended, are amended to read as follows:

(Ch. 96 1/2, par. 4103)

Sec. 3. The Illinois Institute of Natural Resources ~~Department of Business and Economic Development~~ shall have the following powers and duties:

(a) To ~~solicit~~, accept and expend gifts, grants or any form of assistance, from any source, including but not limited to, the federal government or any agency thereof;

(b) To enter into contracts with business, industrial, university, governmental or other qualified individuals or organizations to promote development of coal and other energy resources. Such contracts may be for, but are not limited to, the following purposes: (1) the commercial application of existing technology for development of coal resources, (2) to initiate or complete development of new technology for development of coal resources, and (3) for planning, design, acquisition, development, construction, improvement and

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financing a site or sites and facilities for establishing plants, projects or demonstrations for development of coal resources and research and development of other forms of energy; and

(c) In the exercise of other powers granted it under this Act, to acquire property, real, personal or mixed, including any rights therein, by exercise of the power of condemnation in accordance with the procedures provided by "An Act to provide for the exercise of eminent domain", approved April 12, 1972, as amended, provided, however, the power of condemnation shall be exercised solely for the purposes of siting and/or rights of way and/or easements appurtenant to coal utilization and/or coal conversion projects. The Institute ~~Department~~ shall not exercise its powers of condemnation until it has used reasonable good faith efforts to acquire such property before filing a petition for condemnation and may thereafter use such powers when it determines that such condemnation of property rights is necessary to avoid unreasonable delay or economic hardship to the progress of activities carried out in the exercise of powers granted under this Act. After June 30, 1985, the Institute ~~Department~~ shall not exercise its power of condemnation for a project which does not receive State or U.S. Government funding. Before use of the power of condemnation for projects not receiving State or U.S. Government funding, the Institute ~~Department~~ shall hold a public hearing to receive comments on the exercise of the power of condemnation. The Institute ~~Department~~ shall use the information received at hearing in making its final decision on the exercise of the power of condemnation. The hearing shall be held in a location reasonably accessible to the public interested in the decision. The Institute ~~Department~~ shall promulgate guidelines for the conduct of the hearing.

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Sec. 4. The Illinois Energy Advisory Council on Coal Development, referred to in this Act as the "Council" is created.

The Council shall be composed of the Governor, the Lieutenant Governor, the Director of the Department of Business and Economic Development, the Chairman of the Capital Development Board, the Director of the Department of Mines and Minerals, the Secretary of the Department of Transportation, the Chief of the Illinois Water Survey, the Chief of the Illinois Geological Survey, the Chairman of the Illinois Commerce Commission and the Director of the Environmental Protection Agency and the Director of the Illinois Institute of Natural Resources.

The Governor shall serve as chairman of the Council and the Lieutenant Governor as vice-chairman.

(Ch. 96 1/2, par. 4105)

Sec. 5. The Council shall convene at the call of the Chairman. It shall advise the Illinois Institute of Natural Resources ~~Department of Business and Economic Development~~ in relation to projects authorized under this Act and shall offer to the Institute ~~Department~~ such recommendations as it deems appropriate for the development of the coal resources of Illinois. The Council may also assist the Institute ~~Department~~ in securing matching funds for projects authorized under this Act.

(Ch. 96 1/2, par. 4106)

Sec. 6. The Illinois Institute of Natural Resources ~~Department of Business and Economic Development~~ is authorized to use $70,000,000 for the purposes specified in this Act. These funds shall be expended only on projects for which previous approval of the Illinois Energy Resources Commission has been granted.

(Ch. 96 1/2, par. 4111)

Sec. 11. Expenditure of Funds. At all times, the proceeds from the sale of Bonds are subject to appropriation

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by the General Assembly and may be expended in such amounts and at such times as the Illinois Institute of Natural Resources ~~Department of Business and Economic Development~~, with the approval of the Illinois Energy Resources Commission, may deem necessary or desirable for the specific purposes contemplated by this Act.

Section 11. Section 4 of the "Abandoned Mined Lands Reclamation Act", approved February 7, 1975, as amended, is amended to read as follows:

(Ch. 96 1/2, par. 4604)

Sec. 4. There is created the Abandoned Mined Lands Reclamation Council, comprised of the (a) Director of Mines and Minerals, (b) Director of Conservation, (c) Director of Agriculture, (d) Director of Business and Economic Development, (e) Director of Local Government Affairs, (f) Director of the Environmental Protection Agency, and (g) Director of the Illinois Institute of Natural Resources ~~Environmental Quality~~, or their designates. The Lieutenant Governor or his designate shall serve as Chairman of the Council, except when Article V, Section 6 of the Constitution is operative, the officer next in line of succession shall serve as chairman. The Council shall meet at least quarterly, on the call of the chairman, and at such other times as the Chairman, or any 4 of the members, considers necessary. The Council has the powers and duties enumerated in Sections 4.01 through 4.05 ~~4.04~~.

Section 12. Sections 1.2, 2.1, 2.2, 2.3, 3.1, 4.1, 5.1, 6.1, 6.2, 7.1, 7.3 and 8.1 of "The Comprehensive Solar Energy Act of 1977", approved August 30, 1977, as amended, are amended to read as follows:

(Ch. 96 1/2, par. 7303)

Sec. 1.2. Definitions. As used in this Act.

(a) "Solar Energy" means radiant energy received from the sun at wave lengths suitable for heat transfer, photosynthetic use, or photovoltaic use.

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(b) "Solar collector" means

(1) An assembly, structure, or design, including passive elements, used for gathering, concentrating, or absorbing direct or indirect solar energy, specially designed for holding a substantial amount of useful thermal energy and to transfer that energy to a gas, solid, or liquid or to use that energy directly; or

(2) A mechanism that absorbs solar energy and converts it into electricity; or

(3) A mechanism or process used for gathering solar energy through wind or thermal gradients; or

(4) A component used to transfer thermal energy to a gas, solid, or liquid, or to convert it into electricity.

(c) "Solar storage mechanism" means equipment or elements (such as piping and transfer mechanisms, containers, heat exchangers, or controls thereof, and gases, solids, liquids, or combinations thereof) that are utilized for storing solar energy, gathered by a solar collector, for subsequent use.

(d) "Solar energy system" means

(1) (a) A complete assembly, structure, or design of a solar collector, or a solar storage mechanism, which uses solar energy for generating electricity or for heating or cooling gases, solids, liquids, or other materials;

(b) The design, materials, or elements of a system and its maintenance, operation, and labor components, and the necessary components, if any, of supplemental conventional energy systems designed or constructed to interface with a solar energy system; and

(c) Any legal, financial, or institutional orders, certificates, or mechanisms, including easements, leases, and agreements, required to ensure continued access to solar energy, its source, or its use in a solar energy system, and including monitoring and educational elements of a demonstration project.

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(2) "Solar energy system" does not include

(a) Distribution equipment that is equally usable in a conventional energy system except for such components of such equipment as are necessary for meeting the requirements of efficient solar energy utilization; and

(b) Components of a solar energy system that serve structural, insulating, protective, shading, aesthetic, or other non-solar energy utilization purposes, as defined in the regulations of the Institute ~~Division~~; and

(c) Any facilities of a public utility used to transmit or distribute gas or electricity.

(e) "Solar Skyspace" means

(1) The maximum three dimensional space extending from a solar energy collector to all positions of the sun necessary for efficient use of the collector.

(2) Where a solar energy system is used for heating purposes only, "solar skyspace" means the maximum three dimensional space extending from a solar energy collector to all positions of the sun between 9 a.m. and 3 p.m. Local Apparent Time from September 22 through March 22 of each year.

(3) Where a solar energy system is used for cooling purposes only, "solar skyspace" means the maximum three dimensional space extending from a solar energy collector to all positions of the sun between 8 a.m. and 4 p.m. Local Apparent Time from March 23 through September 21.

(f) "Solar skyspace easement" means

(1) a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of any owner of land or solar skyspace or in any order of taking, appropriate to protect the solar skyspace of a solar collector at a particularly described location to forbid or limit any or all of the following where detrimental to access to solar energy.

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(a) structures on or above ground;

(b) vegetation on or above the ground; or

(c) other activity;

(2) and which shall specifically describe a solar skyspace in three dimensional terms in which the activity, structures, or vegetation are forbidden or limited or in which such an easement shall set performance criteria for adequate collection of solar energy at a particular location.

(g) "Conventional Energy System" shall mean an energy system utilizing fossil fuel, nuclear or hydroelectric energy and the components or such system, including transmission lines, burners, furnaces, tanks, boilers, related controls, distribution systems, room or area units and other components.

(h) "Supplemental Conventional Energy System" shall mean a conventional energy system utilized for providing energy in conjunction with a solar energy system that provides not less than ten percent of the energy for the particular end use. "Supplemental Conventional Energy System" does not include any facilities of a public utility used to produce, transmit, distribute or store gas or electricity.

(i) "Joint Solar Energy System" shall mean a solar energy system that supplies energy for structures or processes on more than one lot or in more than one condominium unit or leasehold, but not to the general public and involving at least two owners or users.

(j) "Unit of Local Government" shall mean county, municipality, township, special districts, including school districts, and units designated as units of local government by law, which exercise limited governmental powers.

(k) "Institute" ~~"Division"~~ means the Illinois Institute of Natural Resources ~~Division of Energy in the Department of Business and Economic Development~~ or its successor agency.

(l) "Public Energy Supplier" shall mean

(1) A public utility as defined in an Act concerning

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Public Utilities, approved June 29, 1921, as amended; or

(2) A public utility that is owned or operated by any political subdivision or municipal corporation of this State, or owned by such political subdivision or municipal corporation and operated by any of its lessees or operating agents; or

(3) An electric cooperative as defined in Section 10.19 of An Act concerning Public Utilities, approved June 29, 1921, as amended.

(m) "Energy Use Sites" shall mean sites where energy is or may be used or consumed for generating electricity or for heating or cooling gases, solids, liquids, or other materials and where solar energy may be used cost effectively, as defined in the regulations of the Institute ~~Division~~, consistent with the purposes of this Act.

(Ch. 96 1/2, par. 7304)

Sec. 2.1. Delegation of Authority. (a) There is created The Illinois Comprehensive Solar Energy Program, hereinafter referred to as the Program, elements of which are specified in Sections 2.1 through 8.2 of this Act.

(b) Primary authority and responsibility for the supervision and implementation of the Program is vested in the Institute ~~Division~~.

(c) The Director of the Institute ~~Division~~ shall carry out the Program; shall accept, receive, expend, and administer for the benefit of the People of this State, any gifts, grants, bequests, devises, or other funds or monies made available from either public or private sources.

(d) The Institute ~~Division~~ shall acquire and collect information; shall represent the state before all agencies, governmental bodies or commissions and; shall promulgate necessary regulations.

(Ch. 96 1/2, par. 7305)

Sec. 2.2. Cooperation with Other Entities. The Institute ~~Division~~ shall make full use of the resources and

facilities of and cooperate with existing state agencies, commissions, private and public academic institutions, business, civic, professional and industrial entities, and units of local government in carrying out the purposes of this Act.

(Ch. 96 1/2, par. 7306)

Sec. 2.3. Public Access to Institute ~~Division~~ Files, Records, and Information. All files, records, data, and other information of the Institute ~~Division~~ regarding solar energy systems shall be open and available to reasonable public inspection, use, and copying, except for confidential or proprietary information, as defined in the regulations of the Institute ~~Division~~, and internal communications within the Institute ~~Division~~ or between the Institute ~~Division~~ and other state agencies and units of local government.

(Ch. 96 1/2, par. 7307)

Sec. 3.1. Demonstration Projects. The Institute ~~Division~~ shall prepare a plan for instituting a variety of solar energy system demonstration projects in public and private buildings or for public and private use throughout the state and prior to implementation shall make such plan available to the Energy Resources Commission.

(Ch. 96 1/2, par. 7308)

Sec. 4.1. Incentive Program. The Energy Resources Commission may conduct policy studies in conjunction with appropriate state agencies. The Institute ~~Division~~, in cooperation with appropriate state agencies, shall develop an incentive program for encouraging the construction and use of cost effective solar energy systems within this state. The Institute ~~Division~~ shall make recommendations concerning findings to the Illinois Energy Resources Commission. The incentive program shall include:

(a) Study of laws, regulations, ordinances, rules and plans for the purpose of determining the extent to which such laws, regulations, ordinances, rules and plans inhibit or

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encourage the use of solar energy systems;

(b) Study of the market penetration of solar energy system; and

(c) Study of solar skyspace protection.

(Ch. 96 1/2, par. 7309)

Sec. 5.1. Assistance Program. Pursuant to the authority delegated the Institute ~~Division~~ by Section 2.1 hereof, the Institute ~~Division~~ may provide upon request whatever assistance the Institute ~~Division~~ determines to be appropriate in the circumstances and consistent with the purposes of this Act.

(Ch. 96 1/2, par. 7310)

Sec. 6.1. Public Education. The Institute ~~Division~~ may, in cooperation with other state agencies, units of local government, and other institutions, plan, prepare, and develop educational programs for the public regarding the use, impact on, and relation of solar energy systems to users, producers, and suppliers of energy, financial institutions, governmental energy programs and policies, the use of our natural resources and the environment, and other such matters.

(Ch. 96 1/2, par. 7311)

Sec. 6.2. Coordination with Educational Bodies. To the fullest extent feasible, the Institute ~~Division~~ shall leave the responsibility for actually implementing and carrying out the solar energy educational plan's school programs to existing state agencies, units of local government, and other institutions already having authority for educating the public or certain portions of the public.

(Ch. 96 1/2, par. 7312)

Sec. 7.1. Study of Public Energy Suppliers and Solar Energy. The Energy Resources Commission may conduct policy studies pertaining to this Section in cooperation with appropriate State agencies. The Institute ~~Division~~ shall, in cooperation with the Illinois Commerce Commission, study the

relationship between public energy suppliers and the use of solar energy systems and shall make recommendations concerning its findings to the Energy Resources Commission. The studies shall determine ways in which to:

(a) Integrate the supply of conventional energy as supplemental energy for solar energy systems at reasonable rates and under reasonable conditions of service; and

(b) Minimize the economic and load impact on public energy suppliers of the use of solar energy systems.

(Ch. 96 1/2, par. 7314)

Sec. 7.3. Study of Solar Energy System Regulation. The Energy Resources Commission may conduct policy studies pertaining to this Section. The Institute ~~Division~~ shall, in cooperation with the Illinois Commerce Commission, study the proper enforcement and regulatory mechanisms for use of joint solar energy systems and for public energy supplier provision of solar energy systems, and shall make recommendations concerning its findings to the Illinois Energy Resources Commission. Study of joint solar energy systems shall consider:

(a) Costs of the regulatory system and the size of the user;

(b) Need for use of the power of eminent domain;

(c) Rate regulation; and

(d) Effects on service areas, costs of provision of service, and other characteristics of the existing public energy supplier in the area so as to prevent undue economic hardship to the public energy supplier and its customers and to encourage solar energy use.

(Ch. 96 1/2, par. 7316)

Sec. 8.1. Funding. For carrying out the purposes of this Act and the Program described herein, the Institute ~~Division~~ shall utilize such funds as are provided to it from any source subject to appropriation.

Section 13. Section 1 of "An Act to transfer

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jurisdiction of the Dickson Mounds State Memorial to the Department of Registration and Education and making an appropriation in connection therewith", approved April 23, 1965, as amended, is amended to read as follows:

(Ch. 105, par. 468m)

Sec. 1. Jurisdiction of the Dickson Mounds State Memorial, together with all records and personal property used in connection therewith, is transferred from the ~~Department of Conservation to the~~ Department of Registration and Education to the Illinois Institute of Natural Resources, to be operated by the Institute ~~Department of Registration and Education~~ as part of the Illinois State Museum.

Section 14. The title of "An Act to transfer jurisdiction of the Dickson Mounds State Memorial to the Department of Registration and Education and making an appropriation in connection therewith", approved April 23, 1965, as amended, is amended to read as follows:

"An Act in relation to the Dickson Mounds State Memorial".

Section 15. Section 3 of the "Environmental Protection Act", approved June 29, 1970, as amended, is amended to read as follows:

(Ch. 111 1/2, par. 1003)

Sec. 3. (a)"Agency" is the Environmental Protection Agency established by this Act.

(b) "Air Pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

(c) "Board" is the Pollution Control Board established by this Act.

(d) "Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever

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source.

(e) "Garbage" is waste resulting from the handling, processing, preparation, cooking, and consumption of food, and wastes from the handling, processing, storage, and sale of produce.

(f) "Institute" is the Illinois Institute of Natural Resources ~~for Environmental Quality established by this Act.~~

(g) "Open burning" is the combustion or any matter in the open or in an open dump.

(h) "Open dumping" means the consolidation of refuse from one or more sources at a central disposal site that does not fulfill the requirements of a sanitary landfill.

(i) "Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

(j) "Public water supply" means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plants, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use in incorporated municipalities; or unincorporated communities where 10 or more separate lots or properties are being served or intended to be served; State-owned parks and memorials; and State-owned educational, charitable, or penal institutions.

(k) "Refuse" is any garbage or other discarded materials with the exception of radioactive materials discarded in accordance with the provisions of "An Act to authorize the Director of Public Health to purchase, lease, accept or acquire suitable sites for the concentration and storage of radioactive wastes, to provide for supervision of the

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operation of such sites and to authorize the Department of Public Health to prepare and to enforce regulations pertaining to the use and operation of such sites", approved August 16, 1963, as now or hereafter amended, and as authorized by regulations promulgated pursuant to the "Radiation Protection Act", approved July 17, 1959, as now or hereafter amended.

(l) "Sanitary landfill" means the disposal of refuse on land without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

(m) "Sewage works" means individually or collectively those constructions or devices used for collecting, pumping, treating, and disposing of sewage, industrial waste or other wastes or for the recovery of by-products from such wastes.

(n) "Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(o) "Waters" means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

(p) "Municipality" means any city, village or incorporated town.

(q) "Trade secret" means the whole or any portion or phase of any scientific or technical information, design, process including a manufacturing process, procedure, formula

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or improvement, or business plan which is secret in that it has not been published or disseminated or otherwise become a matter of general public knowledge, and which has competitive value. A trade secret is presumed to be secret when the owner thereof takes reasonable measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(r) "Intermittent control system" is a system which provides for the planned reduction of source emissions of sulfur dioxide during periods when meteorological conditions are such, or are anticipated to be such, that sulfur dioxide ambient air quality standards may be violated unless such reductions are made.

Section 16. Section 20d-2 of the "Revenue Act of 1939", filed May 17, 1939, as amended, is amended to read as follows:

(Ch. 120, par. 501d-2)

Sec. 20d-2. (a) "Solar energy" means radiant energy received from the sun at wave lengths suitable for heat transfer, photosynthetic use, or photovoltaic use.

(b) "Solar collector" means

(1) An assembly, structure, or design, including passive elements, used for gathering, concentrating, or absorbing direct and indirect solar energy, specially designed for holding a substantial amount of useful thermal energy and to transfer that energy to a gas, solid, or liquid or to use that energy directly; or

(2) A mechanism that absorbs solar energy and converts it into electricity, or

(3) A mechanism or process used for gathering solar energy through wind or thermal gradients; or

(4) A component used to transfer thermal energy to a gas, solid, or liquid, or to convert it into electricity.

(c) "Solar storage mechanism" means equipment or elements (such as piping and transfer mechanisms, containers,

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heat exchangers, or controls thereof, and gases, solids, liquids, or combinations thereof) that are utilized for storing solar energy, gathered by a solar collector, for subsequent use.

(d) "Solar energy system" means

(1) (a) A complete assembly, structure, or design of solar collector, or a solar storage mechanism, which uses solar energy for generating electricity or for heating or cooling gases, solids, liquids, or other materials;

(b) The design, materials, or elements of a system and its maintenance, operation, and labor components, and the necessary components, if any, of supplemental conventional energy systems designed or constructed to interface with a solar energy system; and

(c) Any legal, financial, or institutional orders, certificates, or mechanisms, including easements, leases, and agreements, required to ensure continued access to solar energy, its source, or its use in a solar energy system, and including monitoring and educational elements of a demonstration project.

(2) "Solar energy system" does not include

(a) Distribution equipment that is equally usable in a conventional energy system except for such components of such equipment as are necessary for meeting the requirements of efficient solar energy utilization; and

(b) Components of a solar energy system that serve structural, insulating, protective, shading, aesthetic, or other non-solar energy utilization purposes, as defined in the regulations of the Institute ~~Department~~.

(3) Such solar energy system shall conform to the standards for such systems established by regulation of the Illinois Institute of Natural Resources ~~Division~~.

Section 17. Sections 6.08, 7.04, 62 and 63 of "The Civil Administrative Code of Illinois", approved March 7, 1917, as amended, are amended to read as follows:

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(Ch. 127, par. 6.08)

Sec. 6.08. In the Department of Conservation.

An Advisory Board to the Department of Conservation, composed of nine persons.

In the appointment of the initial members the Governor shall designate 3 persons to serve for 2 years, 3 for 4 years and 3 for 6 years from the third Monday in January of the odd-numbered year in which the term commences.

The Advisory Board shall formulate long range policies for guidance of the Department in: the protection and conservation of renewable resources of the State of Illinois; the development of areas and facilities for outdoor recreation; the prevention of timber destruction and other forest growth by fire, or otherwise; the reforestation of suitable lands of this State; the extension of cooperative support to other agencies of this State in the prevention and guarding against the pollution of streams and lakes within the State; the management of the wildlife resources, including migratory fowl, and fisheries resources, including the construction of new water impoundment areas; the development of an adequate research program for fish, game and forestry through cooperation with and support of the Illinois Natural History Survey ~~Division~~ in the Illinois Institute of Natural Resources ~~Department of Registration and Education~~; the expressing of policies for proper dissemination of and enforcement of the various laws pertinent to the Conservation program of Illinois and the nation.

The Board shall make a study of the personnel structure of the Department and shall, from time to time, make recommendations to the Governor and the Director of Conservation for a merit system of employment and for the revision of the position classification to the extent which Civil Service classification should apply in departmental positions.

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The Board shall make studies of the land acquisition needs of the Department and recommendations from time to time as to necessary acquisition of lands for fisheries, game, forestry and recreational development.

The Board shall in cooperation with the Illinois Natural History Survey ~~Division~~ in the Illinois Institute of Natural Resources ~~Department of Registration and Education~~, recommend to the Director of Conservation any reductions or increases of seasons, and bag or possession limits, or the closure of any season when research and inventory data indicate the need for such changes to maintain the relative biological balance of any species.

Such Board members shall be reimbursed for any necessary travel expenses incurred in the performance of their duties.

(Ch. 127, par. 7.04)

Sec. 7.04. Neither the director, assistant director, superintendent of registration, nor any other executive and administrative officer in the Department of Registration and Education shall be affiliated with any college or school of medicine, dentistry, nursing, optometry, embalming, barbering, veterinary medicine and surgery, architecture, or structural engineering, either as teacher, officer or stockholder, nor shall he hold a license or certificate to exercise or practice any of the professions, trades or occupations regulated.

~~The board of natural resources and conservation shall be composed of the Director of Registration and Education, who shall be ex officio chairman thereof, the president of the University of Illinois or his representative, the president of Southern Illinois University or his representative, and one expert each in biology, geology, engineering, chemistry and forestry, qualified by 10 years' experience in practising or teaching their several professions.~~

~~The board of the Illinois State museum shall be composed of 6 representatives of the natural sciences, anthropology,~~

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~~art and business, qualified by 10 years' experience in practicing or teaching their several professions, and the Director of Registration and Education, ex-officio.~~

(Ch. 127, par. 62)

Sec. 62. Unless otherwise provided by law, the functions and duties formerly exercised by the State entomologist, the State laboratory of natural history, the State water survey and the State geological survey and vested by this Act in the Illinois Institute of Natural Resources ~~Department of Registration and Education~~, shall continue to be exercised at the University of Illinois in buildings and places provided by the trustees thereof.

(Ch. 127, par. 63)

Sec. 63. The Board of natural resources and conservation, acting through five or more sub-committees, each of which shall be composed of the Director of Illinois Institute of Natural Resources ~~Registration and Education~~, the president of the University of Illinois or his representative, the president of Southern Illinois University, or his representative, and the expert advisor specially qualified in each of the fields of investigation, shall:

1. Consider and decide all matters pertaining to natural history, geology, water and water resources, forestry, and allied research, investigation and scientific work;

2. Select and appoint, without reference to the State civil service law, members of the scientific staff, prosecuting such research, investigational and scientific work;

3. Co-operate with the University of Illinois in the use of scientific staff and equipment;

4. Co-operate with the various departments in research, investigational and scientific work useful in the prosecution of the work of any department.

The Board of the Illinois State Museum shall:

1. Advise the Director of the Illinois Institute of

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Natural Resources ~~Registration and Education~~ in all matters pertaining to maintenance, extension and usefulness of the Illinois State Museum;

2. Make recommendations concerning the appointment of a new museum director whenever a vacancy occurs in that position;

3. Fix the salaries of the administrative, scientific and technical staff of the Illinois State Museum;

4. Review the budget and approve budget requests of the Illinois State Museum and make recommendations with reference thereto to the Governor through the Director of the Illinois Institute of Natural Resources ~~Registration and Education~~.

The approval of the Board of the Illinois State Museum is necessary for the appointment of and salary changes in the administrative, scientific and technical staff of the Illinois State Museum.

Section 18. Section 8.14 of "An Act in relation to State Finance", approved June 10, 1919, as amended, is amended to read as follows:

(Ch. 127, par. 144.14)

Sec. 8.14. Appropriations from the Public Utility Fund shall be made only to the Illinois Commerce Commission for ordinary and contingent expenses of such Commission in the administration of "An Act concerning public utilities", approved June 29, 1921, as heretofore or hereafter amended, in the administration of the "Electric Supplier Act", as heretofore or hereafter amended, and in the administration of the "Illinois Gas Pipeline Safety Act", as heretofore or hereafter amended, and to the Illinois Institute of Natural Resources ~~for Environmental Quality~~, for the purpose of conducting studies concerning environmental pollution problems caused or contributed to by public utilities and the means for eliminating or abating those problems, in accordance with the functions of said Institute as specified in the "Environmental Protection Act", enacted by the 76th

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General Assembly, as heretofore or hereafter amended, and for administration of energy programs including those specified in "The Comprehensive Solar Energy Act of 1977", as heretofore or hereafter amended, and "The Illinois Coal and Energy Development Bond Act", has heretofore or hereafter amended. No money shall be transferred from the Public Utility Fund to any other fund.

(Ch. 111 1/2, rep. par. 1006)

Section 19. Section 6 of the "Environmental Protection act", approved June 29, 1970, as amended, is repealed.

(Ch. 127, rep. pars. 6.07, 58.12 through 58.30, 58.30a, 58.31, 58.33, 58.34, 58.35, 58.37 and 63)

Section 20. Sections 6.07, 58.12 through 58.30 and 58.30a, 58.31, 58.33, 58.34, 58.35, 58.37 and 63 of The Civil Administrative Code of Illinois, approved March 17, 1917, as amended, are repealed.

Section 21. This Act takes effect July 1, 1978, except Sections 13, 14, 17 and 20 which take effect January 1, 1979.

President of the Senate

Speaker, House of Representatives

APPROVED

this 14th day of July, 1978 A.D.

GOVERNOR

HOUSE FILE 2098

AN ACT

RELATING TO AND APPROPRIATING FROM THE GENERAL FUND OF THE STATE AND VARIOUS TRUST FUNDS FOR VARIOUS OPERATIONS AND GRANTS AND AIDS TO DEPARTMENTS AND AGENCIES OF THE STATE WHOSE RESPONSIBILITIES RELATE TO AGRICULTURAL AFFAIRS, ECONOMIC DEVELOPMENT, ENERGY RESEARCH, COAL RESEARCH, AND NATURAL RESOURCES MANAGEMENT AND RESEARCH.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. There is appropriated from the general fund of the state and the trust funds indicated to the department of agriculture for the fiscal year beginning July 1, 1978 and ending June 30, 1979 the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

	1978-1979 Fiscal Year
1. GENERAL ADMINISTRATION	
a. From the general fund for salaries, support, maintenance, and miscellaneous purposes	$ 890,502
b. From the fertilizer fund to be transferred to the administration division	$ 25,000
c. From the dairy trade practice fund to be transferred to the administration division	$ 49,067
d. From the commercial feed fund to be transferred to the administration division	$ 25,000
2. REGULATORY DIVISION	
a. From the general fund for salaries, support, maintenance, and miscellaneous purposes	$ 2,049,797
b. From the hotel and restaurant fund to be transferred to the regulatory division	$ 265,471
3. LABORATORY DIVISION	
a. From the general fund for salaries, support, maintenance, and miscellaneous purposes	$ 377,399
b. From the general fund for salaries, support, and miscellaneous purposes for the processing of aujeszky's disease tests required by the department of agriculture's aujeszky's disease control program	$ 100,000

The department shall charge a fee for each aujeszky's disease test. The fees shall cover the costs of the program but shall not exceed one dollar for each aujeszky's disease test and all moneys obtained by collection of such fees shall be deposited in the state general fund.

4. From the commercial feed fund to be transferred to the laboratory division	$ 505,971
5. From the pesticide fund to be transferred to the laboratory division	$ 273,152
6. From the fertilizer fund to be transferred to the laboratory division	$ 500,939

7. a. If there is an unencumbered balance of funds in the commercial feed fund on June thirtieth of any fiscal year equal to or exceeding three hundred fifty thousand dollars,

the secretary of agriculture shall reduce the per ton fee provided for in subsection one (1) of section one hundred ninety-eight point nine (198.9) of the Code for the next fiscal year in such amount as will result in an ending estimated balance for June thirtieth of the next fiscal year of three hundred fifty thousand dollars.

b. If there is an unencumbered balance of funds in the fertilizer fund on June thirtieth of any fiscal year equal to or exceeding three hundred fifty thousand dollars, the secretary of agriculture shall reduce the per ton fee provided for in subsection one (1) of section two hundred point eight (200.8) of the Code for the next fiscal year in such amount as will result in an ending estimated balance for the June thirtieth of the next fiscal year of three hundred fifty thousand dollars.

8. There is appropriated to the regulatory division of the department of agriculture for the purposes of converting or purchasing scale trucks in accordance with plans submitted to the budget subcommittee on natural resources, the amount of one hundred ten thousand (110,000) dollars, or so much thereof as is necessary, from federal indirect cost reimbursements received by the department of agriculture for expenses incurred during the prior fiscal years in the meat and poultry inspection program.

9. Funds appropriated by this section to the department of agriculture shall be used to pay salaries and support for not more than three hundred twenty-two permanent full-time positions.

10. Funds appropriated for the general administration of the department under subsection one (1) of this section shall be used by the department for the salary and support of a livestock reporter who shall provide daily livestock quotations at least twice weekly from the central livestock commission company in Webster City, Iowa, provided that livestock quotations reporting services at other livestock

markets shall not be reduced to provide the services required under this section.

11. If Senate File three hundred sixty-five (365) is approved by the Sixty-seventh General Assembly, 1978 Session, and becomes law, the funds appropriated under section one (1) of this Act shall be adjusted as follows:

a. The amount of funds appropriated pursuant to section one (1), subsection one (1), paragraph a, of this Act shall be increased to eight hundred ninety-seven thousand eight hundred two (897,802) dollars.

b. The amount of funds appropriated pursuant to section one (1), subsection two (2), paragraph a, of this Act shall be increased to two million three hundred thirty-seven thousand five hundred seventy-three (2,337,573) dollars.

c. The amount of funds appropriated pursuant to section one (1), subsection two (2), paragraph b, of this Act shall be reduced to one hundred thirty-two thousand seven hundred thirty-five (132,735) dollars.

d. The number of permanent full-time positions shall be increased under section one (1), subsection nine (9), of this Act to three hundred thirty-five permanent full-time positions.

e. That funds appropriated to the regulatory division from the hotel and restaurant fund shall be available for expenditure for the period beginning July 1, 1978 and ending December 31, 1978 and all unencumbered funds remaining in the hotel and restaurant fund on January 1, 1979 shall be transferred to the general fund of the state.

Sec. 2. There is appropriated from the general fund of the state to the department of agriculture for the fiscal year beginning July 1, 1978 and ending June 30, 1979, the sum of twenty-five thousand (25,000) dollars, or so much thereof as may be necessary, to make grants to counties to pay the indemnity and the expenses of the inspection and testing of animals as provided in chapters one hundred sixty-three A (163A) and one hundred sixty-four (164) of the Code.

The secretary of agriculture shall not approve a grant under this section to a county unless the board of supervisors has levied the maximum levy for the county brucellosis eradication fund under section one hundred sixty-four point twenty-three (164.23) of the Code for the fiscal year beginning July 1, 1978 and ending June 30, 1979 and all funds in the county brucellosis eradication fund including all unobligated funds transferred from the county tuberculosis eradication fund, have been expended. However, no individual claimant, in a single county, shall receive more than five thousand (5,000) dollars in a single fiscal year.

Sec. 3. There is appropriated from the general fund of the state to the Iowa development commission for the fiscal year beginning July 1, 1978 and ending June 30, 1979 the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

	1978-1979 Fiscal Year
1. a. For salaries and support of not more than forty-eight full-time permanent positions, and maintenance and miscellaneous purposes	$ 1,716,821

b. From funds appropriated by paragraph a of this subsection the Iowa development commission shall allocate not to exceed thirty-one thousand five hundred (31,500) dollars for the fiscal year ending June 30, 1979 for the seven regional tourism districts, not to exceed five thousand (5,000) dollars per district, if the district provides on a dollar-to-

dollar matching basis funds equal to the amount allocated by the Iowa development commission.

2. For salaries, support of no more than two full-time permanent positions, maintenance and miscellaneous purposes of the European office	$ 146,868

Sec. 4. There is appropriated from the general fund of the state to the Iowa state fair board for the fiscal year beginning July 1, 1978 and ending June 30, 1979 the following sums, or so much thereof as is necessary, to be used for the purposes designated:

	1978-1979 Fiscal Year
1. For maintenance of state fair buildings and grounds	$ 80,000
2. For premiums	$ 10,000
3. For state aid to agricultural societies (local fairs)	$ 210,000

4. The appropriation contained in subsection three (3) of this section for state aid to agricultural societies is conditional upon full compliance with all other statutes which regulate and prescribe the conditions under which such aid is available. In no case shall such moneys be used for other than the payment of cash premiums, and in no case shall any county receive more

than two thousand one hundred (2,100) dollars except that in a county where there are two definitely separate county extension offices, each such society shall receive state aid in such amount as it would be entitled to if it were the only society in the county. In counties having more than one fair entitled to state aid, the state aid available shall be prorated to the fairs based on cash premiums paid by the fairs.

Sec. 5. There is appropriated from the general fund of the state to Iowa state university of science and technology for the fiscal period beginning July 1, 1978 and ending June 30, 1979, the sum of three hundred thousand (300,000) dollars, or so much thereof as may be necessary, to be used by the energy and mineral resources research institute to conduct a coal research project within the state.

Sec. 6. It is the intent of the general assembly to provide for continued coal research within this state. The coal research project authorized under this Act shall include coal beneficiation research to be conducted at the Iowa state university preparation plant using coal purchased by the university as part of its usual energy requirement with funds provided for that purpose, the design and installation of fine coal recovery equipment at the plant, a study of the suitability of Iowa coal for use in the cement industry, and an agricultural productivity study of a reclaimed mine site.

Sec. 7. Funds appropriated by section five (5) of this Act shall be used solely for research as specified in section six (6) of this Act and shall not be used for related academic

activities or studies.

Sec. 8. The energy and mineral resources research institute shall report on the progress of the coal research project to the budget natural resources subcommittees of both houses of the general assembly not later than January 15, 1979. The report shall include a description of the progress of the project, the results and perceived benefits of the research described in section six (6) of this Act, a summary of project expenditures, including anticipated expenditures and any proposals for continued coal research.

Sec. 9. There is appropriated from the general fund of the state for the fiscal year beginning July 1, 1978 and ending June 30, 1979 to the energy policy council for salaries and support of not more than seven full-time permanent positions, maintenance and miscellaneous purposes, the amount of two hundred fourteen thousand one hundred and ten (214,110) dollars, or so much thereof as is necessary.

Sec. 10. There is appropriated from the general fund of the state to Iowa state university of science and technology agricultural experiment station for the fiscal period beginning July 1, 1978 and ending June 30, 1979, the sum of seventy-five thousand (75,000) dollars, or so much thereof as may be necessary, to be used by the university to conduct a study and research of grain grading, testing and pricing in Iowa, such study and research to include but not be limited to the effects on grain grading, testing and pricing in Iowa of weight shrinkage factors, price discounts, grain product quality and present harvesting techniques.

The study and research conducted by the university shall include study and research in the field.

Sec. 11. There is appropriated from the general fund of the state and the funds indicated to the state conservation commission and its divisions for the fiscal year beginning July 1, 1978 and ending June 30, 1979 the following amounts, or so much thereof as may be necessary, to be used for the

following purposes:

1978-1979
Fiscal Year

1. DIVISION OF LANDS AND WATERS

For deposit in the state conservation fund from the general fund of the state for salaries, support, maintenance, equipment and miscellaneous purposes for not more than one hundred seventy-two full-time permanent positions of the division, and for maintenance of state parks, waters, and forests, prison labor programs and including not more than one million sixty-eight thousand seven hundred sixty-seven (1,068,767) dollars which shall be available for the administration fund from the state conservation fund in compliance with the provisions of section one hundred seven point seventeen (107.17) of the Code..... $ 4,043,091

2. DIVISION OF FISH AND GAME

From the state fish and game protection fund for salaries, support, maintenance, equipment and miscellaneous purposes for not more than two hundred twenty-nine full-time permanent positions, including not more than one million sixty-eight thousand

seven hundred sixty-seven (1,068,767) dollars, which shall be available from the state fish and game protection fund for the administration fund in compliance with the provisions of section one hundred seven point seventeen (107.17) of the Code..... $ 6,785,130

3. STATE ADVISORY BOARD FOR PRESERVES

From the general fund of the state for salaries, support, and maintenance of not more than one full-time permanent position and for equipment and miscellaneous purposes for carrying out the duties of the board..... $ 27,188

4. LAND SURVEYS

From the general fund of the state for land surveys to establish and identify the boundaries of state-owned land..... $ 45,000

5. MISSOURI AND MISSISSIPPI RIVER BASIN COMMISSIONS

From the general fund of the state for the state's contribution for support of the Missouri and Mississippi River Basin Commissions..... $ 46,546

6. GREEN THUMB PROGRAM

From the general fund for deposit in the green thumb fund for the employment of persons under the green thumb program established pursuant to chapter

six hundred one H (601H) of the
Code..... $ 135,000

Sec. 12. The state conservation commission shall pay out of funds available to it the assessment of the city of Ventura, Iowa for a water line and the limitation for the payment of assessments provided for in section three hundred seven A point five (307A.5) of the Code shall not apply to this assessment.

Sec. 13. There is appropriated from the marine fuel tax fund for the fiscal year beginning July 1, 1978 and ending June 30, 1979 to the state conservation commission, division of lands and waters, such amounts of funds computed as provided in section three hundred twenty-four point eighty-four (324.84) of the Code, which funds shall be deposited in the state conservation fund for use in the state conservation commission recreational boating program as provided in subsections one (1) through five (5) of section three hundred twenty-four point seventy-nine (324.79) of the Code. The unencumbered or unobligated balances of funds specifically allocated for capital projects shall not revert to the fund from which appropriated until June 30, 1982.

Sec. 14.

1. The transfer of funds from the state conservation fund and the state fish and game protection fund to the administration funds shall not exceed the amounts specified in subsections one (1) and two (2) of section eleven (11) of this Act. Such funds shall be used for salaries and support of not more than one hundred five full-time permanent positions.

2. a. Funds remaining in the fish and game protection fund which are not specifically appropriated by section eleven (11) of this Act are appropriated and may be used for capital projects and contingencies arising during the fiscal year beginning July 1, 1978.

b. A contingency shall not include any purpose or project which was presented to the general assembly by way of

a bill or a proposed bill and which failed to be enacted into law. For the purpose of this subsection, a necessity of additional operating funds may be construed as a contingency.

Before any of the funds authorized to be expended by this subsection shall be allocated for contingencies, it shall be determined by the executive council that a contingency exists and that the contingency was not existent while the general assembly was in session and that the proposed allocation shall be for the best interests of the state.

If a contingency arises or could reasonably be foreseen during the time the general assembly is in session, expenditures for the contingency must be authorized by the general assembly.

3. All receipts and refunds and reimbursements related to activities funded by the administration fund are appropriated to the administration fund. All refunds and reimbursements relating to activities of the state fish and game protection fund shall be credited to the state fish and game protection fund.

4. The state conservation commission shall establish a priority list of watersheds above publicly-owned lakes and areas within those watersheds which are of highest importance based on soil loss to be used for the allocation of funds set aside in subsection six (6) of section fifteen (15) of this Act for permanent soil conservation practices on watersheds above publicly-owned lakes.

Sec. 15. There is appropriated from the general fund of the state to the department of soil conservation for the fiscal year beginning July 1, 1978 and ending June 30, 1979, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

	1978-1979 Fiscal Year
1. GENERAL OFFICE	
For salaries, support, and	

maintenance of not more than nineteen full-time permanent positions and for miscellaneous purposes..... $ 408,917

2. SOIL CONSERVATION COMMITTEE

To carry on soil conservation work in-soil conservation districts organized under the soil conservation district laws of the state; for aid to soil conservation districts for district commissioner's expenses, stationery, postage and other purposes as may be authorized by the state soil conservation committee to be allocated on a need basis..... $ 160,000

3. For salaries and necessary expenses, equipment, and materials to support personnel assigned to the soil conservation districts by the state soil conservation committee on a need basis..... $ 1,431,970

4. For participation in and conjunction with the federal government or any of its agencies in joint operations of watershed planning and development within this state..... $ 60,000

5. For use and expenditures in participation and conjunction with the soil conservation service, United States department of agriculture, and state agencies in joint operations in conducting soil surveys on lands within this state..... $ 303,000

6. For cost sharing to provide state funding of not more than fifty percent of the approved cost of permanent soil conservation practices instituted under chapter four hundred sixty-seven A (467A) of the Code with priority given to projects on owner-operated and family-operated farms except that not more than five percent of the amount appropriated in this subsection may be used for cost sharing to abate complaints filed under sections four hundred sixty-seven A point forty-seven (467A.47) and four hundred sixty-seven A point forty-eight (467A.48) of the Code and five percent or more of the amount appropriated by this subsection may be used for cost-sharing not to exceed seventy-five percent of the approved cost of permanent soil conservation practices under chapter four hundred sixty-seven A (467A) of the Code on watersheds above publicly-owned lakes to be allocated in accordance with the priority list established by the state conservation commission as required in subsection four (4) of section fourteen (14) of this Act..... $ 4,220,000

Unencumbered or unobligated funds appropriated by this subsection remaining on June 30, 1982 shall revert to the general fund on September 30, 1982.

7. For support of conservancy district planning..... $ 19,000

8. For the salary and support of one full-time permanent position to support the temporary land preservation policy commission..... $ 12,835

Sec. 16. There is appropriated from the general fund of the state for the fiscal year beginning July 1, 1978 and ending June 30, 1979 to the temporary land preservation policy commission the amount of one hundred three thousand six hundred forty-five (103,645) dollars, or so much thereof as is necessary, for two full-time permanent positions and support for the temporary land preservation policy commission. Full-time permanent positions authorized in this section are abolished on June thirtieth following the dissolution of the temporary land preservation policy commission pursuant to chapter fifty-three (53), section four (4), subsection ten (10) of the Acts of the Sixty-seventh General Assembly, 1977 Session.

Sec. 17. There is appropriated from the general fund of the state for the fiscal year beginning July 1, 1978 and ending June 30, 1979, to the following named agencies, the following amounts, or so much thereof as is necessary, to be used for the purposes designated:

	1978-1979 Fiscal Year
1. DEPARTMENT OF ENVIRONMENTAL QUALITY--GENERAL OFFICE	
a. For salaries, support and maintenance of not more than one hundred eighty-four full-time permanent positions and for miscellaneous purposes.....	$ 1,851,059

During the fiscal year for which funds are appropriated by this section the Iowa department of environmental quality shall not require the installation or use of equipment to control the emission of dust or other particulate matter on facilities for the storage of grain which are located within the ambient air quality attainment areas for suspended particulates.

b. For conduct of ground water monitoring program related to the Cedar aquifer and Salsbury laboratories..... $ 100,000

c. For payments to the governing bodies responsible for publicly-owned sewage treatment facilities which are eligible for grants under section two hundred two (202) of the federal Water Pollution Control Act as amended by the federal Clean Water Act of 1977, in an amount equal to five percent of the amount approved as the eligible cost of the project by the Iowa water pollution control com-

mission..... $ 2,000,000

d. The department of environmental quality shall report to the general assembly no later than June 30, 1979, the total expenditures of the department in monitoring, regulating, or enforcing their responsibilities with regard to the Cedar aquifer and the Salsbury laboratories. Such report shall be inclusive of all federal, state and private funds expended by any state agency in this regard.

2. GEOLOGICAL SURVEY--GENERAL OFFICE

For salaries, support and maintenance of not more than twenty-seven full-time permanent positions and for miscellaneous purposes..... $ 880,350

3. GEOLOGICAL SURVEY--WATER PLANNING

For salaries and support of not more than five full-time permanent positions..... $ 116,110

4. GEOLOGICAL SURVEY

Iowa coal research program

For salaries and support for not more than four full-time permanent positions, and for maintenance and miscellaneous

purposes..... $ 128,430

5. IOWA NATURAL RESOURCES COUNCIL--GENERAL OFFICE

For salaries, support and maintenance of not more than thirty-one full-time permanent positions and for miscellaneous purposes..... $ 515,553

Notwithstanding the provisions of section four hundred fifty-five A point seventeen (455A.17) of the Code, the Iowa natural resources council may perform its statutory duties relating to uses and developments of water sources of the state without meeting the provisions of a comprehensive statewide plan for the control, utilization, and protection of the water resources of the state until such time as the plan is prepared and completed.

6. MISSISSIPPI RIVER PARKWAY COMMISSION

For support, maintenance and miscellaneous purposes..... $ 9,000

Sec. 18. All federal grants to and the federal receipts of the agencies appropriated funds under this Act are appropriated for the purposes set forth in such federal grants or receipts. Positions within state agencies funded with federal funds are approved for the duration of those funds only.

Sec. 19. Section ninety-three point two (93.2), Code 1977, is amended by striking the section and inserting in lieu thereof the following:

93.2 COUNCIL ESTABLISHED.

1. There is established an energy policy council which shall consist of the following twelve members:

a. Four members of the general assembly. Two members shall be appointed by the speaker of the house from the membership of the house of representatives, not more than

one of whom shall be from the same political party. Two members shall be appointed by the majority leader of the senate from the membership of the senate, not more than one of whom shall be from the same political party. Legislative members of the energy policy council shall vote only on policy statements.

b. The director of energy policy. The director shall be entitled to vote on a matter before the council only when the director's vote is necessary to determine the outcome of a tie vote.

c. Seven public members appointed by the governor for four-year terms commencing July first and subject to confirmation by two-thirds of the membership of the senate. The governor's appointees shall be knowledgeable in the fields of energy production, energy technology and energy management. Not more than four of the governor's appointees shall be from the same political party.

2. The following persons shall serve as ex officio nonvoting members of the council:

a. The state geologist.

b. The chairperson of the Iowa state commerce commission.

c. The administrative officer of the state soil conservation committee.

d. The director of transportation.

e. The executive director of the Iowa department of environmental quality.

f. The director of the Iowa natural resources council. If the Iowa natural resources council is abolished or merged into another state agency by an act of the general assembly that becomes law, the director of the Iowa natural resources council shall cease to serve as an ex officio nonvoting member of the energy policy council.

g. The secretary of agriculture.

Sec. 20. Section ninety-three point three (93.3), Code 1977, is amended to read as follows:

93.3 PERSONNEL. The governor shall appoint a director of energy policy who shall carry out duties assigned to ~~him~~ the director by the council or duties assigned to ~~him~~ the director by the governor pursuant to a proclamation of emergency issued under the provisions of section 93.8. The appointment of the director shall be subject to confirmation by two-thirds of the members of the senate. ~~The director shall be paid an annual salary in an amount not to exceed twenty-two thousand dollars. Other personnel utilized by the council shall be employed through a program of interchange of personnel between the council and other governmental agencies pursuant to chapter 28B~~ The employees of the council shall be subject to the provisions of chapter nineteen A (19A) of the Code. Any employee or any position established for an employee that is to be paid for from federal funds shall be terminated when the federal funds are no longer available.

Sec. 21. Section ninety-three point four (93.4), Code 1977, is amended to read as follows:

93.4 MEETINGS. The council shall organize ~~within ten days following June 13, 1974, by electing one of its members to serve as chairman and one to serve as vice chairman. The council shall establish~~ annually by establishing procedures and requirements with respect to quorum, place and conduct of meetings ~~and~~. The director shall serve as chairperson of the council. The members shall select the vice chairperson. The council may provide for the establishment of an executive committee selected from among the voting members of the council to supervise the administrative duties assigned to the director.

Sec. 22. Section ninety-three point five (93.5), Code 1977, is amended to read as follows:

93.5 COMPENSATION AND EXPENSES. Council members who are not employees of the state shall receive a per diem at the rate of forty dollars for each day devoted to council business and all ~~nonlegislative~~ council members shall be reimbursed

for actual expenses incurred in carrying out their duties as members of the council. ~~Legislative members shall receive payment pursuant to section 2.10 and section 2.12.~~

Sec. 23. Section ninety-three point seven (93.7), subsection one (1), paragraph i, Code 1977, is amended to read as follows:

i. Legislation necessary to implement the state policy for the development and utilization of energy sources and the comprehensive conservation plan. The council shall serve as policy advisor to the governor and the general assembly on all energy matters.

Sec. 24. Section ninety-three point seven (93.7), subsections five (5) and six (6), Code 1977, are amended to read as follows:

5. Review, propose and recommend legislation relating to the development and use of alternative sources of energy in this state and the reduction of dependence on nonrenewable sources of energy.

6. Develop and recommend public education and communication programs in energy conservation and conversion to alternative sources of energy.

Sec. 25. Chapter ninety-three (93), Code 1977, is amended by adding the following new sections:

NEW SECTION. REVIEW. The second session of the Sixty-ninth General Assembly meeting in the year 1982 shall review the activities and performance of the council and shall not later than July 1, 1982 make a determination concerning the status and duties of the council.

NEW SECTION. REPEAL. Chapter ninety-three (93) of the Code is repealed June 30, 1983.

Sec. 26. Of the initial public members appointed by the governor to the energy policy council, two members shall be appointed for terms ending June 30, 1980, two members shall be appointed for terms ending June 30, 1981, and three members shall be appointed for terms ending June 30, 1982. The terms of public members serving on the energy policy council on

June 30, 1978 shall expire on July 1, 1978.

Sec. 27. Acts of the Sixty-fifth General Assembly, 1974 Session, chapter one thousand one hundred thirteen (1113), section twenty-two (22), as amended by Acts of the Sixty-sixth General Assembly, 1976 Session, chapter one thousand eighty-eight (1088), section five (5) and as codified in section ninety-three point sixteen (93.16), Code 1977, is repealed.

Sec. 28. Section four hundred fifty-five B point twenty-four (455B.24), subsection one (1), Code 1977, is amended by adding the following lettered paragraph:

NEW LETTERED PARAGRAPH. Location of emission monitoring devices in areas of the political subdivision in compliance with uniform state standards adopted by the commission. The commission shall adopt uniform state standards for the location of emission monitoring devices specifying such intervals and such procedures to provide a reasonably consistent measurement of emissions from air contaminant sources regardless of the political subdivision of the state in which the sources may be located.

Sec. 29. Section four hundred fifty-five B point thirty-two (455B.32), subsection eleven (11), Code 1977, is amended to read as follows:

11. Formulate and adopt specific and detailed statewide standards pursuant to chapter 17A for review of plans and specifications and the construction of sewer systems and water supply distribution systems and extensions to such systems not later than October 1, 1977. The standards shall be based on criteria contained in the "Recommended Standards for Sewage Works" and "Recommended Standards for Water Works" (Ten States Standards) as adopted by the Great Lakes-Upper Mississippi River board of state sanitary engineers, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature and applicable safety standards. The material standards for polyvinyl chloride pipe shall not exceed the specifications

for polyvinyl chloride pipe in designations D-1784-69, D-2241-73, D-2564-76, D-2672-76, D-3036-73 and D-3139-73 of the American society of testing and material. The rules adopted which directly pertain to the construction of sewer systems and water supply distribution systems and the review of plans and specifications for such construction shall be known respectively as the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems and shall be applicable in each governmental subdivision of the state. Exceptions shall be made to the standards so formulated only upon special request to and receipt of permission from the department. The department shall publish the standards and make copies of such standards available to governmental subdivisions and to the public.

DALE M. COCHRAN
Speaker of the House

ARTHUR A. NEU
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2098, Sixty-seventh General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved _____, 1978

ROBERT D. RAY
Governor

CHAPTER 291

(S.B. 134)

AN ACT relating to the center for energy research.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 152.760 is amended to read as follows:

The board *of energy research* may, if any *energy developmental or demonstration* project *undertaken by the Kentucky center for energy research pursuant to KRS 152.750* is deemed economically feasible *by the board*, request the state property and buildings commission to issue revenue bonds *as authorized by KRS Chapters 56 or 58* [pledging proceeds, including the severance tax on coal produced as a result of the project, for debt service] to meet monetary commitments under any contract executed *by the Kentucky center for energy research, with the approval of the board, for the construction or acquisition of such project.*

Section 2. KRS 152.340 is amended to read as follows:

(1) Whenever in the estimation of the administrator the purposes of KRS 152.310 to 152.390 would be furthered through the use of patented processes or equipment, the administrator is authorized to enter into such agreements as he deems necessary for the acquisition or use of such patents on reasonable terms and conditions.

(2) The administrator is authorized to acquire by condemnation, purchase, *options to purchase,* lease, or otherwise such real property as may be necessary to enable him to carry out his duties under KRS 152.310 to 152.390.

(3) The administrator may accept funds that are donated or otherwise made available to him, and spend them in the program established by KRS 152.310 to 152.390.

Section 3. KRS 152.755 is amended to read as follows:

The administrator of the Kentucky center for energy research, with the approval of the governor, may execute contracts to design, construct, or operate development or demonstration projects, subject to the approval of the board. To such end, the administrator may execute such agreements up to a maximum of fifty-*five* million dollars *($55,000,000)* [($50,000,000)] for the period July 1, 1974 to *December 30, 1985* [January 1, 1979]. Funds required under such agreement shall be deemed a necessary governmental expense and paid by the state treasurer upon approval of the executive department for finance and administration. A copy of each agreement executed shall be filed with the legislative research commission.

Section 4. KRS 152.765 is amended to read as follows:

Any proceeds realized from contracts executed, except where revenue bonds are issued, shall be deposited to the "Fund" created herein, up to the fifty-*five* million dollars *($55,000,000)* [($50,000,000)] authorized and any excess shall accrue to the general expenditure fund. Any balance in the fund upon expiration of all contracts shall revert to the general expenditure fund.

SECTION 5. A NEW SECTION OF KRS CHAPTER 152 IS CREATED TO READ AS FOLLOWS:

In the event that the board of energy research has requested the state property and buildings commission to issue revenue bonds as authorized by KRS 152.760, it may be provided in connection with such fi-

nancing that such bonds shall be secured solely by revenues derived by the Kentucky center for energy research from any project financed wholly or in part from the proceeds of the sale of such bonds, including lease rental payments and the proceeds realized from the sale of the commercially usable product or output of any such developmental or demonstration project.

SECTION 6. A NEW SECTION OF KRS CHAPTER 152 IS CREATED TO READ AS FOLLOWS:

The administrator of the Kentucky center for energy research shall certify to the commissioner of the department of revenue by October 1 of each year the amount of the annual lease rental payments required to be made for any energy research developmental or demonstration project undertaken by the center for energy research. Upon receiving such certification, the commissioner of the department of revenue shall cause to be transferred by appropriate interfund transfer procedures to the Kentucky center for energy research from the available proceeds of the tax levied by KRS Chapter 143, after deducting the amount required to be transferred to the state road fund by KRS 143.090, a sum equal to said annual lease rental payments, but not more than three million dollars ($3,000,000) in any one year.

Approved March 30, 1978

ENROLLED

Regular Session, 1973

HOUSE BILL NO. 835

BY MESSRS. BEL AND FAUCHEUX

ACT NO. 542

AN ACT

To amend Title 30 of the Louisiana Revised Statutes of 1950 by adding thereto a new Chapter, to be designated as Chapter 11, to be comprised of Sections 1101 through 1109, to provide with respect to the development and coordination of a program of research and development in supply, consumption, and conservation of solar energy by the state of Louisiana; and otherwise to provide with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 11 of Title 30 of the Louisiana Revised Statutes of 1950, comprised of Sections 1101 through 1109, is hereby enacted to read as follows:

CHAPTER 11. RESEARCH AND DEVELOPMENT

§1101. Definitions

As used in this Chapter:

(1) "Passive thermal system" means a system which utilizes the structural elements of a building and is not augmented by mechanical components to provide for collection, storage, and distribution of solar energy or coolness.

(2) "Semipassive thermal system" means a system which utilizes the structural elements of a building and is augmented by mechanical components to provide for collection, storage, and distribution of solar energy or coolness.

(3) "Solar device" means the equipment associated with the collection, transfer, distribution, storage, and control of solar energy.

(4) "Solar system" means the integrated use of solar devices for the functions of collection, transfer, storage, and distribution of solar energy.

(5) "Standard" means a specification of design, performance, and procedure, or of the instrumentation, equipment, surrounding conditions, and skills required during the conduct of a procedure.

§1102. Development and coordination of program; priorities

The Department of Natural Resources shall develop and coordinate a program of research and development in solar energy supply, consumption, and conservation and the technology of siting facilities and shall give priority to those forms of research and development which are of particular importance to the state, including, but not limited to, all of the following:

(1) Expansion and accelerated development of alternative sources of energy, including geothermal and solar resources, including, but not limited to, participation in large-scale demonstrations of alternative energy systems sited in Louisiana in cooperation with federal agencies, regional compacts, other state governments and other participants. For purposes of this Paragraph, "participation" shall be defined as any of the following: direct interest in a project, research and development to insure acceptable resolution of environment and other impacts of alternative energy systems, research and development to improve siting and permitting methodology for alternative energy systems, experiments utilizing the alternative energy systems, and research and development of appropriate methods to insure the widespread utilization of economically useful alternative energy systems. Large-scale demonstrations of alternative energy systems are exemplified by the one hundred kilowatt to ten kilowatt range demonstrations of solar, wind, and geothermal systems contemplated by federal agencies, regional compacts, other state governments, and other participants.

(2) Improved methods of construction, design, and operation

of solar energy facilities.

(3) To accomplish the purposes of Paragraph (1), an amount not more than one-half of the total state funds appropriated for the solar energy research and development program shall be allocated for large-scale demonstration of alternative energy systems.

§1103. Technical assessment studies

The Department of Natural Resources shall carry out technical assessment studies on all forms of solar energy and energy-related problems, in order to influence federal research and development priorities and to be informed on future energy options and their impacts, including, in addition to those problems specified in Section 1102.

§1104. Regulations governing solar devices

On or before July 1, 1979, the Department of Natural Resources shall develop and adopt, in cooperation with affected industry and consumer representatives, and after one or more public hearings, regulations governing solar devices. The regulations shall be designed to encourage the development and use of solar energy and to provide maximum information to the public concerning solar devices. The regulations may include, but need not be limited to, any or all of the following:

(1) Standards for testing, inspection, certification, sizing, and installation of solar devices.

(2) Provisions for the enforcement of the standards. Such provisions may include any or all of the following:

(a) procedures for the accreditation by the Department of Natural Resources of laboratories to test and certify solar devices;

(b) requirements for on-site inspection of solar devices, including specifying methods for inspection, to determine compliance or noncompliance with the standards;

(c) requirements for submission to the Department of Natural Resources of any data resulting from the testing and inspection of solar devices;

(d) prohibitions on the sale of solar devices which do not meet minimum requirements for safety and durability as established

by the Department of Natural Resources; and

(e) dissemination of the results of the testing, inspection, and certification program to the public.

(3) In adopting the regulations, the Department of Natural Resources shall give due consideration to their effect on the cost of purchasing, installing, operating, and maintaining solar devices. The Department of Natural Resources shall reassess the regulations as often as it deems necessary, based upon the value of the regulations in terms of benefits and disadvantages to the widespread adoption of solar energy systems and the need to encourage creativity and innovative adaptations of solar energy. The Department of Natural Resources may amend or repeal these regulations based on such reassessment.

(4) Under no circumstances may the Department of Natural Resources preclude any person from developing, installing, or operating a solar device on his own property.

(5) Any violation of any regulation adopted by the Department of Natural Resources pursuant to this Section may be enjoined in the manner prescribed by law.

§1105. Mass market deployment of solar systems; preparation; thermal systems

No later than December 31, 1980, the Department of Natural Resources shall prepare for mass market deployment of solar systems by developing designs and specifications for prototype housing to utilize passive or semipassive thermal systems for heating or heating and cooling purposes.

§1106. Manual of design types, costs, performance and evaluation procedures for certain thermal systems

On or before December 31, 1980, the Department of Natural Resources shall develop a manual of design types, costs, performance, and evaluation procedures for passive and semipassive thermal systems. The evaluation procedures shall be such as will facilitate the determination of the performance of different passive and semipassive designs in different regions of Louisiana. The department shall also procure thermal performance data from monitoring a

number of existing passive or semipassive thermal systems in buildings in Louisiana to generate data for the manual.

§1107. Conferences to coordinate adoption of regulations

The Department shall confer with officials of federal agencies, including the National Aeronautics and Space Administration, the National Bureau of Standards, the Energy Research and Development Administration, and the Department of Housing and Urban Development, to coordinate adoption of regulations pursuant to Sections 1104 and 1105.

§1108. Effective date of regulations

The Department of Natural Resources may, in adopting regulations pursuant to this Chapter, specify the date when the regulations shall take effect. The department may specify different dates for different regulations.

§1109. Contracts for materials and services

For purposes of carrying out the provisions of this Chapter, the Department of Natural Resources may contract with any person for materials and services that cannot be performed by its staff or other state agencies, and may apply for federal grants or any other funding.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

CHAPTER 111

AN ACT

RELATING TO ENERGY; MAKING APPROPRIATIONS FOR THE PURPOSE OF ENEEGY RESEARCH AND DEVELOPMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. APPROPRIATIONS.--

A. Two million dollars ($2,000,000) is appropriated from the severance tax income fund to the energy research and development fund for expenditure pursuant to the provisions of the Energy Research and Development Act.

B. Five hundred thousand dollars ($500,000) is appropriated from the severance tax income fund to the energy and minerals department for disbursement to the board of regents of New Mexico state university in order to:

(1) develop solar equipment performance standards for solar energy development;

(2) test solar energy heating and cooling systems;

(3) coordinate major solar research development and demonstration efforts within the state;

(4) collect and disseminate information to the citizens and industry in the state concerning solar energy research, development and demonstration and solar energy applications and technologies; and

(5) coordinate the development of federal solar energy programs within the state.

HOUSE BILL 199
Approved: March 6, 1978

C. Unencumbered and unexpended balances of the appropriations made in Subsections A and B of this section shall not revert at the end of the sixty-seventh fiscal year.

78S 2060

State of Rhode Island, &c.

IN GENERAL ASSEMBLY

JANUARY SESSION, A. D. 1978

RESOLUTION

CREATING A SPECIAL LEGISLATIVE COMMISSION TO STUDY THE FEASIBILITY OF DEVELOPING HYDRO-ELECTRIC AND/OR HYDRO-POWER IN RHODE ISLAND

RESOLVED, That a special legislative commission be and the same is hereby created consisting of seven (7) members to be appointed by the lieutenant governor: one (1) of whom shall be from the financial community; one (1) of whom shall be a licensed engineer; one (1) of whom shall be a general contractor; one (1) of whom shall be from the senate; one (1) of whom shall be from the house of representatives; one (1) of whom shall be from the coastal resources management council, and one (1) of whom shall be from the business community, and whose purpose it shall be to study the feasibility of developing hydro-electric and/or hydro-power in Rhode Island.

Forthwith upon the passage of this resolution, the members of the commission shall meet at the call of the lieutenant governor and organize and shall select from among themselves a chairman. Vacancies in said commission shall be filled in like manner as the original appointment.

The membership of said commission shall receive no compensation for their services.

All departments and agencies of the state shall furnish such advice and information, documentary and otherwise, to said commission and its agents as is deemed necessary or desirable by the commission to facilitate the purposes of this resolution.

The director of administration is hereby authorized and directed to provide suitable quarters for said commission; and be it further

RESOLVED, That the commission shall report its findings and recommendations to the lieutenant governor one year from the date of the passage of this resolution.

NO. 234. AN ACT TO ADD SUBCHAPTER 5 TO 10 V.S.A. CHAPTER 73 RELATING TO CONSERVATION AND DEVELOPMENT.

(H.298)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. Subchapter 5 is added to 10 V.S.A. chapter 73, to read:

Subchapter 5, Forest Resource Advisory Council

§ 2221. DECLARATION OF POLICY

It is hereby declared that to further implement the policy as stated in section 2051 of this chapter the department of forests and parks shall carry out a detailed assessment of the forest resource which assessment shall be the basis for program planning and administration. Further, there shall be established a forest resource advisory council.

§ 2222. FINDINGS

The legislature finds that it is desirable to alleviate unemployment and raise the income potential of Vermonters by broadening the economic base of the wood-using industry through promoting greater and more profitable use of the state's native raw material, wood. It is the policy of the state of Vermont to encourage development and diversification of the forest products industry through market development, utilization assistance, and detailed inventories of wood availability and growth. Secondary processes will be encouraged to provide "value-added" through remanufacture, and the development of new wood-using industries will be promoted. A forest resource advisory council will be established to provide interdisciplinary review, analysis, and coordination, on policies, plans, and programs which will maximize the returns and benefits to Vermonters to be derived from the state's forest resource.

§ 2223. CREATION OF A FOREST RESOURCE ADVISORY COUNCIL

There is established within the executive branch the forest resource advisory council, which shall be composed of eleven members including the commissioner of forests and parks, commissioner of economic development, director of the state energy office, and director of the school of natural resources of the University of Vermont, ex officio; and in addition, five persons to be appointed by the governor who are representative of the following areas: wood-harvesting industry, wood-using industry, environment, finance and economics, and forest management; and in addition, two members of the general assembly, one member of the house of representatives, to be appointed by the speaker, and one member of the senate, to be appointed by the committee on committees. In making his appointments, the governor shall attempt to appoint persons employed at various levels in the applicable industries. Terms of all appointed members shall be three years; except initial appointments by the governor shall be made so that two of the five gubernatorial appointees are appointed for terms of one year, two of the five are appointed for terms of two years, and one of the five is appointed for a term of three years. The legislative appointees shall initially and thereafter be appointed to three-year terms. The chairman shall be appointed by the governor.

The department of forests and parks shall provide administrative support. In addition, the council may use the services and staff of any

department to assist it in the performance of its duties with the approval of the head of the department.

Members of the forest resource advisory council except for those members serving ex officio or otherwise regularly employed by the state shall receive $30.00 per diem for each day they perform their official duties of the board, together with reasonable expenses incurred in the performance of their duties.

§ 2224. COUNCIL; POWERS AND DUTIES

The council is authorized to study, analyze, and review the total forest resource and its potential for wise development and utilization. The council is directed to advise the governor, the legislature, and the appropriate executive departments on policy, plans, and programs in which Vermont's forest resources would have a direct or indirect place. The council shall, as appropriate, develop and publish specific reports and recommendations on its own authority or through a supporting executive department. In exercising the powers authorized herein, the council may:

(1) support a detailed and continuous inventory of the state's forest resource to determine the availability of wood for present and future industry expansion;

(2) identify those obstacles which impede forest product expansion and make recommendations for the removal of those impediments;

(3) assist individuals and organizations in developing ways which will increase the wise use of Vermont forest lands and maximize benefits to be derived from forest resources;

(4) make recommendations to the department of forests and parks, the school of natural resources and the agricultural experiment station at University of Vermont on areas where research might prove most beneficial to forestry in Vermont;

(5) identify and develop new markets for forest products and assist in the development of new products which might play a significant part in the expansion of forestry and forest products in Vermont; and assist in the promotion of research on forest products, as well as on markets for wood which is currently unmerchantable;

(6) submit an annual report of its activities on or before January 15th.

§ 2225. ASSESSMENT

The department of forests and parks is authorized to carry out a detailed inventory and analysis of the forest resource. These activities may include but are not limited to the following:

(1) an inventory and analysis of the supply and availability of the various present and potential forest resources of the state, including limits to such supplies imposed by natural site conditions, by governmental restrictions, or by ownership patterns and attitudes. Among resource potentials to be evaluated are opportunities to:

(A) more fully utilize the productive potential for growing and harvesting timber;

(B) improve wood fiber utilization and wood product recycling;

(C) improve the management of wildlife habitat;

(D) develop the potential for recreational use of forest areas;

(E) increase the potential to use wood fiber from timberland as an economically viable source of fuel for energy production;

(F) conserve and protect watershed values;

(G) analyze present and anticipated demand for various forest resources in the state;

(H) evaluate current state programs and responsiblities in cooperative state-federal forestry programs, for the management of both private and public forest and related lands;

(I) identify the major policies, laws, regulations, management responsibilities, and other factors expected to influence and significantly affect the use, ownership, and management of forest resources;

(2) develop and maintain an effective system for the collection, analysis, and display of such data in forms that contribute to the achievement of the purposes of this chapter;

(3) identify high priority needs for completing the data base and analytical framework essential to improving the quality of future assessments;

(4) evaluate the accuracy and completeness of existing data and of steps needed to improve the accuracy and completeness of data for future assessments;

(5) the assessment shall be completed by July 1, 1980 and thereafter shall be the basis for planning programs and their administration by the department for the conservation, management, and development of Vermont's forest resources.

§ 2226. FUNDING

To carry out the purposes of this act, the commissioner of forests and parks may use such funds as are made available by the legislature, the federal government, or from other sources.

Sec. 2. COMMON NAME

This act shall be known as the Forest Resource Assessment and Development Act of 1978.

Sec. 3. Appropriation

For the purposes of this act there is appropriated to the department of forests and parks the sum of $124,000.00 from the general fund June 30, 1977 balance. This appropriation shall not revert but shall continue until the purposes for which it is made have been accomplished.

Approved: April 17, 1978

A bill to be entitled

An act relating to eminent domain; amending s. 74.011, Florida Statutes, adding regional water supply authorities and lawfully constituted port or aviation authorities to those entities authorized by law to take possession and title in advance of final judgment in eminent domain actions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 74.011, Florida Statutes, is amended to read:

74.011 Scope.--In any eminent domain action, properly instituted by and in the name of the state, the Division of Road Operations of the Department of Transportation, or any county, school board, municipality, expressway authority, regional water supply authority, flood control district, drainage or subdrainage district, the ship canal authority, any lawfully constituted housing, port or aviation authorities ~~authority~~, rural electric cooperative, telephone cooperative corporations, or public utility corporation, the petitioner may avail itself of the provisions of this chapter to take possession and title in advance of the entry of final judgment.

Section 2. This act shall take effect October 1, 1978.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underlined are additions.

ENROLLED

A bill to be entitled

An act relating to marketable record titles to real property; adding s. 712.03(7), Florida Statutes; providing an exception to marketability for sovereignty lands; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) is added to section 712.03, Florida Statutes, to read:

712.03 Exceptions to marketability.--Such marketable record title shall not affect or extinguish the following rights:

(7) State title to lands beneath navigable waters acquired by virtue of its sovereignty.

Section 2. This act shall take effect upon becoming a law.

4-D

CODING: Words in ~~struck through~~ type are deletions from existing law; words underlined are additions.

FLORIDA

CHAPTER 78-82

Senate Bill No. 901

AN ACT relating to the protection of underground gas pipelines; amending s. 553.851(2)(b), Florida Statutes, and adding paragraph (f) to said subsection, requiring the clerk of the circuit court to keep a gas pipeline file; requiring excavators who seek a permit to excavate on land which contains a buried gas pipeline to provide the owner with described notice; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (2) of section 553.851, Florida Statutes, is amended, and paragraph (f) is added to said subsection to read:

553.851 Protection of underground gas pipelines.--

(2) NOTICE AND MARKING REQUIREMENTS FOR EXCAVATION.--

(b) Any owner having the right to bury gas pipelines shall file with the Clerk of the Circuit Court, and have recorded, in each county wherein the owner's gas pipelines are buried the name, address, and telephone number of the owner from whom the necessary location information may be obtained. The clerk shall keep such records in a separate and readily available gas pipeline file.

(f) Should any permit for excavation as described in paragraph (e) be held for more than 30 days prior to excavation, the excavator shall be required to again notify the owner not less than 48 hours or more than 5 days prior to commencing excavation.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor May 28, 1978.

Filed in Office Secretary of State May 30, 1978.

This public document was promulgated at a base cost of $11.86 per page for 1,500 copies or $.0079 per single page for the purpose of informing the public of Acts passed by the Legislature.

CODING: Words in ~~struck-through~~ type are deletions from existing law; words in underscored type are additions.

(To be made one and twelve copies)

THE SENATE

.....NINTH..... LEGISLATURE, 1978.

STATE OF HAWAII

S.C.R. NO. Adopted 28, S.D. 1

SENATE CONCURRENT RESOLUTION

REQUESTING PRESIDENT CARTER AND THE CONGRESS TO PROVIDE HAWAII ITS RIGHTFUL SHARE OF THE U.S. DEPARTMENT OF ENERGY'S PROPOSED BUDGET FOR THE STRATEGIC PETROLEUM RESERVE.

WHEREAS, President Carter's budget fails to provide for any strategic oil reserve facilities in Hawaii; and

WHEREAS, Hawaii's Congressional delegation was given assurance by the Administration of its fair share of the budget for such purposes and that long-term plans include strategic storage in Hawaii; and

WHEREAS, the national energy crisis of 1974 affected Hawaii--as it did the rest of the nation--dramatically, causing every sector of the economy to experience hardship or inconvenience; consumers were unable to purchase gasoline and other petroleum products regularly; business had to slow or stagger production; and labor had to endure shorter work-hours, one survey indicating that during the first six weeks of the crisis, some 900 persons were either laid off or not hired because of energy shortages; and

WHEREAS, this experience clearly demonstrates that every sector of our economy was affected; production suffered, business slowed, and unemployment rose; and

WHEREAS, this may also be true of other areas in the nation, they have alternative energy sources, such as natural gas, coal, hydroelectric and nuclear, to maintain a sufficient degree of economic equilibrium; and

WHEREAS, the reasons given for not funding storage for Hawaii were the higher cost of above ground steel-tank storage facility as against the Gulf of Mexico area salt dome storage and the availability of Alaskan North Slope oil to Hawaii's refineries; and

WHEREAS, neither reason is valid because while the cost of steel tank storage in Hawaii will be higher than salt dome storage in the Gulf Coast, the added cost of

transportation of the oil from its source to the Gulf and then to Hawaii will equalize the differential between Gulf and Hawaii storage cost on first use and the more the reserve is used, the greater the savings by location in Hawaii; and because the basic quality and characteristics of Alaskan North Slope oil is not compatible with Hawaii's refinery facilities, nor with its environmental and product specifications; and

WHEREAS, the Hawaii storage option involves one loading in the Far East and one unloading at Hawaii directly into the storage facility the central storage option involves an extra 12,000 miles of transportation and six separate loading, lightering, barge loading and unloading operations with the concommitant increased environmental exposure; and

WHEREAS, because of almost complete dependence upon petroleum fuels and lack of viable alternate energy sources, at least in the short run, Hawaii is particularly vulnerable to interruptions in delivery of crude oil and petroleum products resulting from embargoes or other emergencies and it is imperative that provisions be made to safeguard Hawaii against adverse and negative effects of such a potential future oil embargo; and

WHEREAS, the Department of Planning and Economic Development has testified that strong support should be shown by the Legislature to inform the President and the Congress of Hawaii's critical need for strategic petroleum reserves; and

WHEREAS, this omission is discriminatory to Hawaii and a clear violation of the Energy Policy and Conservation Act of 1975 (Public Law 94-163) which provides that "each non-contiguous area of the United States which does not have overland access to domestic crude oil products has its component of the Strategic Petroleum Reserves within its respective territory" to the extent practicable; and

WHEREAS, this omission is moreover clearly contrary to the intent of Congress' Energy Policy and Conservation Act of 1975 (Public Law 94-163) which recognized the special needs of areas like Hawaii for maintaining the security of supply; and

WHEREAS, Hawaii is over 90% dependent on imported oil for its energy, which represents nearly twice the dependency ratio of the mainland; and

WHEREAS, Hawaii shares this supply and price vulnerability in a disproportionate manner due to its near-total dependence on oil for its energy needs; and

WHEREAS, the strategic petroleum reserve program is far more critical to Hawaii than it is to the mainland states since a nationwide 20% cut in petroleum supply would decrease the mainland's total energy supply by only 8.9%, while, a 20% cut in petroleum supplies to Hawaii would result in nearly a full 20% cut in energy supply; now, therefore . . .

BE IT RESOLVED by the Senate of the Ninth Legislature of the State of Hawaii, Regular Session of 1978, the House of Representatives concurring, that the President of the United States, the Director of the Office of Management and Budget (OMB) and the Secretary of the Department of Energy, James R. Schlessinger, reconsider this crucial omission upon which the future of Hawaii is dependent and take the necessary steps with the support of the Congress, to make the required funds available, so this program can start being implemented as soon as possible; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the President of the United States, the Director of the Office of Management and Budget (OMB), the Secretary of the Department of Energy, James R. Schlessinger, the members of the Hawaii Congressional delegation, the Governor of the State of Hawaii and the Director of the Department of Planning and Economic Development.

PRINTING CODE—The parts in **this style type** are additions to the text of the existing section of the law. The parts in ~~this style type~~ are deletions from the text of the existing section of the law. The absence of either of the above type styles in an amendatory SECTION indicates that an entirely new section or chapter is to be added to the existing law.

HOUSE ENROLLED ACT No. 1353

AN ACT to amend IC 13-2-11 concerning certain privately owned bodies of water.

Be it enacted by the General Assembly of the State of Indiana.

SECTION 1. IC 13-2-11 is amended by adding a NEW section 7 to read as follows: Sec. 7. An off-stream, privately owned pond, lake, reservoir or other body of water designed and constructed primarily for the reduction or control of pollutants or cooling before discharge of these waters into the public waters of this state does not become a body of public water for the purpose of permitting the state to regulate the quality of water; nor does the state or its citizens acquire a continuing right or interest therein if the owner permits entrance to or recreational use of that body of water by the public. The provisions of IC 14-2-6-3 govern a body of water operated under this section. This section does not affect the duties of the department of natural resources to enforce the fish and wildlife laws of this state as they apply to public entrance or recreational use of that body of water.

SECTION 2. Because an emergency exists, this act takes effect April 1, 1978.

HOUSE BILL No. 3238

AN ACT relating to public utilities; amending K.S.A. 1977 Supp. 66-1,159 and 66-1,172 and repealing the existing sections.

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

Section 1. K.S.A. 1977 Supp. 66-1,172 is hereby amended to read as follows: 66-1,172. (a) Subject to the provisions of this act, the corporation commission shall cause the state to be divided into electric service territories. Within each such territory, only one (1) retail electric supplier shall provide retail electric service, and any such territory established for a retail electric supplier pursuant to this section shall be certified to such retail electric supplier by the commission and such area shall be provided retail electric service exclusively by such supplier. Each retail electric supplier shall continue to have the right to serve all customers being served by it on the effective date of this act, except that such suppliers, by agreement approved by the commission, may otherwise provide for electric service to such customers.

(1) In all existing dual certified service territories the boundaries of the certified territory of each retail electric supplier shall be set at a line or lines substantially equidistant between such supplier's existing distribution lines and the nearest existing distribution line or lines of any other retail electric supplier in every direction, and the commission shall certify to each retail electric supplier such area which, in its entirety, is located substantially in closer proximity to its existing distribution lines than to the nearest existing distribution lines of other retail electric suppliers except that where a retail electric supplier has, on the effective date of this act, an existing distribution line located in dual certified service territory adjacent to the boundary of another retail electric supplier's single certified service territory, the boundary between the certified territories of the two retail electric suppliers shall be set at a line substantially equidistant between the existing single certified service territory boundary of the one retail electric supplier and the nearest existing distribution line of the other retail electric supplier.

(2) The single certified service territories of all retail electric suppliers certificated on the effective date of this act shall remain unchanged subject to the provisions of subsections (a)(3), (a)(4) and (a)(5).

(3) When a municipal retail electric supplier, on the effective date of this act, is the only retail supplier serving electricity within the boundaries of a single service territory certified on the effective date of this act, it shall be granted a single certified territory, the boundaries of which shall be established one-half (½) mile in every direction from its existing distribution lines, but no such territory shall extend beyond any boundaries of such original single certified service territory.

(4) When a retail electric supplier, other than a municipal supplier, on the effective date of this act, is providing electric service within a single service territory then certified to it and a municipal retail electric supplier also is providing electric service in the same single certified service territory, the municipal retail electric supplier shall be granted a single certified service territory, the boundaries of which shall be established substantially equidistant between existing distribution lines of the two retail electric suppliers, but the municipal electric supplier's single certified service territory so designated shall not extend more than one-half (½) mile in any direction from its distribution lines or beyond any of the original single certified service territory boundary.

(5) All single certified service territories or parts thereof existing on the effective date of this act, not assigned to a municipal retail electric supplier under provisions of this act as described in subsection (a)(3) or (a)(4) shall be retained as a single certified service territory by the originally certified retail electric supplier.

(b) The commission shall cause to be prepared, ~~within two (2) years after the effective date of this act~~ *no later than June 30, 1979,* maps of uniform scale to show, accurately and clearly, the boundaries of the electric service territory of each retail electric supplier, as established under subsection (a) of this section. If the commission has authorized or required electric service territories to be established pursuant to agreements of retail electric suppliers, and any retail electric supplier fails to reach agreement with any other retail electric supplier concerning the boundaries of their respective electric service territories, the commission shall have the power to fix the boundaries, for the purpose of determining the electric service territory of any retail electric supplier. Such power shall include the right to hold public hearings and in any such hearing, the commission shall consider all relevant facts including the following conditions, as they existed on the effective date of this act:

(1) The proximity of existing distribution lines of the retail electric suppliers involved;

(2) which supplier was first furnishing retail electric service, and the age of existing facilities in the area; and

(3) the prevention of duplicate electric lines and facilities furnishing retail electric service within such territory.

Sec. 2. K.S.A. 1977 Supp. 66-1,159 is hereby amended to read as follows: 66-1,159. No electric utility may begin site preparation for or construction of an electric generation facility or an addition to an electric generation facility or exercise the right of eminent domain to acquire any land in connection with site preparation for or construction of any such facility or addition thereto, without first acquiring a permit from the state corporation commission. Whenever any such electric utility desires to obtain such a permit, it shall file an application with the commission, setting forth therein that it proposes to construct an electric generation facility or an addition to an electric generation facility and specifying the proposed location, the total number of acres of land that such utility contemplates is needed in connection with the construction, operation and maintenance of such facility or addition thereto and the names of the landowners. In addition, the electric utility shall file with the application such documents pertaining to the construction, operation and maintenance of the proposed electric generation facility or addition to the electric generation facility and such other matters deemed relevant thereto as may be required by rules or regulations of the commission. Thereupon, the commmission shall fix a time for a public hearing on such application, which shall be not less than thirty (30) nor more than ~~sixty (60)~~ *one hundred eighty (180)* days *from the date the application was filed, to determine the necessity* for and the reasonableness of the location and size of the proposed electric generation facility or the addition to the electric generation facility. The commission shall fix the place for hearing, which shall be in the county in which is located the major portion of the land which has been or is proposed to be acquired in connection with the construction, operation and maintenance of the proposed electric generation facility or the addition to the electric generation facility.

Sec. 3. K.S.A. 1977 Supp. 66-1,172 and 66-1,159 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the official state paper.

I hereby certify that the above BILL originated in the HOUSE, and passed that body.

_____

HOUSE concurred in
SENATE amendments _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE
as amended _____

_____
President of the Senate.

_____
Secretary of the Senate

APPROVED _____

_____
Governor.

HOUSE BILL No. 437
(81c0625)

Introduced by Delegate Thomas

Read and Examined by Proofreader:

_____
Proofreader.

_____
Proofreader.

Sealed with the Great Seal and presented to the Acting Governor, for his approval this_____day of_____ at_____o'clock,_____M.

_____
Speaker.

CHAPTER 878

AN ACT concerning

Power Plant Siting Act

FOR the purpose of requiring that acquisiton of sites for power plants not take place except under certain conditions; and making stylistic changes.

BY repealing and reenacting, with amendments,

Article - Natural Resources
~~Section 3-305(a)~~ Section 3-305(a) and (b)
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

BY adding to

Article 78 - Public Service Commission Law
Section 54B (e)
Annotated Code of Maryland
(1975 Replacement Volume and 1977 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article - Natural Resources

3-305.

(a) The expertise of the electric utilities in the basic requirements including environmental considerations of a site for power generation and generator lead route is a needed element in site selection. Therefore, for the purposes of insuring adequate power on reasonable schedules while also protecting the quality of the State's environment, site acquisition and generator lead route designation may occur as follows:

(1) Notwithstanding any other provision of this subtitle, any site either already owned or purchased in the future by electric companies shall be included in the inventory of possible and proposed sites.

(2) The Secretary, upon the advice of the Secretary of Economic and Community Development, shall acquire in the name of the State a sufficient number of sites to satisfy the expected requirements as submitted by the Secretary of State Planning as provided in § 3-304 (4) of this subtitle. Site selection shall be based on existing research findings that show the site is desirable for power plant construction. Following site acquisition, the Secretary[, with] AND the local governing bodies of the areas through which the potential generator lead routes pass[,] shall designate mutually[,] one or more desirable routes. After designation of a route, each county within which the route is located shall designate the proposed public utility corridor by enactment of an ordinance or by incorporation in its appropriate land use plan. Any investigation to ascertain the suitability of a site for the construction of an electric generating station shall be completed within [two] 2 years of the date the site has been identified. By the end of the [two-] 2 year period, the Secretary shall purchase or remove from consideration the site and make public his decision.

(3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE, THE SECRETARY SHALL NOT ACQUIRE ANY SITE ~~UNTIL A REQUISITION FOR A SITE IS RECEIVED FROM AN ELECTRIC UTILITY. THE SITE SHALL BE PURCHASED BY THE ELECTRIC UTILITY WITHIN 1 YEAR AFTER ACQUISITION BY THE SECRETARY.~~ FOR AN ELECTRIC COMPANY WHOSE PEAK DEMAND WITHIN THE STATE IS LESS THAN 1000 MW UNTIL THE PUBLIC SERVICE COMMISSION REQUESTS THE SECRETARY TO PURCHASE A SITE PURSUANT TO ARTICLE 78, SECTION 54B(E).

(4) IF ANY PROPERTY ACQUIRED BY CONDEMNATION UNDER THIS SUBSECTION IS NOT REQUESTED BY AN ELECTRIC

COMPANY PURSUANT TO SECTION 3-305 (D) WITHIN 15 YEARS OF THE DATE OF PURCHASE BY THE SECRETARY, THE SECRETARY SHALL PROVIDE THE ORIGINAL OWNER OR HIS HEIRS THE OPPORTUNITY TO PURCHASE THE PROPERTY WITHIN 90 DAYS FROM THE DATE THE OFFER IS MADE, AT A PRICE NOT EXCEEDING THE AMOUNT PAID BY THE STATE PLUS 6 PERCENT ANNUAL INTEREST. SUCH A SALE SHALL BE DEEMED TO BE FOR ADEQUATE CONSIDERATION FOR PURPOSES OF SECTION 15 OF ARTICLE 78A.

(b) IF THE OTHER REQUIREMENTS OF THIS SUBTITLE HAVE BEEN SATISFIED, [The] THE Secretary may acquire any site by agreement or condemnation under the condemnation law and pay for them from the fund. PRIOR TO SUCH ACQUISITION, THE SECRETARY SHALL HOLD ONE OR MORE INFORMATIONAL MEETINGS AND ONE PUBLIC HEARING IN THE LEGISLATIVE DISTRICT WHERE THE PROPOSED SITE OR SITES ARE LOCATED. The Secretary holds the property in the name of the state and may not permit its temporary use for any purpose which might logically be expected to impede its prompt availability for power plant siting as and when needed. Temporary uses which the Secretary may authorize may include but are not limited to public recreational facilities, including open space areas, parks, forests and beaches, fish and wildlife refuges and other public recreational uses as authorized within this article. The Secretary may not hold, at any one time, [less than four nor] more than eight sites, suitable for either single or multiple power plant siting. [However, a site shall be acquired by July 1, 1974, reasonably suitable for each electric company generating more than 1000 MW of Electric power and at least one such site reasonably suitable for such electric company shall be held subsequently as a minimum inventory.] HOWEVER, THE SECRETARY SHALL ACQUIRE WITHIN A REASONABLE TIME AT LEAST ONE SUITABLE SITE FOR EACH ELECTRIC COMPANY HAVING A PEAK DEMAND WITHIN THE STATE OF MORE THAN 1000 MW.

Article 78 – Public Service Commission Law

54B.

(E) FOR PUBLIC SERVICE COMPANIES WHOSE PEAK DEMAND WITHIN THE STATE IS LESS THAN 1000MW, THE PUBLIC SERVICE COMMISSION SHALL REQUEST THE SECRETARY OF NATURAL RESOURCES TO PURCHASE A POWER PLANT SITE AS PROVIDED IN SUBTITLE 3 OF THE NATURAL RESOURCES ARTICLE UPON A PETITION BY THE SECRETARY OF NATURAL RESOURCES OR THE SECRETARY ~~AND THE SECRETARY~~ OF STATE PLANNING AND A FINDING BY THE PUBLIC SERVICE COMMISSION THAT SUCH A SITE IS NEEDED.

(1) THE FINDING OF THE PUBLIC SERVICE COMMISSION SHALL BE MADE ONLY AFTER PUBLIC NOTICE AND HEARING. SAID HEARING SHALL BE HELD IN THE LEGISLATIVE DISTRICT IN WHICH THE SITE OR SITES UNDER CONSIDERATION ARE LOCATED.

(2) IN DETERMINING WHETHER THERE EXISTS A NEED FOR THE STATE TO PURCHASE A POWER PLANT SITE, THE PUBLIC SERVICE COMMISSION SHALL CONSIDER THE SUITABILITY OF SITES OWNED BY THE UTILITY, WITHIN AND WITHOUT THE STATE, THE ANTICIPATED GROWTH OF ELECTRIC POWER DEMAND AND THE ALTERNATIVE MEANS AND LOCATIONS FOR MEETING THAT DEMAND, WITHIN AND WITHOUT THE STATE, IN ADDITION TO THE OTHER FACTORS AS REQUIRED BY LAW.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

SENATE BILL No. 927
(81r3510)

Introduced by Senator McGuirk

Read and Examined by Proofreader:

_____
Proofreader.

_____
Proofreader.

Sealed with the Great Seal and presented to the Acting Governor, for his approval this_____day of_____ at_____o'clock,_____M.

_____
President.

CHAPTER 520

AN ACT concerning

Oil Pipeline Corporations - Power of Condemnation

FOR the purpose of authorizing certain common carrier oil pipeline corporations which are operating existing pipelines in this State under certain conditions to acquire by eminent domain in certain subdivisions property necessary for the construction and operation of additional pipelines and appurtenances within their existing rights of way.

BY adding to

Article 23 - Miscellaneous Companies
Section 342
Annotated Code of Maryland
(1973 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

Article 23 - Miscellaneous Companies

342.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "OIL PIPELINE CORPORATION" MEANS ANY CORPORATION OF THIS STATE, ANY OTHER STATE, THE DISTRICT OF COLUMBIA, OR THE UNITED STATES, WHICH IS ENGAGED IN THE BUSINESS OF TRANSPORTING REFINED PETROLEUM PRODUCTS BY PIPELINE AS A COMMON CARRIER PUBLIC SERVICE CORPORATION, AND WHICH IS SUBJECT TO THE JURISDICTION OF EITHER THE UNITED STATES DEPARTMENT OF ENERGY (FEDERAL ENERGY REGULATORY COMMISSION), OR THE PUBLIC SERVICE COMMISSION OF MARYLAND.

(3) "PROPERTY" MEANS REAL PROPERTY IN FEE SIMPLE OR ANY LESSER RIGHTS, INTEREST OR ESTATES THAT ARE NECESSARY FOR EITHER THE INTRASTATE OR INTERSTATE PURPOSES OF THE OIL PIPELINE CORPORATION OR BOTH, AND INCLUDES:

(I) ANY PRIVATELY OWNED PROPERTY,

(II) PROPERTY OWNED BY ANY PUBLIC BODY, AND

(III) PROPERTY DEVOTED TO ANY PUBLIC USE IF THE ACQUISITION DOES NOT MATERIALLY INTERFERE WITH THAT PUBLIC USE.

(B) AN OIL PIPELINE CORPORATION WHICH IS OPERATING EXISTING OIL PIPELINES IN THIS STATE MAY ACQUIRE BY EMINENT DOMAIN ANY PROPERTY ~~WITHIN ITS EXISTING RIGHTS OF WAY~~ NECESSARY FOR THE CONSTRUCTION AND OPERATION OF ADDITIONAL OIL PIPELINES AND APPURTENANCES ALONG, ON, ADJACENT TO, OR INCIDENTALLY DEVIATING , BUT NOT MORE THAN 50 FEET, FROM THOSE ROUTES FOLLOWED WITHIN ~~ITS EXISTING~~ ~~THESE~~ ITS EXISTING RIGHTS OF WAY.

(C) ANY ACQUISITION UNDER THIS SECTION SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF TITLE 12 OF THE REAL PROPERTY ARTICLE OF THE CODE.

(D) THE EXERCISE OF THE AUTHORIZATION IN THIS SECTION IS LIMITED TO ANNE ARUNDEL, BALTIMORE, CARROLL, CECIL, HARFORD, HOWARD, MONTGOMERY, AND PRINCE GEORGE'S COUNTIES AND BALTIMORE CITY.

(E) ANY PROPERTY USED FOR CONSTRUCTION OR MAINTENANCE OF ANY PIPELINE SHALL BE RESTORED TO ITS ORIGINAL CONDITION BY THE OIL PIPELINE CORPORATION AND SUCH CONSTRUCTION OR MAINTENANCE AND THE RESTORATION SHALL BE COMPLETED WITHIN 7 DAYS AFTER ITS COMMENCEMENT WITH RESPECT TO THAT PARCEL OF PROPERTY. HOWEVER, IF WEATHER CONDITIONS OR THE NATURE OF THE TERRAIN THROUGH WHICH THE PIPELINE GOES MAKE UNFEASIBLE COMPLETION OF SUCH CONSTRUCTION, OR MAINTENANCE AND

RESTORATION WITHIN 7 DAYS, THEN THE OIL PIPELINE CORPORATION SHALL HAVE 30 DAYS.

~~(E)~~ (F) ~~OTHER THAN FOR ACQUISITIONS UNDER SUBSECTION (B) OF THIS SECTION,~~ THE RIGHT TO ACQUIRE ANY PROPERTY UNDER THIS SECTION MAY NOT BE EXERCISED UNLESS THE OIL PIPELINE CORPORATION, WHETHER OR NOT IT IS OTHERWISE SUBJECT TO THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION OF MARYLAND, FIRST OBTAINS AN ORDER FROM THE PUBLIC SERVICE COMMISSION AFTER A PUBLIC HEARING WITH WRITTEN NOTICE TO ALL AFFECTED PROPERTY OWNERS FINDING THE ACQUISITION TO BE IN THE PUBLIC INTEREST, AND THE PUBLIC SERVICE COMMISSION IS AUTHORIZED TO MAKE A FINDING AND ISSUE AN ORDER.

~~(F)~~ (G) THE PROVISIONS OF THIS SECTION MAY NOT BE CONSTRUED AS IN ANY WAY AFFECTING ANY LAW OF THIS STATE WHICH IS APPLICABLE GENERALLY OR SPECIFICALLY TO OIL PIPELINE CORPORATIONS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
President of the Senate.

_____
Speaker of the House of Delegates.

By: Delegates Knudsen, Burgess, and Chasnoff
Introduced and read first time: February 1, 1978
Assigned to: Environmental Matters

Committee report: Favorable
House action: Adopted
Read second time: March 9, 1978

RESOLUTION NO. 32

HOUSE JOINT RESOLUTION

A House Joint Resolution concerning

High Voltage Transmission Lines

FOR the purpose of requesting that the Speaker of the House, the President of the Senate, and the Acting Governor appoint a Commission to explore the public health risks of residing near high voltage power transmission corridors; to assess the impact to property values of routing overhead transmission corridors through residential communities and to examine the benefits and costs of placing high voltage lines underground in populated areas.

WHEREAS, The electromagnetic field strengths at corridor boundaries of some high voltage overhead power transmission lines approach the field strengths reported by some investigators to cause biological changes under laboratory conditions; and

WHEREAS, The want of definitive data on the risk to public health associated with long term exposure to corridor boundary fields has prompted the federal government to support ongoing scientific studies; and

WHEREAS, The possibility of natural disasters involving high voltage power transmission lines is believed to be an immediate danger to life and property; and

WHEREAS, Uncertainty regarding health risks and their perceived effect on property values is a cause of concern for residents bordering existing and proposed high voltage power corridors; and

WHEREAS, Placing of high voltage power transmission lines underground is a technologically feasible means for reducing residential exposure to ultra-low frequency electromagnetic fields; now, therefore, be it

EXPLANATION:
Underlining indicates amendments to the resolution.
~~Strike-out~~ indicates matter stricken by amendment.

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Speaker of the House, the President of the Senate, and the Acting Governor are requested to appoint a Commission for the Review of the Siting of Power Transmission Lines. The Speaker, the President, and the Acting Governor shall each appoint five members, at least one and not more than two of whom shall be selected from nominees submitted by the electric utilities of Maryland. The Commission shall elect its Chairman and receive staff support from the Department of Legislative Reference. The Commission shall receive no salary; however, reasonable expenses shall be paid in accordance with the standard practice of the State of Maryland. The Commission is charged to explore the public health risks of residing near high voltage power transmission corridors, to assess the impact to property values of routing overhead transmission corridors through residential communities, and to examine the benefits and costs of placing high voltage lines underground in populated areas. The Commission shall submit its report and recommendations for legislation, if any, to the Acting Governor and to each member of the General Assembly no later than January 1, 1979; and be it further

RESOLVED, That copies of this Resolution be sent to the Speaker of the House, the President of the Senate, and the Acting Governor.

Approved:

_____
Acting Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

THE COMMONWEALTH OF MASSACHUSETTS

Advance Copy 1978 Acts and Resolves

PAUL GUZZI, Secretary of the Commonwealth

Chap. 217. AN ACT DIRECTING THE DEPARTMENT OF PUBLIC UTILITIES AND THE ENERGY FACILITY SITING COUNCIL TO PROMULGATE RULES AND REGULATIONS REGARDING HYDROELECTRIC POWER.

Be it enacted, etc., as follows:

Every electric company shall, on a form approved by the department of public utilities and the energy facilities siting council, identify all hydroelectric generation sites within its market area, and file such identification with the department of public utilities and the energy siting council prior to June first, nineteen hundred and seventy-nine.

Approved June 6, 1978

CHAPTER 658-H.F.No.2087

An act relating to the process and procedures for designating power plant sites and transmission line routes; clarifying the grounds for revocation or suspension of a site certificate or route suspension permit; extending the effective date of the board's emergency rules; altering the distribution of proceeds of tax on certain transmission and distribution lines; amending Minnesota Statutes 1976, Section 273.42; and Minnesota Statutes, 1977 Supplement, Sections 116C.645 and 116C.66; and Laws 1977, Chapter 439, Section 26.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes, 1977 Supplement, Section 116C.645, is amended to read:

116C.645 **REVOCATION OR SUSPENSION.** A site certificate or construction permit may be revoked or suspended by the board after adequate notice of the alleged grounds for revocation or suspension and a full and fair hearing in which the affected utility has an opportunity to confront any witness and respond to any evidence against it and to present rebuttal or mitigating evidence upon a finding by the board of:

(1) Any false statement knowingly made in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted a change in the board's findings;

(2) Failure to comply with material conditions of the site certificate or construction permit, or failure to maintain health and safety standards; or

(3) Any material violation of the provisions of sections 116C.51 to 116C.69, any rule promulgated pursuant thereto, or any order of the board.

Sec. 2. Minnesota Statutes, 1977 Supplement, Section 116C.66, is amended to read:

116C.66 **RULES.** The board, in order to give effect to the purposes of sections 116C.51 to 116C.69, shall prior to ~~January~~ July 1, 1978, adopt rules consistent with sections 116C.51 to 116C.69, including promulgation of site and route designation criteria,

Changes or additions indicated by underline deletions by ~~strikeout~~

the description of the information to be furnished by the utilities, establishment of minimum guidelines for public participation in the development, revision, and enforcement of any rule, plan or program established by the board, procedures for the revocation or suspension of a construction permit or a certificate of site compatibility, the procedure and timeliness for proposing alternative routes and sites, and route exemption criteria and procedures. No rule adopted by the board shall grant priority to state owned wildlife management areas over agricultural lands in the designation or route avoidance areas. The provisions of chapter 15 shall apply to the appeal of rules adopted by the board to the same extent as it applies to review of rules adopted by any other agency of state government.

The chief hearing examiner shall, prior to January 1, 1978, adopt procedural rules for public hearings relating to the site and route designation process and to the route exemption process. The rules shall attempt to maximize citizen participation in these processes.

Sec. 3. Laws 1977, Chapter 439, Section 26, is amended to read:

Sec. 26. **EMERGENCY RULES.** The environmental quality board is authorized and directed to promulgate emergency rules pursuant to section 15.0412, subdivision 5, within 90 days of the effective date of this act, concerning the procedures for the revocation or suspension of a construction permit or a certificate of site compatibility and the procedure for designation of a route, including the manner and timeliness of proposing alternative routes, route designation considerations and route exemption criteria and procedures.

The chief hearing examiner is authorized and directed to promulgate emergency rules pursuant to section 15.0412, subdivision 5, within 30 days of the effective date of this act, establishing procedures for public hearings relating to the designation and exemption of routes. The rules shall attempt to maximize citizen participation in the route designation and exemption process.

Any emergency rules authorized by this section to be adopted by the chief hearing examiner shall be effective until either January 1, 1978, or until the ~~board~~ ~~and~~ the chief hearing examiner ~~adopt~~ adopts permanent rules pursuant to chapter 15, whichever occurs first. Any emergency rules authorized by this section to be adopted by the environmental quality board shall be effective until July 1, 1978, or until the board adopts permanent rules pursuant to chapter 15, whichever occurs first.

Sec. 4. Minnesota Statutes 1976, Section 273.42, is amended to read:

273.42 **RATE OF TAX; ENTRY AND CERTIFICATION; CREDIT ON PAYMENT.** The property set forth in section 273.37, subdivision 2, consisting of transmission lines, and distribution lines not taxed as provided in sections 273.38, 273.40 and 273.41 shall be taxed at the average rate of taxes levied for all purposes throughout the county and shall be entered on the tax lists by the county auditor against the owner thereof and certified to the county treasurer at the same time and in the same manner that other taxes are certified, and, when paid, shall be credited, ~~one-half~~ 35 percent to the general revenue fund of the county, ~~and one-half~~ 50 percent to the general school fund of the county, and 15 percent to the townships within the county in which the lines are located. The amount available for distribution to the townships shall be divided among the townships in the same proportion that the length of transmission line in each township bears to the total length of transmission line in the county, except that if a payment to a town exceeds ten percent of the town's levy for the preceding year, the excess amount shall be paid to the county.

Sec. 5. Sections 1 to 3 are effective the day following final enactment. Section 4 is effective for taxes levied in 1978, payable in 1979 and thereafter.

Approved March 28, 1978.

CHAPTER 59

AN ACT

RELATING TO OIL AND GAS; UNDERGROUND STORAGE FACILITIES; REPEALING SECTION 65-9-4 NMSA 1953 (BEING LAWS 1963, CHAPTER 139, SECTION 4, AS AMENDED BY LAWS 1977, CHAPTER 255, SECTION 69 AND CHAPTER 380, SECTION 1); ENACTING A NEW SECTION 65-9-4 NMSA 1953; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 55-9-4 NMSA 1953 (being Laws 1963, Chapter 139, Section 4, as amended by Laws 1977, Chapter 255, Section 69 and Chapter 380, Section 1) is repealed and a new Section 65-9-4 NMSA 1953 is enacted to read:

"65-9-4. APPROPRIATION OF UNDERGROUND STORAGE FACILITIES--LIMITATIONS.--By eminent domain proceedings, any natural gas company may appropriate for underground storage of natural gas any subsurface stratum or formation in any land which the division shall have found to be suitable for the underground storage of natural gas, and in connection therewith may appropriate such other interests in the land as may be required to maintain and operate facilities for such underground storage; provided, however, that the right to appropriate underground formations and strata shall be limited as follows:

A. no formation or stratum which is producing or which is capable of producing oil in paying quantities, through any known recovery method, shall be subject to appropriation hereunder;

HOUSE BILL 80
Approved: February 24, 1978

B. no formation or stratum that contained native gas producible in paying quantities shall be subject to appropriation hereunder, unless the recoverable volumes of native gas originally in place therein shall be substantially depleted, and unless such formation or stratum has a greater value or utility as a gas storage reservoir for the purpose of insuring an adequate supply of natural gas, or for the conservation of natural gas, than for the production of the relatively small volumes of native gas which remain therein;

C. no formation or stratum underlying lands which contain known commercial deposits of potash shall be subject to appropriation hereunder;

D. no formation or stratum shall be subject to appropriation hereunder if its use for underground storage purposes would cause injury to surface or underground water resources;

E. no rights or interest in existing underground gas reservoirs, being used for the injection, storage and withdrawal of natural gas, owned or operated by others than the condemner, shall be subject to appropriation;

F. no dwelling, barn, store, warehouse or other building shall be subject to appropriation hereunder; and

G. the right of appropriation hereby granted shall be without prejudice to the rights of the owner of said lands or of other rights or interests therein to drill through the underground stratum or formation so appropriated in such manner as shall comply with orders, rules and regulations of the division issued for the purpose

of protecting underground storage strata or formations against pollution and against the escape of natural gas therefrom and shall be without prejudice to the rights of the owner of said lands or other rights or interests therein as to all other uses thereof."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is March 31, 1978.

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

CHAPTER 62

AN ACT

RELATING TO ENERGY AND MINERALS; TULAROSA BASIN ELECTRICAL GENERATION PLANT; REPEALING SECTION 65-13-8.6 NMSA 1953 (BEING LAWS 1977, CHAPTER 255, SECTION 103 AND CHAPTER 378, SECTION 1); ENACTING A NEW SECTION 65-13-8.7 NMSA 1953; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 65-13-8.6 NMSA 1953 (being Laws 1977, Chapter 255, Section 103 and Chapter 378, Section 1) is repealed and a new Section 65-13-8.7 NMSA 1953 is enacted to read:

"65-13-8.7. ELECTRICAL GENERATION PLANT--TULAROSA BASIN.--The legislature finds that there is a great potential for conservation of fossil fuels, generation of electrical energy and the production of usable water in the siting of an electrical generating plant in the Tularosa basin, and directs the energy and minerals department to make a detailed study of such potential, and, using its powers to interact with the public and private sectors, present to the legislature a feasibility study for such a plant, showing how it would fit into the department's statewide energy plan."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is March 31, 1978.

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 83
Approved: February 24, 1978

P. L. 1978, CHAPTER 80, *approved July 13, 1978*

1978 Assembly No. 519 (*Official Copy Reprint*)

AN ACT to amend and supplement the "Department of Energy Act," approved July 11, 1977 (P. L. 1977, c. 146).

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 3 of P. L. 1977, c. 146 (C. 52:27F–3) is amended to read as follows:

a. As used in this act:

a. "Commissioner" means the Commissioner of the Department of Energy;

b. "Department" means the Department of Energy established by this act;

c. "Distributor" means and includes each person, wherever resident or located, who imports into this State fuels for use, distribution, storage, or sale in this State after the same shall reach this State; and also each person who produces, refines, manufactures, blends, or compounds fuels and sells, use, stores, or distributes the same within this State. In no case, however, shall a retail dealer be construed to be a distributor;

d. "Energy" means all power derived from, or generated by, any natural or man-made agent, including, but not limited to, petroleum products, gases, solar radiation, atomic fission or fusion, mineral formations, thermal gradients, wind, or water.

e. "Energy facility" means any plant or operation which produces, converts, distributes or stores energy or converts one form of energy to another; in no case, however, shall an operation conducted by a person acting only as a retail dealer be construed as an energy facility;

f. "Energy information" means any statistic, datum, fact, or item of knowledge and all combinations thereof relating to energy;

g. "Energy information system" means the composite of energy information collected by the office;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

h. "Energy industry" means any person, company, corporation, business, institution, establishment or other organization of any nature engaged in the exploration, extraction, transportation, transmission, refining, processing, generation, distribution, sale or storage of energy;

i. "Fuel" means coal, petroleum products, gases and nuclear fuel, including enriched uranium, U235 and U238, and plutonium, U239;

j. "Gases" means natural gas, methane, liquefied natural gas, synthetic natural gas, coal gas and other manufactured gases;

k. "Person" means natural persons, partnerships, firms, associations, joint stock companies, syndicates and corporations, and any receiver, trustee, conservator or other officer appointed pursuant to law or by any court, State or Federal; "person" also means the State of New Jersey, counties, municipalities, authorities, other political subdivisions, and all departments and agencies within the aforementioned governmental entities;

l. "Petroleum products" means and includes motor gasoline, middle distillate oils, residual fuel oils, aviation fuel, propane, butane, natural gasoline, naphtha, gas oils, lubricating oils and any other similar or dissimilar liquid hydrocarbons;

m. "Public building" means any building, structure, facility or complex used by the general public, including, but not limited to, theaters, concert halls, auditoriums, museums, schools, libraries, recreation facilities, public transportation terminals and stations, factories, office buildings, business establishments, passenger vehicle service stations, shopping centers, hotels or motels and public eating places, owned by any State, county or municipal government agency or instrumentality or any private individual, partnership, association or corporation;

n. "Purchase" means and includes, in addition to its ordinary meaning, any acquisition of ownership or possession, including, but not limited to, condemnation by eminent domain proceedings;

o. "Retail dealer" means any person who engages in the business of selling fuels from a fixed location such as a service station, filling station, store, or garage directly to the ultimate users of said fuel;

p. "Sale" means and includes, in addition to its ordinary meaning, any exchange, gift, theft, or other disposition. In such case where fuels are exchanged, given, stolen, or otherwise disposed of, they shall be deemed to have been sold;

q. "Supplier of fuel" means any refiner, importer, marketer, jobber, distributor, terminal operator, firm, corporation, wholesaler, broker, cooperative or other person who supplies, sells, consigns, transfers, or otherwise furnishes fuel. In no case, however, shall a retail dealer be construed to be a supplier of fuel;

r. "Trade secret" means the whole or any portion or phase of any scientific, technical or otherwise proprietary information, design, process, procedure, formula or improvement which is used in one's business and is secret and of value; and a trade secret shall be presumed to be secret when the owner takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes;

s. "Wholesale dealer" means any person who engages in the business of selling fuels to other persons who resell the said fuel. In no case shall a retail dealer be considered as a wholesale dealer.

t. "Cogeneration" means the simultaneous production in one facility of electric power and other useful forms of energy such as heating or process steam.

2. Section 9 of P. L. 1977, c. 146 (C. 52:27F–11) is amended to read as follows:

9. The commissioner shall, on behalf of the department through the Division of Energy Planning and Conservation:

a. Manage the department as the central repository within the State Government for the collection of energy information;

b. Collect and analyze data relating to present and future demands and resources for all forms of energy;

c. Have authority to require all persons, firms, corporations or other entities engaged in the production, processing, distribution, transmission or storage of energy in any form *or in the use of steam in quantities greater than 50,000 pounds per hour* to submit reports setting forth such information as shall be required to carry out the provisions of this act;

d. Have authority to require any person to submit information necessary for determining the impact of any construction or development project on the energy and fuel resources of this State;

e. Charge other State Government departments and agencies involved in energy-related activities, including the Board of Public Utilities, with specific information gathering goals and require that said goals be fulfilled;

f. Establish an energy information system which will provide all data necesesary to insure a fair and equitable distribution of available energy, to permit a more efficient and effective use of

available energy, and to provide the basis for long-term planning related to energy needs;

g. Design, implement, and enforce a program for the conservation of energy in commercial, industrial, and residential facilities, which program shall provide for the evaluation of energy systems as they relate to lighting, heating, refrigeration, air-conditioning, building design and operation, *elective cogeneration and process steam production associated with cogeneration facilities,* and appliance manufacturing and operation; and may include, but shall not be limited to, the requiring of an annual inspection and adjustment, if necessary, of oil-fired heating systems in residential, commercial and industrial buildings so as to bring such systems into conformity with efficiency standards therefor prescribed by the department; the setting of lighting efficiency standards for public buildings; the establishment of mandatory thermostat settings and the use of seven-day, day-night thermostats in public buildings; the development of standards for efficient boiler operation; *[*en-courage*]* **consider* the establishment of cogeneration facilities to simultaneously produce electricity and steam to conserve fuel;* and, the preparation of a plan to insure the phased retrofitting of existing gas furnaces with electric ignition systems and to require that new gas ranges and dryers be equipped with electric ignition systems, and new gas furnaces with electric ignition systems and automatic vent-dampers;

h. Conduct and supervise a State-wide program of education including the preparation and distribution of information relating to energy conservation;

i. Monitor prices charged for energy within the State, evaluate policies governing the establishment of rates and prices for energy, and make recommendations for necessary changes in such policies to other concerned Federal and State agencies, including the Board of Public Utilities, and to the Legislature;

j. Have authority to conduct and supervise research projects and programs for the purpose of increasing the efficiency of energy use, developing new sources of energy, evaluating energy conservation measures, and meeting other goals consistent with the intent of this act;

k. Have authority to distribute and expend funds made available for the purpose of research projects and programs;

l. Have authority to enter into interstate compacts in order to carry out energy research and planning with other states or the Federal Government where appropriate;

m. Have authority to apply for, accept, and expand grants-in-aid and assistance from private and public sources for energy programs; notwithstanding any other law to the contrary, the commissioner is designated as the State official to apply for, receive, and expend Federal and other funding made available to the State for the purposes of this act;

n. Require the annual submission of energy utilization reports and conservation plans by State Government departments and agencies, including the Board of Public Utilities, evaluate said plans and the progress of the departments and agencies in meeting these plans, and order changes in the plans or improvement in meeting the goals of the plans;

o. Carry out all duties given him under other sections of this act or any other acts;

p. Have authority to conduct hearings and investigations in order to carry out the purposes of this act and to issue subpenas in furtherance of such power. Said power to conduct investigations shall include, but not be limited to, the authority to enter without delay and at reasonable times the premises of any energy industry in order to obtain or verify any information necessary for carrying out the purposes of this act;

q. Have authority to adopt, amend or repeal, pursuant to the "Administrative Procedure Act" (C. 52:14B–1 et seq.) such rules and regulations necessary and proper to carry out the purposes of this act;

r. Administer such Federal energy regulations as are applicable to the states, including, but not limited to, the mandatory petroleum allocation regulations and State energy conservation plans.

s. Have authority to sue and be sued;

t. Have authority to acquire by purchase, grant, contract or eminent domain title to real property for the purpose of demonstrating facilities which improve the efficiency of energy use, conserve energy or generate energy in new and efficient ways;

u. Have authority to construct and operate, on an experimental or demonstration basis, facilities which improve the efficiency of energy use, conserve energy or generate power in new and efficient ways;

v. Have authority to contract with any other public agency or corporation incorporated under the laws of this or any other state for the performance of any function under this act;

w. Determine the effect of energy and fuel shortages upon consumers, and formulate proposals designed to encourage the lowest

possible cost of energy and fuels consumed in the State consistent with the conservation and efficient use of energy;

x. Keep complete and accurate minutes of all hearings held before the commissioner or any member of the Division of Energy Planning and Conservation pursuant to the provisions of this act. All such minutes shall be retained in a permanent record and shall be available for public inspection at all times during the office hours of the department.

3. (New section) The commissioner shall, through the Division of Energy Planning and Conservation, within 180 days of the effective date of this amendatory and supplementry act prepare or cause to be prepared a study evaluating a. alternative ownership patterns for cogeneration facilities including but not limited to industrial ownership, utility ownership, governmental ownership, joint ownership, and third party ownership; and b. financial incentive which would encourage such ownership patterns.

[4. (New section) The Division of Energy and Planning and Conservation shall prepare or cause to be prepared a study evaluating the site-specific potential for the cogeneration of electricity and process steam at the 200 largest steam-using sites in this State.]

[5.] *4.* This act shall take effect immediately.

Signed into law June 19, Chapter 348

STATE OF NEW YORK

S. 7924 A. 10319

SENATE–ASSEMBLY

February 16, 1978

IN SENATE Introduced by Sen. PRESENT—read twice and ordered printed, and when printed to be committed to the Committee on Local Government

IN ASSEMBLY—Introduced by M. of A. KIDDER—read once and referred to the Committee on Environmental Conservation

AN ACT to amend the general municipal law, the local finance law and the education law, in relation to authorizing school districts to explore for natural gas fields

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general municipal law is hereby amended by adding thereto a new article fourteen-AA to read as follows:

ARTICLE 14-AA

SCHOOL DISTRICT EXPLORATION FOR NATURAL GAS FIELDS

§ 368. Exploration, development and production of natural gas fields by school districts.

§ 368. Exploration, development and production of natural gas fields by school districts. 1. "Natural gas producing facility" as used in this article shall mean all real estate, fixtures, and personal property operated, owned, used or to be used for or in connection with or to facilitate the production, conveyance, transportation, distribution, or furnishing of natural gas.

2. Notwithstanding any general or special law to the contrary, any school district may engage in the exploration and development of natural gas fields, and further, may construct, lease, purchase, own, acquire, use and/or operate any natural gas producing facility which is situated on real property owned by the school district for the purpose of producing, conveying, transporting and furnishing natural gas to itself solely for school district purposes.

3. No school district, other than a city school district, may perform any of the acts authorized under the provisions of this section unless and until the provisions of the education law relating to voter approval of such acts have been complied with.

4. Any school district may acquire the necessary rights to extend pipes across public highways or other lands for the purpose of transporting natural gas from the natural gas producing facility to other real property owned by the school district.

5. Any school district may finance the cost of exploration, development and production of natural gas and the cost of the natural gas producing facility in whole or in part by levying taxes in the manner authorized by the education law, or the

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

LBDB-50-114

same may be financed in whole or in part pursuant to the local finance law.

6. The exploration, development and production of such natural gas and the purchase, acquisition, leasing and construction of such natural gas producing facility shall be effected by such school district in the same manner as other contracts, purchases and leases are effected by and for such school districts and shall be governed by all laws applicable thereto.

7. All of the provisions of article four of the public service law and article twenty-three of the environmental conservation law, so far as the same are applicable, shall apply to a school district which furnishes to itself natural gas under this section except that a school district need not apply to or obtain from the public service commission a certificate of authorization.

8. Nothing herein shall be construed to authorize the sale or transfer of natural gas by a school district to any other person.

§ 2. Subdivision five of paragraph a of section 11.00 of the local finance law, as amended by chapter eight hundred thirty-seven of the laws of nineteen hundred forty-five, is hereby amended to read as follows:

5. Electric light and power systems **[**or**]**, gas plants *or natural gas producing facilities*. The acquisition, construction or reconstruction of or addition to an electric light and power plant or distribution system **[**or**]**, a gas plant or distribution system *or a natural gas producing facility*, whether or not including buildings, land or rights in land, original furnishings, equipment, machinery or apparatus, or the replacement of such equipment, machinery or apparatus, thirty years; the replacement of such furnishing, ten years.

§ 3. Section seventeen hundred nine of the education law is hereby amended by adding thereto a new subdivision thirty-one, to read as follows:

31. To explore, develop and produce natural gas solely for school district purposes in accordance with section three hundred sixty-eight of the general municipal law.

§ 4. This act shall take effect immediately.

Signed June 19, Chapter 395

STATE OF NEW YORK

8181—A

IN SENATE

March 1, 1978

Introduced by Sen. MARCHI—read twice and ordered printed, and when printed to be committed to the Committee on Conservation and Recreation—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT in relation to imposing limited moratoriums on the issuance of certificates of environmental safety for the siting of facilities and certification of routes for the transportation of liquefied natural or petroleum gas

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. The legislature finds that in order to protect the public health, safety and the environmental and economic welfare of the state, it is necessary that the within action of imposing limited moratoriums on the construction of storage or conversion facilities for and transportation of liquefied natural or petroleum gas is prompted of necessity because of the known and yet to be discovered hazards posed by the transportation and storage of such gases. Recent studies conducted under the auspices of the federal government have concluded, at least preliminarily, that storage facilities for and transportation activities involving these gases are highly vulnerable to accident, severe storms, earthquakes and terrorists attacks. Those same studies estimate, in addition to untold loss and destruction of property, the rupture of liquefied natural or petroleum gas storage or transportation facilities could result in the loss of life and limb to any person in a wide area surrounding the site of such a rupture and, therefore, the legislature imposes the following limited moratoriums for the period specified or until such time as we shall have obtained more accurate and reliable information upon which to proceed to further provide for the safe transportation and storage of these extremely highly volatile, highly flammable and dangerous substances.

§ 2. Moratoriums imposed. (a) On and after the effective date of this act the state commissioner of environmental conservation shall have no power to issue any certificate of environmental safety for a liquefied natural or petroleum gas storage or conversion facility otherwise provided for by the provisions of title seventeen of article twenty-three of the environmental conservation law.

(b) On and after the effective date of this act the state department of transportation shall have no power to accept any application or to issue any certification of a route for the intrastate transportation of liquefied natural or petroleum gas otherwise provided for by the provisions of title seventeen of

EXPLANATION – Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

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article twenty-three of the environmental conservation law.

§ 3. Exemptions. The provisions of this act shall not be deemed to apply to liquefied petroleum gas in the form of butane, bottled gas, propane, propylene or butylene when used, stored or transported at their respective normal temperatures.

§ 4. Effect of other laws. The provisions of this act shall be controlling notwithstanding the otherwise inconsistent provisions of title seventeen of article twenty-three of the environmental conservation law or any other law except that the consistent and relevant provisions of such laws as they relate to the regulation of the siting of facilities for and transportation activities involving liquefied natural or petroleum gases shall continue in full force and effect until expressly amended or repealed.

§ 5. Separability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

§ 6. This act shall take effect immediately and remain in full force and effect only to and including April first, nineteen hundred seventy-nine.

Signed into law August 4, Chapter 708

STATE OF NEW YORK

Cal. No. 1452 5992-B

1977-1978 Regular Sessions

IN SENATE

May 11, 1977

Introduced by Sen. McFARLAND—read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Public Utilities—recommitted to Committee on Corporations, Authorities and Public Utilities in accordance with Senate Rule 6, sec. 8—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—reported favorably from said committee and committed to the Committee on Rules—ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the public service law, in relation to the expeditious siting of major steam electric generating facilities and repealing certain provisions thereof, relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The legislature hereby finds and declares that an adequate and reliable electric power supply, available at reasonable cost to the residents, commerce and industry of the state, is necessary to maintain both a health economic climate in the state and the general well-being of its residents.

In nineteen hundred seventy-two, article eight of the public service law was enacted to provide for the expeditious siting of major steam electric generating facilities. That law was intended to balance in a single proceeding, the people's need for electricity and their environmental concerns. Prior to article eight, requirements for a multiplicity of governmental licenses and permits resulted in delays in new construction of such facilities and very substantial cost increases were passed on to electric consumers throughout the state.

It is the legislature's intention by these amendments to (a) establish a strict time schedule within which any hearing must be conducted and a determination reached and (b) provide for a procedure whereby the focus of a hearing may be directed to those issues which are essential for the board to reach a decision granting or denying a certificate.

§ 2. Article eight of the public service law is hereby **repealed**, and a new article eight is hereby added to read as follows:

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

ARTICLE VIII

SITING OF MAJOR STEAM ELECTRIC GENERATING FACILITIES

Section 140. Definitions.
141. Board certificate.
141-a. Pre-application procedures.
142. Application for a certificate.
143. Hearing schedule.
144. Parties to a certification proceeding.
145. Conduct of hearing.
146. Board decisions.
147. Opinion to be issued with decision.
148. Rehearing and judicial review.
149. Jurisdiction of courts.
149-a. Powers of municipalities and state agencies.

§ 140. Definitions. Where used in this article, the following terms, unless the context otherwise requires, shall have the following meanings:

1. "Municipality" means a county, city, town or village in the state.

2. "Major steam electric generating facility" means a steam electric generating facility with a generating capacity of fifty thousand kilowatts or more.

3. "Person" means any individual, corporation, public benefit corporation, political subdivision, governmental agency, municipality, partnership, co-operative association, trust or estate.

4. "Board" means the New York state board on electric generation siting and the environment, which shall be in the department of public service and consist of five persons, one of whom shall be the chairman of the public service commission, who shall serve as chairman of the board, one of whom shall be the commissioner of environmental conservation, one of whom shall be the commissioner of the state energy office, one of whom shall be the commissioner of commerce and one of whom shall be an ad hoc member appointed by the governor, who shall be a resident of the judicial district in which the facility as primarily proposed is to be located. The term of the ad hoc member, shall continue until a final determination has been made in the particular proceeding for which he was appointed.

Upon receipt of an application under this article, the chairman shall promptly notify the governor. Three of the five persons on the board shall constitute a quorum for the transaction of any business of the board, and the decision of three members of the board shall constitute action of the board. The board, exclusive of the ad hoc member shall have the power to adopt rules and regulations relating to the procedures to be used in certifying facilities under the provisions of this article.

In addition to the requirements of the public officers law, no person shall be eligible to be an appointee of the governor to the board who holds another state or local office. No member of the board may retain or hold any official relation to, or any securities of an electric utility corporation operating in the state, nor shall the appointee have been a director, officer, employee thereof. The appointee of the governor shall receive the sum of two hundred dollars for each day in which he is actually engaged in the performance of his duties herein plus actual and necessary expenses incurred by him in the performance of such duties. The chairman shall provide such personnel, hearing examiners, subordinates and employees and such legal, technological, scientific, engineering and other services and such meeting rooms, hearing rooms and other facilities as may be required in proceedings under this article. The board may provide for its own representation and appearance in all actions and proceedings involving any question under this article. The department of environmental conservation shall provide associate hearing examiners. Each member of the board other than the appointee of the governor may designate an alternate to

serve instead of the member with respect to all proceedings pursuant to this article. Such designation shall be in writing and filed with the chairman.

5. "Department" means the state department of public service.

6. "Certificate" means a certificate of environmental compatibility and public need authorizing the construction of a major steam electric generating facility issued by the board pursuant to this article.

§ 141. Board certificate. 1. On or after January first, nineteen hundred seventy-nine, no person shall commence the preparation of a site for, or begin the construction of a major steam electric generating facility in the state without having first obtained a certificate issued with respect to such facility by the board. Any such facility with respect to which a certificate is issued shall not thereafter be built, maintained or operated except in conformity with such certificate and any terms, limitations or conditions contained therein, provided that nothing herein shall exempt such facility from compliance with state law and regulations thereunder subsequently adopted or with municipal laws and regulations thereunder not inconsistent with the provisions of such certificate. A certificate for a major steam electric generating facility may be issued only pursuant to this article.

2. A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms, limitations and conditions contained therein.

3. A certificate issued hereunder may be amended as herein provided.

4. This article shall not apply:

(a) To a major steam electric generating facility if, on or before December thirty first, nineteen hundred seventy-eight, an application has been made for a license, permit, certificate, consent or approval from any federal, state or local commission, agency, board or regulatory body, in which application the location of the major steam electric generating facility has been designated by the applicant; or if the facility is under construction at such time;

(b) To a major steam electric generating facility over which any agency or department of the federal government has exclusive jurisdiction, or has jurisdiction concurrent with that of the state and has exercised such jurisdiction, to the exclusion of regulation of the facility by the state;

(c) To normal repairs, replacements, modifications, and improvements of a major steam electric generating facility, whenever built, which do not constitute a violation of any certificate issued under this article and which do not result in an increase in capacity of the facility of more than fifty thousand kilowatts; or

(d) To a major steam electric generating facility (i) constructed on lands dedicated to industrial uses, (ii) the output of which shall be used solely for industrial purposes, on the premises, and (iii) the generating capacity of which does not exceed two hundred thousand kilowatts.

5. Any person intending to construct a major steam electric generating facility excluded from this article pursuant to subdivision four of this section may elect to waive such exclusion by delivering notice of such waiver to the chairman of the board. This article shall thereafter apply to each major steam electric generating facility identified in such notice from the date of its receipt by the chairman of the board.

§ 141-a. Pre-application procedures. 1. Any person proposing to submit an application for a major steam electric generating facility may consult with, and seek agreement with, the staff of the department and the department of environmental conservation as to any study or program of studies made or to be made to support such application. If the staff of the department, the department of environmental conservation and the person proposing to file an application can agree as to the studies or program of studies to be conducted, they shall enter into a stipulation setting forth the agreement. Nothing herein, however, shall bar any party to a hearing on an application, other than any party to a pre-application agreement, from timely raising objections at the hearing to the methodology and scope of any stipulated studies or program of studies in any such agreement.

2. In order to attempt to resolve any questions that may arise as a result of consultation pursuant to subdivision one of this section, the board shall designate a hearing examiner who shall mediate any issue relating to the methodology and scope of any studies or programs of study to which the staff of the department, the department of environmental conservation and the person seeking to file an application cannot agree. If the parties can agree, they shall enter into a stipulation setting forth the agreement. Nothing herein, however, shall bar any party to a hearing on an application other than any party to such a stipulation from timely raising objections at the hearing to the methodology and scope of any stipulated studies or program of studies in any such agreement.

§ 142. Application for a certificate. 1. An applicant for a certificate shall file with the chairman of the board an application, in such form as the board may prescribe containing the following information and materials:

(a) a description of the site and a description of the facility to be built thereon; including available site information, including maps and description, present and proposed development, source and volume of water required for plant operation and cooling, and as appropriate, geological, aesthetic, ecological, tsunami, seismic, biological, water supply, population and load center data;

(b) a description of any reasonable alternate location or locations for, and alternate practical sources of power to, the proposed facility; a description of the comparative advantages and disadvantages of each such location and source; and a statement of the reasons why the primary proposed location and source is best suited to promote the public health and welfare, including the recreational and other concurrent uses which the site may serve;

(c) studies, identifying the author and date thereof, which have been made of the expected environmental impact and safety of the facility, both during its construction and its operation, which studies are sufficient to identify (i) the anticipated gaseous, liquid and solid wastes to be produced at the facility including their source, anticipated volumes, composition and temperature, and such other attributes as the board may specify and the probable level of noise during construction and operation of the facility; (ii) the treatment processes to reduce wastes to be released to the environment, the manner of disposal for wastes retained and measures for noise abatement; (iii) the anticipated volumes of wastes to be released to the environment under any operating condition of the facility, including such meterological, hydrological and other information needed to support such estimates; (iv) conceptual architectural and engineering plans indicating compatibility of the facility with the environment; and (v) how the construction and operation of the facility, including transportation and disposal of wastes would comply with environmental health and safety standards, requirements, regulations and rules under state and municipal laws, and a statement why any variances or exceptions should be granted;

(d) estimated cost information, including plant costs by account, all expenses by categories including fuel costs, plant service life and capacity factor and total generating cost per kilowatt-hour, both at plant and including related transmission, and comparative costs of alternatives considered;

(e) a statement explaining the need for the facility including (i) reasons that the facility is necessary or desirable for the public welfare and is not incompatible with health and safety; (ii) the load demands which the facility is designed to meet; (iii) how the facility will contribute to system reliability, safety and efficiency; and (iv) that the facility conforms to the current long range electric forecasts of the energy planning board; and

(f) such other information as the applicant may consider relevant or as may be required by the board. Copies of the application, including the required information, shall be filed with the board and shall be available for public inspection.

2. Each application shall be accompanied by proof of service, in such manner as the board shall prescribe, of:

(a) a copy of such application on

(i) each municipality in which any portion of such facility is to be located as primarily proposed or in the alternative locations listed. Such copy to a municipality shall be addressed to the chief executive officer thereof and shall specify the date on or about which the application is to be filed;

(ii) each member of the board;

(iii) the department of health;

(iv) the department of commerce;

(v) the department of agriculture and markets;

(vi) the secretary of state;

(vii) the attorney general;

(viii) the department of transportation;

(ix) a library serving the district of each member of the state legislature in whose district any portion of the facility is to be located as primarily proposed or in the alternative locations listed;

(x) in the event such facility or any portion thereof as primarily proposed or in the alternative locations listed is located within its jurisdiction, the Hudson river valley commission;

(xi) in the event such facility or any portion thereof as primarily proposed or in the alternative locations listed is located within its jurisdiction, the St. Lawrence-eastern Ontario commission; and

(xii) in the event that such facility or any portion thereof as primarily proposed or in the alternative locations listed is located within the Adirondack park, as defined in subdivision one of section 9-0101 of the environmental conservation law, the Adirondack park agency.

(b) a notice of such application on

(i) persons residing in municipalities entitled to receive a copy of the application under subparagraph (i) of paragraph (a) of this subdivision. Such notice shall be given by the publication of a summary of the application and the date on or about which it will be filed, to be published under regulations to be promulgated by the board, in such form and in such newspaper or newspapers as will serve substantially to inform the public of such application;

(ii) each member of the state legislature in whose district any portion of the facility is to be located as primarily proposed or in the alternative locations listed; and

(iii) persons who have filed a statement with the board within the past twelve months that they wish to receive all such notices concerning facilities in the area in which the facility is to be located as primarily proposed or in the alternative locations listed.

3. Inadvertent failure of service on any of the municipalities, persons, agencies, bodies or commissions named in subdivision two of this section shall not be jurisdicational and may be cured pursuant to regulations of the board designed to afford such persons adequate notice to enable them to participate effectively in the proceeding. In addition, the board may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons and file proof thereof as the board may deem appropriate.

4. The board shall prescribe the form and content of an application for an amendment of a certificate to be issued hereunder. Notice of such an application shall be given as set forth in subdivision two of this section.

5. If an alternative location not listed in the application is proposed in the certification proceeding, notice of such proposed alternative shall be given as set forth in subdivision two of this section.

6. (a) Each application shall be accompanied by a fee of one hundred fifty thousand dollars to be used to establish a fund (hereafter in this section referred to as the "fund") to be disbursed at the board's direction, to defray expenses incurred by

municipal and other local parties to the proceeding (except a municipality which is the applicant) for expert witness and consultant fees. The board shall provide transcripts, reproduce and serve documents, and publish required notices, for municipal parties. Any monies remaining in the fund, after the board has issued its decision on an application under this article and the time for applying for a rehearing and judicial review has expired, shall be returned to the applicant.

(b) The one hundred fifty thousand dollar fee required by paragraph (a) of this subdivision shall be deposited in one or more separate accounts in one or more of the board's choosing insured by the federal deposit insurance corporation. Notwithstanding any other provision of law to the contrary, the board shall provide by rules and regulations for the managment of the fund, for disbursements from the fund, and for the proper auditing of monies in the fund, which rules and regulations shall be consistent with the purpose of this section to make available to municipal parties up to seventy-five thousand dollars from such fund for uses specified in this section. In addition, the board shall provide other local parties up to seventy-five thousand dollars, provided however, that the board shall assure that such funds are made available on an equitable basis in a manner which facilitates broad public participation.

7. (a) The applicant shall also file with the chairman of the board, either concurrently with its application under subdivision one of this section or in a separate document to be incorporated therein, such evidence as will enable the board to evaluate the facility's water intake and discharge systems and to reach a determination to issue therefor, subject to appropriate conditions and limitations, a permit under section four hundred two to the Federal Water Pollution Control Act amendments of nineteen hundred seventy-two (33 U.S.C. §1342; P.L. 92-500. §286 Stat. 880), as amended.

(b) After public notice and an opportunity to comment, the board shall promulgate such regulations as may be necessary to implement, with respect to major steam electric generating facilities, the permit program of the national pollutant discharge elimination system established pursuant to section four hundred two of the Federal Water Pollution Control Act amendments of nineteen hundred seventy-two. Such regulations shall be consistent with any state program requirements established by the United States environmental protection agency for state participation in the national pollutant discharge elimination system permit program and shall include procedures for early consideration and such prompt determination as is feasible of issues arising under such permit program.

§ 143. Hearing schedule. 1. After the receipt of an application filed pursuant to section one hundred forty-two of this article, the chairman of the board shall, within sixty days of such receipt, determine whether the application complies with such section one hundred forty-two and upon finding that the application so complies, fix a date for the commencement of a public hearing. If the chairman determines that an application does not conform to such section one hundred forty-two, he may nevertheless fix a date for the commencement of a public hearing on any portions of the application which do conform with such section and permit the filing of such additional information as may be needed to supplement an application before or during the hearings.

2. Within a reasonable time after the date has been fixed by the chairman for commencement of a public hearing, the presiding examiner shall hold a prehearing conference to expedite the order to conduct and disposition of the hearing, to specify the issues, to obtain stipulations as to matters not disputed, and to deal with such other matters as the presiding examiner may deem proper. Thereafter, the presiding examiner shall issue an order identifying the issues to be addressed by the parties provided, however, that no such order shall preclude consideration of issues which warrant consideration in order to develop an adequate record as determined by an order of the board.

3. All parties shall be prepared to proceed in an expeditious manner at the hearing so that it may proceed regularly until completion. The place of the hearing shall be designated by the presiding examiner, except that hearings of sufficient duration to provide adequate opportunity to hear direct evidence and rebuttal evidence from residents of the area of the proposed location for the major steam electric generating facility, shall be held in such area and provided that if more than one company proposes to finance and own the facility at least one hearing, on adequate notice, shall be held in the service territory of each company.

4. Proceedings on an application shall be completed in all respects, including a final decision by the board, within twenty-four months after a determination by the chairman that an application complies with section one hundred forty-two of this article; provided, however, that the board may waive the deadline in order to give consideration to specific issues necessary to develop an adequate record, or by regulation, shorten the time period for completion of all proceedings.

5. On an application for an amendment of a certificate proposing a change in the facility likely to result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility, a hearing shall be held in the same manner as a hearing on an application for a certificate. The board shall promulgate rules, regulations, and standards under which it shall determine whether hearings are required under this subdivision and shall make such determinations.

§ 144. Parties to a certification proceeding. 1. The parties to the certification proceedings shall include:

(a) the applicant;

(b) the department of environmental conservation, which shall in any such proceeding present expert testimony and information concerning the potential environmental impact of the proposed facility, and any alternate facility or energy source on the environment and whether and how such facility would comply with applicable state and municipal environmental protection laws, standards, rules and regulations;

(c) the department of commerce;

(d) the department of health;

(e) the department of agriculture and markets;

(f) the state energy office;

(g) where the facility or any portion thereof or of any alternate is to be located within its jurisdiction, the Hudson river valley commission;

(h) where the facility or any portion thereof or of any alternate is to be located within its jurisdiction, the St. Lawrence-eastern Ontario commission;

(i) where the facility or any portion thereof or of any alternate is to be located within the Adirondack park, as defined in subdivision one of section 9-0101 of the environmental conservation law, the Adirondack park agency;

(j) a municipality entitled to receive a copy of the application under paragraph (a) of subdivision two of section one hundred forty-two of this article, if it has filed with the board a notice of intent to be a party, within forty-five days after the date given in the published notice as the date for the filing of the application; any municipality entitled to be a party herein and seeking to enforce any local ordinance, law, resolution or other action or regulation otherwise applicable shall present evidence in support thereof or shall be barred from the enforcement thereof;

(k) any individual resident in a municipality entitled to receive a copy of the application under paragraph (a) of subdivision two of section one hundred forty-two of this article if he has filed with the board a notice of intent to be a party, within forty-five days after the date given in the published notice as the date for filing of the application;

(l) any non-profit corporation or association, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health

or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups or to promote the orderly development of any area in which the facility is to be located, if it has filed with the board a notice of intent to become a party, within forty-five days after the date given in the published notice as the date for filing of the application;

(m) any other municipality or resident of such municipality located within a five mile radius of such proposed facility, if it or he has filed with the board a notice of intent to become a party, within forty-five days after the date given in the published notice as the date for filing of the application;

(n) any other municipality or resident of such municipality which the board in its discretion finds to have an interest in the proceeding because of the potential environmental effects on such municipality or person, if the municipality or person has filed with the board a notice of intent to become a party, within forty-five days after the date given in the published notice as the date for filing of the application, together with an explanation of the potential environmental effects on such municipality or person; and

(o) such other persons or entities as the board may at any time deem appropriate, who may participate in all subsequent stages of the proceeding.

2. The department shall designate members of its staff who shall participate as a party in proceedings under this article.

3. Any person may make a limited appearance in the proceeding by filing a statement of his intent to limit his appearance in writing at any time prior to the commencement of the hearing. All papers and matters filed by a person making a limited appearance shall become part of the record. No person making a limited appearance shall be a party or shall have the right to present oral testimony or cross-examine witnesses or parties.

4. The board may for good cause shown, permit a municipality entitled to become a party under subdivision one of this section, but which has failed to file the requisite notice of intent within the time required, to become a party, and to participate in all subsequent stages of the proceeding.

§ 145. Conduct of hearing. 1. The hearing shall be conducted in an expeditious manner by a presiding examiner appointed by the department. An associate hearing examiner shall be appointed by the department of environmental conservation prior to the date set for commencement of the public hearing. The associate examiner shall attend all hearings as scheduled by the presiding examiner and he shall assist the presiding examiner in inquiring into and calling for testimony concerning relevant and material matters. The conclusions and recommendations of the associate examiner shall be incorporated in the recommended decision of the presiding examiner, unless the associate examiner prefers to submit a separate report of dissenting or concurring conclusions and recommendations.

The testimony presented at a hearing may be presented in writing or orally. The board may require any state agency to provide expert testimony on specific subjects where its personnel have the requisite expertise and such testimony is considered necessary to the development of an adequate record. A record shall be made of the hearing and of all testimony taken and the cross-examinations thereon. The rules of evidence applicable to proceedings before a court shall not apply. The presiding examiner may provide for the consolidation of the representation of parties, other than governmental bodies or agencies, having similar interests. In the case of such a consolidation, the right to counsel of its own choosing shall be preserved to each party to the proceeding provided that the consolidated group may be required to be heard through such reasonable number of counsel as the presiding examiner shall determine. Appropriate regulations shall be issued by the board to provide for prehearing discovery procedures by parties to a proceeding, consolidation of the representation of parties, the exclusion of irrelevant, repetitive, redundant or immaterial evidence, and the review of rulings by presiding examiners.

2. A copy of the record shall be made available by the board at all reasonable times for examination by the public.

3. The chairman of the board may enter into an agreement with an agency or department of the United States having concurrent jurisdiction over all or part of the location, construction, or operation of a major steam electric generating facility subject to this article with respect to providing for joint procedures and a joint hearing of common issues on a combined record, provided that such agreement shall not diminish the rights accorded to any party under this article.

4. The presiding examiner shall cause proferred testimony to be received on alternate site and source proposals provided notice of the intent to submit such testimony shall be given within such period as the board shall prescribe by regulation, which period shall be not less than thirty nor more than sixty days after the commencement of the hearing. Nevertheless, in its discretion, the board may thereafter cause to be considered other potential sites and sources and cause testimony to be accepted thereon.

5. Notwithstanding the provisions of subdivision four of this section, the board may, by regulation, promulgate procedures to permit a prompt determination by the board on the sufficiency of the applicant's consideration and evaluation of alternatives to its proposed type of major steam electric generating facility and its proposed location for that facility before resolution of other issues pertinent to a final determination on the application. Such procedures shall assure that all interested parties have reasonable opportunity to question and present evidence in support of or against the merits of the applicant's consideration and evaluation of alternatives, so that the board is able to decide, in the first instance, whether the applicant's proposal is preferable to alternatives.

§ 146. Board decisions. 1. The board shall make the final decision on an application under this article for a certificate or amendment thereof, upon the record made before the presiding examiner, after receiving briefs and exceptions to the recommended decision of such examiner and to the report of the associate examiner, and after hearing such oral argument as the board shall determine. Except for good cause shown to the satisfaction of the board, a determination under subdivision five of section one hundred forty-five of this article that the applicant's proposal is preferable to alternatives shall be final. Such a determination shall be subject to rehearing and review only after the final decision on an application is rendered.

2. The board shall render a decision upon the record either to grant or deny the application as filed or to certify the facility upon such terms, conditions, limitations or modifications of the construction or operation of the facility as the board may deem appropriate. The board shall issue, with its decision, an opinion stating in full its reasons for its decision. The board shall issue an order upon the decision and the opinion embodying the terms and conditions thereof in full. Following any rehearing and any judicial review of the board's decision, the board's jurisdiction over an application shall cease. The public service commission shall monitor, enforce and administer compliance with any terms and conditions set forth in the board's order. The board may not grant a certificate for the construction or operation of a major steam electric generating facility, either as proposed or as modified by the board, unless it shall first find and determine:

(a) the public need for the facility and the basis thereof;

(b) the nature of the probable environmental impact, including a specification of the predictable adverse effect on the normal environment and ecology, public health and safety, aesthetics, scenic, historic and recreational value, forest and parks, air and water quality, fish and other marine life and wildlife;

(c) that the facility (i) represents the minimum adverse environmental impact, considering the state of available technology, the nature and economics of the various alternatives, the interests of the state with respect to asthetics, preservation of historic sites, forest and parks, fish and wildlife, viable agricultural lands, and other

pertinent considerations, (ii) is compatible with public health and safety and (iii) will not discharge any effluent that will be in contravention of the standards adopted by the department of environmental conservation, or in case no classification has been made of the receiving waters associated with the facility, will not discharge any effluent that will be unduly injurious to the propagation and protection of fish and wildlife, the industrial development of the state, and public health and public enjoyment of the receiving waters;

(d) that the facility is designed to operate in compliance with applicable state and local laws and regulations issued thereunder concerning, among other matters, the environment, public health and safety, all of which shall be binding upon the applicant, except that the board may refuse to apply any local ordinance, law, resolution or other action or any regulation issued thereunder or any local standards or requirement which would be otherwise applicable if it finds that as applied to the proposed facility such is unreasonably restrictive in view of the existing technology or the needs of or costs to consumers whether located inside or outside of such municipality. The board shall provide the municipality an opportunity to present evidence in support of such ordinance, law, resolution, regulation, or other local action issued thereunder. For the purposes of this article an agreement between the applicant and a municipality in which the proposed facility is to be located, entered into on or before May first, nineteen hundred seventy-six, relating to the location of facilities within the municipality shall be deemed to be and have the force and effect of a local law;

(e) that the facility is consistent with long-range planning objectives for electric power supply in the state, including an economic and reliable electric system; and for protection of the environment;

(f) that the facility will serve the public interest, convenience and necessity; provided, however, that a determination of necessity for a facility made by the power authority of the state of New York pursuant to section ten hundred five of the public authorities law for which an application for a certificate has been filed prior to July first, nineteen hundred seventy-eight shall be conclusive on the board; and

(g) that the facility is in the public interest, considering the environmental impact of the facility, the total cost to society as a whole, the possible available sites or alternative available sources of energy, as the case may be, both within the state and elsewhere and the immediacy and totality of the needs of the people of the state for the facility within the context of the need for public utility services and for protection of the environment.

3. The board shall, either as a part of the decision described in subdivision two of this section or as part of any determination as may be appropriately made in conformance with regulations adopted pursuant to paragraph (b) of subdivision six of section one hundred forty-two of this article, issue a permit under section four hundred two of the Federal Water Pollution Control Act amendments of nineteen hundred seventy-two. Such permit shall be based upon the evidence of record with respect to the construction and operation of the water intake and discharge systems of the facility and shall contain such conditions and limitations as the board shall deem appropriate. The issuance of a permit as part of a determination hereunder shall not prevent the board, if it be so disposed, from denying the application under subdivision two of this section in which event the permit shall thenceforth be deemed to be of no force or effect.

4. A copy of the board's decision and opinion shall be served on each party personally or by mail.

§ 147. Opinion to be issued with decision. In rendering a decision on an application for a certificate, the board shall issue an opinion stating its reasons for the action taken. If the board has found that any local ordinance, law, resolution, regulation, or other action issued thereunder or any other local standard or

requirement which would be otherwise applicable is unreasonably restrictive pursuant to paragraph (d) of subdivision two of section one hundred forty-six of this article, it shall state in its opinion the reasons therefor.

§ 148. Rehearing and judicial review. 1. Any party aggrieved by the board's decision denying or granting a certificate may apply to the board for a rehearing within thirty days after issuance of the aggrieving decision. Any such application shall be considered and decided by the board and any rehearing shall be completed and a decision rendered thereon within three months of the expiration of the period for filing rehearing petitions, provided however that the board may waive the deadline where a hearing is required if necessary to develop an adequate record. Thereafter such a party may obtain judicial review of such decision as provided in this section. A judicial proceeding shall be brought in the appellate division of the supreme court of the state of New York in the judicial department embracing the county wherein the facility is to be located or, if the application is denied, the county wherein the applicant has proposed to locate the facility. Such proceeding shall be initiated by the filing of a petition in such court within thirty days after the issuance of a final decision by the board upon the application for rehearing together with proof of service of a demand on the board to file with said court a copy of a written transcript of the record of the proceeding and a copy of the board's decision and opinion. The board's copy of said transcript, decision and opinion, shall be available at all reasonable times to all parties for examination without cost. Upon receipt of such petition and demand the board shall forthwith deliver to the court a copy of the record and a copy of the board's decision and opinion. Thereupon, the court shall have jurisdiction of the proceeding and shall have the power to grant such relief as it deems just and proper, and to make and enter an order enforcing, modifying and enforcing as so modified, remanding for further specific evidence or findings or setting aside in whole or in part such decision. The appeal shall be heard on the record, without requirement of reproduction, and upon briefs to the court. No objection that has not been urged by the party in his application for rehearing before the borad shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of fact on which such decision is based shall be conclusive if supported by substantial evidence on the record considered as a whole and matters of judicial notice set forth in the opinion. The jurisdiction of the appellate division of the supreme court shall be exclusive and its judgement and order shall be final, subject to review by the court of appeals in the same manner and form and with the same effect as provides for appeals in a special proceeding. All such proceedings shall be heard and determined by the appellate division of the supreme court and by the court of appeals as expeditiously as possible and with lawful precedence over all other matters.

2. The grounds for and scope of review of the court shall be limited to whether the decision and opinion of the board are:

(a) in conformity with the constitution of the state and the United States; and

(b) supported by substantial evidence in the record and matters of judicial notice properly considered and applied in the opinion;

(c) within the board's statutory jurisdiction or authority;

(d) made in accordance with procedures set forth in this article or established by rule or regulation pursuant to this article;

(e) arbitrary, capricious or an abuse of discretion.

3. Except as herein provided article seventy-eight of the civil practice law and rules shall apply to appeals taken hereunder.

§ 149. Jurisdiction of courts. Except as expressly set forth in section one hundred forty-eight of this article and except for review by the court of appeals of a decision of the appellate division of the supreme court as provided for therein, no court of this state shall have jurisdiction to hear or determine any matter, case or controversy concerning any matter which was or could have been determined in a proceeding under

this article or to stop or delay the construction or operation of a major steam electric generating facility except to enforce compliance with this article or the terms and conditions of a certificate issued hereunder.

§ 149-a. Powers of municipalities and state agencies. 1. Notwithstanding any other provision of law, no state agency, municipality or any agency thereof may, except as expressly authorized by this article by the board, require any approval, consent, permit, certificate or other condition for the construction or operation of a major steam electric generating facility with respect to which an application for a certificate hereunder has been filed, other than those provided by otherwise applicable state law for the protection of employees engaged in the construction and operation of such facility, and provided that in the case of a municipality or an agency thereof, such municipality has received notice of the filing of the application therefor.

2. Neither the Hudson river valley commission, the St. Lawrence-eastern Ontario commission nor the Adirondack park agency shall hold public hearings for a major steam electric generating facility with respect to which an application hereunder has been filed, provided that such commission or agency has received notice of the filing of such application.

§ 3. Notwithstanding any provision of article eight of the public service law as added by chapter three hundred eighty-five of the laws of nineteen hundred seventy-two, and as subsequently amended, (i) the board provided for in subdivision four of section one hundred forty of article eight of the public service law as added by this act shall hear and determine any application filed pursuant to the provisions of article eight as added by said chapter three hundred eighty-five for which a presiding examiner's recommended decision has not been issued as of the effective date of this act, (ii) any board decision with respect to an application filed pursuant to the provisions of article eight as added by said chapter three hundred eighty-five shall be reached within eighteen months of the effective date of this act, provided however that the board may waive the deadline in order to give consideration to specific issues necessary to develop an adequate record, and (iii) any board's jurisdiction over any such application filed pursuant to the provisions of article eight as added by said chapter three hundred eighty-five shall cease following any rehearing or any judicial review of the board's decision and order, and the public service commission shall monitor, enforce and administer compliance with any terms or conditions set forth in such board decision and order.

§ 4. This act shall take effect immediately and shall continue in full force and effect only until January first, nineteen hundred eighty-four; provided, however, that the provisions of this act shall remain operative and continue in full force and effect with regard to applications filed on or before December thirty-first, nineteen hundred eighty-three.

Signed into law August 4, Chapter 709

STATE OF NEW YORK

10490

IN SENATE

June 22, 1978

Introduced by Sen. McFARLAND—read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend a chapter of the laws of nineteen hundred seventy-eight, relating to the expeditious siting of major steam electric generating facilities, in relation to making technical changes therein

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The title of a chapter of the laws of nineteen hundred seventy-eight, as added by senate bill no. 5992 relating to the expeditious siting of major steam electric generating facilities, is hereby amended to read as follows:

AN ACT to amend the public service law, in relation to the expeditious siting of major steam electric generating facilities [and repealing certain provisions thereof, relating thereto]

§ 2. Section two of such chapter, as added by such bill, is hereby amended to read as follows:

§ 2. [Article eight of the public service law is hereby **repealed**, and a new article eight is hereby added to read as follows:] *The public service law is hereby amended by adding thereto a new article eight to read as follows:*

§ 3. This act shall take effect on the same day as senate bill no. 5992 relating to the expeditious siting of major steam electric generating facilities.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

LBD8-50-838

State of Rhode Island, &c.

IN GENERAL ASSEMBLY

JANUARY SESSION, A. D. 19 78

RESOLUTION

CREATING A SPECIAL LEGISLATIVE COMMISSION TO STUDY THE FEASIBILITY OF ENACTING AN ENERGY FACILITY SITING ACT

RESOLVED, That a special legislative commission be and the same is hereby created consisting of ~~eleven (11)~~ thirteen (13) members: ~~three (3)~~ four (4) of whom shall be from the house of representatives, not more than ~~two (2)~~ three (3), from the same political party, to be appointed by the speaker; ~~two (2)~~ three (3) of whom shall be from the senate, not more than two (2) from the same political party, to be appointed by the majority leader; six (6) of whom shall be representative of the general public, to be appointed by the governor; and whose purpose it shall be to study the feasibility of enacting an energy facility siting act.

Forthwith upon the passage of this resolution, the members of the commission shall meet at the call of the speaker of the house and organize and shall select from among themselves a chairman. Vacancies in said commission shall be filled in like manner as the original appointment.

The membership of said commission shall receive no compensation for their services.

All departments and agencies of the state shall furnish such advice and information, documentary and otherwise, to said commission and its agents as is deemed necessary or desirable by the commission to facilitate the purposes of this resolution.

The director of administration is hereby authorized and directed to provide suitable quarters for said commission; and be it further

RESOLVED, That the commission shall report its findings and recommendations to the general assembly on or before January 16, 1979.

STATE OF WISCONSIN

1977 Assembly Bill 1077 Date published*: June 6, 1978

CHAPTER 440 , LAWS OF 1977

AN ACT to repeal 32.09 (5m); to amend 32.05 (2a), (5), (10) (b) and (11) (a) and (b), 32.06 (2a), (9) (a) and (10) (a) and (b), 32.09 (4) and (6) (intro.) and 32.10; to repeal and recreate 32.02 (intro.); and to create 32.035, 32.05 (3m), 32.06 (3m), 32.09 (1m), (6g) and (6r), 32.19 (4) (am) and (4m) and 32.28 of the statutes, relating to requiring the department of agriculture, trade and consumer protection to prepare an agricultural impact statement on certain actual or proposed public projects, changing certain aspects of recovery of costs in certain condemnation actions and in the removal of illegal outdoor signs and making other changes in the law on eminent domain.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 32.02 (intro.) of the statutes, as affected by chapter 29, laws of 1977, is repealed and recreated to read:

32.02 Who may condemn; purposes. (intro.) The following departments, municipalities, boards, commissions, public officers and corporations may acquire by condemnation any real estate and personal property appurtenant thereto or interest therein which they have power to acquire and hold or transfer to the state, for the purposes specified, in case such property cannot be acquired by gift or purchase at an agreed price:

SECTION 2. 32.035 of the statutes is created to read:

32.035 Agricultural impact statement. (1) DEFINITIONS. In this section:

(a) "Department" means department of agriculture, trade and consumer protection.

(b) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural commodities for sale and home use, and customarily producing the commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(2) EXCEPTION. This section shall not apply if an environmental impact statement under s. 1.11 is prepared for the proposed project and if the department submits the information required under this section as part of such statement or if the condemnation is for an easement for the purpose of constructing or operating an electric transmission line, except a high voltage transmission line as defined in s. 196.491 (1) (f).

(3) PROCEDURE. The condemnor shall notify the department of any project involving the actual or potential exercise of the powers of eminent domain affecting a farm operation. If the condemnor is the department of natural resources, the notice required by this subsection shall be given at the time that permission of the senate and assembly committees on natural resources is sought under s. 23.09 (2) (d) or 27.01 (2) (a). To prepare an agricultural impact statement under this section, the department may require the condemnor to compile and submit information about an affected farm operation. The department shall charge the condemnor a fee approximating the actual costs of preparing the statement. The department may not publish the statement if the fee is not paid.

(4) IMPACT STATEMENT. The department shall prepare an agricultural impact statement for each project, except a project under ch. 81, if the project involves the actual or potential exercise of the powers of eminent domain and if any interest in more than 5 acres of any farm operation may be taken. The department may prepare an agricultural impact statement on a project if any interest in 5 or less acres of any farm operation may be taken and if the condemnation will have a significant effect on any farm

* Section 990.05, *1975 Wisconsin Statutes*: **Laws and acts; time of going into force.** "Every law or act which does not expressly prescribe the time it takes effect shall take effect on the day after its publication."

operation as a whole. The statement shall list the acreage and describe all land lost to agricultural production and all other land with reduced productive capacity, whether or not the land is taken. The department shall prepare the impact statement within 60 days of receiving the information requested from the condemnor under sub. (3). The department shall publish the statement upon receipt of the fee required under sub. (3). The condemnor may not negotiate with an owner or make a jurisdictional offer under this chapter until 30 days after the impact statement is published.

(5) PUBLICATION. Upon completing the impact statement, the department shall distribute the impact statement to the following:

(a) The governor's office.

(b) The senate and assembly committees on agriculture and transportation.

(c) All local and regional units of government which have jurisdiction over the area affected by the project. The department shall request that each unit post the statement at the place normally used for public notice.

(d) Local and regional news media in the area affected.

(e) Public libraries in the area affected.

(f) Any individual, group, club or committee which has demonstrated an interest and has requested receipt of such information.

(g) The condemnor.

SECTION 3. 32.05 (3m) of the statutes is created to read:

32.05 (3m) In this section, "uneconomic remnant" means the property remaining after a partial taking of property, if the property remaining is of such size, shape or condition as to be of little value or of substantially impaired economic viability. If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the condemnor shall offer to acquire the remnant concurrently and may acquire it by purchase or by condemnation if the owner consents.

SECTION 4. 32.05 (2a), (5), (10) (b) and (11) (a) and (b) of the statutes are amended to read:

32.05 (2a) NEGOTIATION. Before making the jurisdictional offer provided in sub. (3), the condemnor shall attempt to negotiate personally with the owner or one of the owners or his or her personal representative of the property sought to be taken for the purchase of the same. In such negotiation the condemnor is authorized to contract to pay the items of compensation enumerated in ss. 32.09 and 32.19 as may be applicable to the property in one or more instalments on such conditions as the condemnor and property owners may agree. The condemnor shall record any conveyance by or on behalf of the owner of the property to the condemnor executed as a result of negotiations under this subsection with the register of deeds of the county in which the property is located. The condemnor shall also record a certificate of compensation stating the identity of all persons having an interest of record in the property immediately prior to its conveyance, the legal description of the property, the nature of the interest acquired and the compensation for such acquisition. The condemnor shall serve upon or mail by certified mail to all persons named therein a copy of the statement and a notice of the right to appeal the amount of compensation under this subsection. Any person named in the certificate may, within 6 months after the date of its recording, appeal from the amount of compensation therein stated in the manner set forth in subs. (9) to (13) for appeals from an award under sub. (7). For purposes of any such appeal, the amount of compensation stated in the certificate shall be treated as the award and the date the conveyance is recorded shall be treated as the date of taking and the date of evaluation.

(5) COURT ACTION TO CONTEST RIGHT OF CONDEMNATION. ~~When~~ If an owner desires to contest the right of the condemnor to condemn the property described in the jurisdictional offer, for any reason other than that the amount of compensation offered is inadequate, ~~such~~ the owner may within 40 days from the date of personal service of the jurisdictional offer or within 40 days from the date of postmark of the certified mail letter transmitting such offer, or within 40 days after date of publication of the jurisdictional offer as to persons for whom such publication was necessary and was made, commence an action in the circuit court of the county wherein the property is located, naming the condemnor as defendant. Such action shall be the only manner in which any issue other than the amount of just compensation, or other than proceedings to perfect title ~~as provided in~~ under ss. 32.11 and 32.12, may be raised pertaining to the condemnation of the property described in the jurisdictional offer. The trial of the issues raised by the pleadings in such action shall be given precedence over all other actions in said court then not on trial. If the action is not commenced within the time limited the owner or other person

having any interest in the property shall be ~~forever~~ barred from raising any such objection in any other manner. Nothing in this section shall be construed to limit in any respect the right to determine the necessity of taking as conferred by s. 32.07 nor to prevent the condemnor from proceeding with condemnation during the pendency of the action to contest the right to condemn. ~~If the final judgment of the court is that the condemnor cannot condemn the property described in the jurisdictional offer, the judgment shall also award the owner such sum as will in the opinion of the court reimburse the owner for reasonable costs, disbursements and expenses including reasonable attorney and engineering fees actually incurred because of the action of the condemnor, but the judgment shall not, in addition thereto, award the owner taxable costs and disbursements pursuant to ch. 814.~~

(10) (b) The court shall enter judgment for the amount found to be due after giving effect to any amount paid by reason of a prior award. The judgment shall include legal interest on the amount so found due from the date of taking if judgment is for the condemnor, and from 14 days after the date of taking if judgment is for the condemnee. ~~Costs shall be allowed pursuant to s. 814.02 (2). If the appeal was by the condemnor and if the amount of just compensation found under par. (a) exceeds the amount of the basic award, the condemnee shall be deemed the "successful party" under s. 814.02 (2).~~

(11) (a) If the jury verdict as approved by the court does not exceed the basic award, the condemnor shall have judgment against the appellant for the difference between the jury verdict and the amount of the basic award, plus interest on the amount of such difference from the date of taking~~, plus condemnor's taxable statutory costs and disbursements pursuant to s.~~ 814.02 ~~(2)~~.

(b) If the jury verdict as approved by the court exceeds the basic award, the appellant shall have judgment for the amount of such excess plus legal interest thereon to date of payment in full from that date which is 14 days after the date of taking~~, plus statutory taxable costs and disbursements pursuant to s. 814.02 (2)~~.

SECTION 4m. 32.06 (2a) of the statutes is amended to read:

32.06 (2a) AGREED PRICE. Before making the jurisdictional offer ~~provided in~~ under sub. (3) the condemnor shall attempt to negotiate personally with the owner or one of the owners or his or her personal representative of the property sought to be taken for the purchase of the same. In such negotiation the condemnor may contract to pay the items of compensation enumerated in ss. 32.09 and 32.19 where shown to exist. The condemnor shall record any conveyance by or on behalf of the owner of the property to the condemnor executed as a result of negotiations under this subsection with the register of deeds of the county in which the property is located. The condemnor shall also record a certificate of compensation stating the identity of all persons having an interest of record in the property immediately prior to its conveyance, the legal description of the property, the nature of the interest acquired and the compensation for such acquisition. The condemnor shall serve upon or mail by certified mail to all persons named therein a copy of the statement and a notice of the right to appeal the amount of compensation under this subsection. Any person named in the certificate may, within 6 months after the date of its recording, appeal from the amount of compensation therein stated by filing a petition with the judge of the circuit court of the county in which the property is located for proceedings to determine the amount of just compensation. Notice of such petition shall be given to all persons having an interest of record in such property. The judge shall forthwith assign the matter to the chairperson of the county condemnation commissioners for hearing under sub. (8). The procedures prescribed under subs. (9) (a) and (b), (10), (12) and (13) shall govern such appeals. The date the conveyance is recorded shall be treated as the date of taking and the date of evalution.

SECTION 5. 32.06 (3m) of the statutes is created to read:

32.06 (3m) DEFINITION. In this section, "uneconomic remnant" means the property remaining after a partial taking of property, if the property remaining is of such size, shape or condition as to be of little value or of substantially impaired economic viability. If acquisition of only part of a property would leave its owner with an uneconomic remnant, the condemnor shall offer to acquire the remnant concurrently and may acquire it by purchase or by condemnation if the owner consents.

SECTION 6. 32.06 (9) (a) and (10) (a) and (b) of the statutes are amended to read:

32.06 (9) (a) ~~The condemnor must within~~ Within 30 days after the date of filing of the commission's award, ~~if it desires to abandon the proceeding,~~ the condemnor shall petition the judge of the circuit court of the county wherein the property is situated, upon 5 days' notice by certified mail to the owner, for leave to abandon the petition for taking if the condemnor desires to abandon the proceeding. The circuit ~~judge~~ court shall grant ~~such~~ the petition upon such terms as ~~he~~ it deems just, ~~which terms may include reasonable expert witness fees incurred by condemnee for not to exceed 3 expert witnesses and a reasonable attorney's fee both as approved by the judge. Upon payment of such~~

~~amount into court for the benefit of the owner, the judge~~ and shall make a formal order discontinuing ~~said~~ the proceeding which order shall be recorded in the judgment book of the court after the record of the commission's award. The order shall operate to divest any title of condemnor to the lands involved and to automatically discharge the lis pendens.

(10) (a) If the jury verdict as approved by the court exceeds the commission's award, the owner shall have judgment increased by the amount of ~~his statutory taxable costs and disbursements, together with~~ legal interest from the date title vests in condemnor to date of entry of judgment on the excess of the verdict over the compensation awarded by the commission.

(b) If the jury verdict as approved by the court does not exceed the commission's award, the condemnor shall have judgment against the owner for the difference between the verdict and the amount of the commission's award, with legal interest on such difference from the date condemnor paid such award~~, plus condemnor's statutory taxable costs and disbursements~~.

SECTION 7. 32.09 (1m), (6g) and (6r) of the statutes are created to read:

32.09 (1m) As a basis for determining value, a commission in condemnation or a court may consider the price and other terms and circumstances of any good faith sale or contract to sell and purchase comparable property. A sale or contract is comparable within the meaning of this subsection if it was made within a reasonable time before or after the date of evaluation and the property is sufficiently similar in the relevant market, with respect to situation, usability, improvements and other characteristics, to warrant a reasonable belief that it is comparable to the property being valued.

(6g) In the case of the taking of an easement, the compensation to be paid by the condemnor shall be determined by deducting from the fair market value of the whole property immediately before the date of evaluation, the fair market value of the remainder immediately after the date of evaluation, assuming the completion of the public improvement and giving effect, without allowance of offset for general benefits, and without restriction because of enumeration but without duplication, to the items of loss or damage to the property enumerated in sub. (6) (a) to (g) where shown to exist.

(6r) (a) In the case of a taking of an easement in lands zoned or used for agricultural purposes, for the purpose of constructing or operating a high-voltage transmission line, as defined in s. 196.491 (1) (f), or any petroleum or fuel pipeline, the offer under s. 32.05 (2a) or 32.06 (2a), the jurisdictional offer under s. 32.05 (3) or 32.06 (3) or the statement of damages and benefits under section 4 of chapter 275, laws of 1931, as amended (Kline Law), the award of damages under s. 32.05 (7), the award of the condemnation commissioners under s. 32.05 (9) or 32.06 (8) or the modified assessment under section 6 of chapter 275, laws of 1931, as amended (Kline Law), and the jury verdict as approved by the court under s. 32.05 (10) or (11) or 32.06 (10) or the verdict of the jury under section 10 (2) of chapter 275, laws of 1931, as amended (Kline Law), shall specify, in addition to a lump sum representing just compensation under sub. (6) for outright acquisition of the easement, an amount payable annually on the date therein set forth to the condemnee, which amount represents just compensation under sub. (6) for the taking of the easement for one year.

(b) The condemnee shall choose between the lump sum and the annual payment method of compensation at such time as the condemnee accepts the offer, award or verdict, or the proceedings relative to the issue of compensation are otherwise terminated. Selection of the lump sum method of payment shall irrevocably bind the condemnee and successors in interest.

(c) 1. Except as provided under subd. 2, if the condemnee selects the annual payment method of compensation, the fact of such selection and the amount of the annual payment shall be stated in the conveyance or an appendix thereto which shall be recorded with the register of deeds. The first annual payment shall be in addition to payment of any items payable under s. 32.19. Succeeding annual payments shall be determined by multiplying the amount of the first annual payment by the quotient of the state assessment under s. 70.575 for the year in question divided by the state assessment for the year in which the first annual payment for that easement was made, if the quotient exceeds one. A condemnee who selects the annual payment method of compensation, or any successor in interest, may at any time, by agreement with the condemnor or otherwise, waive in writing his or her right, or the right of his or her successors in interest, to receive such payments. Any successor in interest shall be deemed to have waived such right until the date on which written notice of his or her right to receive annual payments is received by the condemnor or its successor in interest.

2. If lands which are zoned or used for agricultural purposes and which are condemned and compensated by the annual payment method of compensation under this paragraph are no longer zoned or used for agricultural purposes, the right to receive the annual payment method of compensation for a high-voltage transmission line easement shall cease and the condemnor or its successor in interest shall pay to the condemnee or any successor in interest who has given notice as required under subd. 1 a single

payment equal to the difference between the lump sum representing just compensation under sub. (6) and the total of annual payments previously received by the condemnee and any successor in interest.

SECTION 8. 32.09 (4) and (6) (intro.) of the statutes are amended to read:

32.09 (4) ~~Where~~ If a depreciation in value of property results from an exercise of the police power, even though in conjunction with the taking by eminent domain, no compensation ~~shall~~ may be paid for such depreciation except as expressly allowed in subs. (5) (b)~~, (5m)~~ and (6) and s. 32.19.

(6) (intro.) In the case of a partial taking of property other than an easement, the compensation to be paid by the condemnor shall be the greater of either the fair market value of the property taken as of the date of evaluation or the sum determined by deducting from the fair market value of the whole property immediatley before the date of evaluation, the fair market value of the remainder immediately after the date of evaluation, assuming the completion of the public improvement and giving effect, without allowance of offset for general benefits, and without restriction because of enumeration but without duplication, to the following items of loss or damage to the property where shown to exist:

SECTION 9. 32.09 (5m) of the statutes is repealed.

SECTION 10. 32.10 of the statutes is amended to read:

32.10 Condemnation proceedings instituted by property owner. ~~Whenever~~ If any property has been occupied by a ~~body~~ person possessing the power of condemnation ~~but where such body~~ and if the person has not exercised ~~said~~ the power, the owner, to institute condemnation proceedings, shall present a verified petition to the circuit judge of the county wherein the land is situated asking that such proceedings be commenced. ~~Such~~ The petition shall describe the land, state the ~~board, commission or corporation~~ person against which the condemnation proceedings are instituted and the use to which it has been put or is designed to have been put by the ~~board, commission or corporation~~ person against which the proceedings are instituted. A copy of ~~said~~ the petition shall be served upon the ~~board, commission or corporation which~~ person who has occupied petitioner's land, or interest in land. The petition shall be filed in the office of the clerk of the circuit court and thereupon the matter shall be deemed an action at law and at issue, with petitioner as plaintiff and the ~~board, commission or corporation~~ occupying person as defendant. The court shall ~~thereupon~~ make a finding of whether the defendant is occupying property of the plaintiff without having the right to do so. If the court determines that the defendant is occupying such property of the plaintiff without having the right to do so, it shall treat the matter in accordance with the provisions of this chapter assuming the plaintiff has received from the defendant a jurisdictional offer and has failed to accept the same and assuming the plaintiff is not questioning the right of the defendant to condemn the property so occupied. ~~The court rendering a judgment for the plaintiff in an action brought under this section shall also award to the plaintiff as a part of such judgment such sum as will in the opinion of the court reimburse the plaintiff for reasonable costs, disbursements and expenses including reasonable attorney, appraisal and engineering fees actually incurred because of such action, but the judgment shall not, in addition thereto, award the owner taxable costs and disbursements pursuant to ch. 814.~~

SECTION 11. 32.19 (4) (am) and (4m) of the statutes are created to read:

32.19 (4) (am) In determining the comparability of a replacement dwelling or mobile home under par. (a), the department of local affairs and development and the department of industry, labor and human relations shall consider and give effect to the overall size, number of rooms and size of rooms, hallways and storage areas of the dwelling or mobile home being replaced, as well as the size and utility of any garage or other outbuildings within the curtilage of the dwelling or mobile home being replaced, regardless of the contribution of the garage or other outbuildings to the owner's income.

(4m) BUSINESS OR FARM REPLACEMENT PAYMENT. In addition to amounts otherwise authorized by this chapter, the condemnor shall make a payment, not to exceed $50,000, to any displaced person who is displaced from any business or farm operation which the person has owned for not less than 180 days prior to the initiation of negotiations for the acquisition of the real property on which the business or farm operation lies, and who actually purchases a comparable replacement for such acquired property within 2 years after the date the person vacates the acquired property or receives payment from the condemnor, whichever is later. The additional payment under this subsection shall include the following amounts:

(a) The amount, if any, which when added to the acquisition cost of the property (other than any dwelling on such property) equals the reasonable cost of a comparable replacement for such acquired property, as determined by the department of local affairs and development and the department of industry, labor and human relations, jointly. Such replacement property shall be within reasonable

proximity of the property being acquired and shall be suited for the same type of business or farm operation as that which is being conducted by the displaced person at the time of acquisition.

(b) The amount, if any, which will compensate such displaced person for any increased interest cost which such person is required to pay for financing the acquisition of any replacement property, if the property acquired was encumbered by a bona fide mortgage which was a valid lien on the property for at least 180 days prior to the initiation of negotiations for its acquisition. The amount under this paragraph shall be equal to the excess in the aggregate interest and other debt services cost of that amount of the principal of the mortgage on the replacement property which is equal to the unpaid balance of the mortgage on the acquired property, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits in commercial banks in the general area where the replacement property is located.

(c) Reasonable expenses incurred by the displaced person for evidence of title, recording fees and other closing costs incident to the purchase of the replacement property, but not including prepaid expenses.

SECTION 12. 32.28 of the statutes is created to read:

32.28 Costs. (1) In this section, "litigation expenses" means the sum of the costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees necessary to prepare for or participate in actual or anticipated proceedings before the condemnation commissioners, board of assessment or any court under this chapter or chapter 275, laws of 1931, as amended (Kline Law).

(2) Except as provided in sub. (3), costs shall be allowed under ch. 814 in any action brought under this chapter or chapter 275, laws of 1931, as amended (Kline Law). If the amount of just compensation found by the court or commissioners of condemnation exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer, the condemnee shall be deemed the successful party under s. 814.02 (2).

(3) In lieu of costs under ch. 814, the court shall award litigation expenses to the condemnee if:

(a) The proceeding is abandoned by the condemnor;

(b) The court determines that the condemnor does not have the right to condemn part or all of the property described in the jurisdictional offer or there is no necessity for its taking;

(c) The judgment is for the plaintiff in an action under s. 32.10;

(d) The award of the condemnation commission under s. 32.05 (9) or 32.06 (8) exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least $700 and at least 15% and neither party appeals the award to the circuit court;

(e) The jury verdict as approved by the court under s. 32.05 (11) exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least $700 and at least 15%;

(f) The condemnee appeals an award of the condemnation commission which exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least $700 and at least 15%, if the jury verdict as approved by the court under s. 32.05 (10) or 32.06 (10) exceeds the award of the condemnation commission by at least $700 and at least 15%;

(g) The condemnor appeals the award of the condemnation commission, if the jury verdict as approved by the court under s. 32.05 (10) or 32.06 (10) exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least $700 and at least 15%;

(h) The condemnee appeals an award of the condemnation commission which does not exceed the jurisdictional offer or the highest written offer prior to the jurisdictional offer by 15%, if the jury verdict as approved by the court under s. 32.05 (10) or 32.06 (10) exceeds the jurisdictional offer or the highest written offer prior to the jurisdictional offer by at least $700 and at least 15%; or

(i) The condemnee appeals an assessment of damages and benefits under section 10 (2) of chapter 275, laws of 1931, as amended (Kline Law), if the verdict of the jury awards an amount at least $700 and at least 15% greater than the award made by the city.

SECTION 14. **Program responsibilities.** (1) In the list of program responsibilities specified for the department of agriculture, trade and consumer protection in section 15.131 (intro.) of the statutes, insert reference to section "32.035".

(2) In the list of program responsibilities specified for the department of industry, labor and human relations in section 15.221 (intro.) of the statutes, insert reference to section "32.19 (4m) (a)".

(3) In the list of program responsibilities specified for the department of local affairs and development in section 15.281 of the statutes, insert reference to section "32.19 (4m) (a)".

SECTION 15. **Applicability.** The treatment of sections 32.05 (5), (10) (b) and (11) (a) and (b), 32.06 (9) (a) and (10) (a) and (b), 32.10 and 32.28 of the statutes by this act shall apply to all actions and proceedings on or after the effective date of this act, regardless of when such actions or proceedings were commenced.

SECTION 16. **Effective date.** This act shall take effect on the first day of the 4th month after its publication.

LAWS OF ALASKA

1977

Source

HCSSB 274 am H

Chapter No.

146

AN ACT

Relating to the taking of oil and gas royalty in kind; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 38.05.182 is amended to read:

Sec. 38.05.182. ROYALTY ON NATURAL RESOURCES. (a) Any royalty provided for in secs. 135 - 181 of this chapter may be taken in kind rather than in money if the commissioner determines that the taking in kind would be in the best interest of the state. However, royalties on oil and gas shall be taken in kind unless

(1) the commissioner determines that the taking in money would be in the best interest of the state; and

(2) the Alaska Royalty Oil and Gas Development Advisory Board approves the taking in money.

(b) The commissioner shall submit a determination to take royalty in money approved under (a) of this section to the legislature at the first opportunity during a current session or, if the legislature is not in session, at the next regular session. The legislature, within 60 days or by the adjournment of the session, whichever comes sooner, may revoke the determination by concurrent resolution.

* Sec. 2. AS 38.06.055(a) is amended to read:

(a) In addition to the approval by the board required under sec. 50 of this chapter, no sale, exchange or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas may be made by the commissioner of natural resources under AS 38.05.183 without the prior approval of the legislature

by a concurrent resolution concurred in by a majority of the members of each house except for sales, exchanges, or other dispositions made for a term of no more than one year, which may be entered into to relieve a shortage of storage capacity.

* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

Permitted to become law without Signature
Actual Effective Date: June 23, 1977

ENROLLED

Regular Session, 1973

ACT NO. 294

HOUSE BILL NO. 768

BY MESSRS. TAUZIN, FREEMAN, ACKAL, ALARIO, CHABERT, CHARBONNET, DELPIT, D'GEROLAMO, DOWNER, DUPUIS, FOWLER, HOGAN, A. JACKSON, J. JACKSON, JASPER, JOHN, KIMBALL, R. LABORDE, LONG, LEITHMAN, PATTI, RICE, SHANNON, STRAIN, F. THOMPSON, TOCA, TURNLEY, VIDRINE AND WALL AND SENATORS MOUTON, BROWN, KIEFER, BRINKHAUS, DOUCET, DUVAL, EAGAN, GERALD, GIBBS, LAURICELLA, NUNEZ, O'KEEFE, RAYBURN, TIEMANN AND WINDHORST AND MESSRS. SCHMITT, DYER, BEL, MORRIS, ULLO, DEMOS, MORRISON, REILLY, CAIN, CONNOR, RUSSO, DISCHLER, CROSBY, GUIDRY, GUNTER, SCOGIN AND R. THOMPSON

AN ACT

To amend Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950 by adding thereto a new Chapter to be designated as Chapter 16 thereof to contain a Part I comprising Sections 1301 through 1307, providing for the levy and collection of a tax on the first use, in the state of Louisiana, of natural gas produced outside of the territorial limits of the state of Louisiana, which is not subject to the levy of an import tax or customs duty by the United States as an import from a foreign country, and upon which no severance tax or tax upon the volume of production has been paid to any state or territory of the United States; providing a definition of first use and for other definitions; providing for exclusions from the tax; providing for the imposition and rate of the tax; declaring certain contractual agreements unenforceable; providing for the point at which the gas is measured and the tax assessed; providing for the reporting and collection thereof and promulgation of regulations; providing for commingling; providing penalties; providing for the disposition of the collections of the tax; and providing otherwise both generally and specifically with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 16 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950 containing a Part I and comprising Sections 1301 through 1307 of Title 47 is hereby enacted to read as follows:

CHAPTER 16. FIRST USE TAX

PART I. FIRST USE TAX ON NATURAL GAS

§1301. State policy

A. The conservation of natural resources is of vital concern to the present and future welfare of our state and nation, and it is the policy of the state of Louisiana, in the exercise of its police and taxing power, to prevent the physical and economic waste of its natural resources. It is recognized that other existing laws providing limitations upon the production of oil and gas are allowed within the state, and the imposition of a tax upon the severance of these natural resources from the soil and water of the state fail to prevent the economic waste of these Louisiana natural resources and will unfairly tax Louisiana producers in a discriminatory fashion, unless the state equally and uniformly taxes the introduction for the first time into the economy of the state natural gas which has not been otherwise or elsewhere subject to taxation by or within the United States.

B. The waterbottoms, barrier islands and coastal areas within this state are also valuable natural resources, as they provide essential habitat for many forms of wildlife and aquatic life in Louisiana, help protect our coastline from erosion, and are of aesthetic, commercial and recreational value to the citizens of our state and nation. It is further recognized that while other existing laws, applicable to the production of oil and natural gas, provide recompense in the form of taxes to the people of the state of Louisiana for adverse effects on the natural resources, barrier islands, waterbottoms, and shorelands of this state, these laws fail to provide protection for such valuable natural resources or compensation to the people of Louisiana for the necessary adverse effects caused by entry for use for the first time in Louisiana, under the protection of the state's laws, of natural gas which has not been subject to taxation otherwise or elsewhere by or within the United States unless the state levies an equitable tax thereon.

C. It is one of the express purposes of this tax to require the exaction of fair and reasonable compensation to the citizens of this state for the costs incurred and paid with public funds, which

costs enure solely to the benefit of the owners of natural gas produced beyond the boundaries of Louisiana, although introduced into the state, and to provide some measure of reimbursement to the citizens for damages to the state's waterbottoms, barrier reefs, and sensitive shorelands as a direct consequence of activity within the state associated with such natural gas by the owners thereof.

§1302. Definitions

The definitions hereinafter set forth shall have the meanings ascribed to them unless the context of use clearly indicates otherwise:

(1) "Oil, condensate, distillate or similar hydrocarbons" are liquid hydrocarbons remaining in a liquid state at 15.025 pounds per square inch absolute and sixty degrees Fahrenheit.

(2) "Natural gas" is natural or casinghead gaseous phase hydrocarbons remaining after separation from either oil, condensate, or distillate and measured at a pressure base of 15.025 pounds per square inch absolute at a temperature base of sixty degrees Fahrenheit.

(3) "Processing" is the scrubbing of a natural gas stream by specifically applied mechanical processes of absorption, adsorption, compression, cooling, cryogenics, refrigeration or any combination thereof for the purpose of extracting natural or casinghead gasoline, methane, ethane, propane, butane and other liquefiable hydrocarbons.

(4) "Refining" is the process by which crude oil, distillate and condensate are separated or fractionated into the various component parts or purified.

(5) "Storage" means and includes any keeping or retention in this state of oil and natural gas.

(6) "Measurement" is any process by which the volume of natural gas affected by this Part is determined.

(7) "Sale" is the transfer of ownership of and title to natural gas from one person to another for valuable consideration.

(8) "Use" is: the sale; the transportation in the state to the point of delivery at the inlet of any processing plant; the transportation in the state of unprocessed natural gas to the point of delivery at the inlet of any measurement or storage facility;

transfer of possession or relinquishment of control at a delivery point in the state; processing for the extraction of liquefiable component products or waste materials; use in manufacturing; treatment; or other ascertainable action at a point within the state.

(9) "Owner" is the person or person having title to and the right to alienate the natural gas subject to the tax at the time a use occurs in the state. It shall not include any person to whom temporary possession or control has been transferred. In the event of a sale the purchaser shall be deemed the owner.

§1303. Imposition; exclusions; commingling

A. Pursuant to the exercise of the police and taxing powers of the state for the purpose of preventing economic and physical waste of our natural resources and for protecting and providing compensation for adverse effects upon the state's shorelands, waterbottoms and barrier islands, there is hereby levied and imposed a tax upon the first occurrence within this state of any use, as defined in this Part, of any natural gas upon which no severance tax or tax upon the volume of production has been paid, or is legally due to be paid, to this state or any other state or territory of the United States, or which is not subject to the levy of any import tax or tariff by the United States as an import from a foreign country. The tax levied herein shall not apply to natural gas otherwise subject thereto when such gas is used or consumed in the drilling for or production of oil, natural gas, sulphur, or in the processing of natural gas for liquids extraction within the state; nor shall it apply to gas shrinkage volumes attributable to the extraction of ethane, propane, butanes, natural or casinghead gasoline or other liquefied hydrocarbons, provided shrinkage volumes shall not exceed equivalent gas volumes of the extracted liquids computed by recognized conversion factors used by the Gas Processors Association nor shall it apply to natural gas used or consumed in the manufacture of fertilizer and anhydrous ammonia within the state.

B. The tax imposed by Subsection A of this Section shall be computed at a rate of seven cents on each unit of natural gas as to

which a use first occurs within the state. For the purposes of this tax a unit shall be one thousand cubic feet of natural gas as measured at a pressure base of 15.025 pounds per square inch absolute and at a temperature base of sixty degrees Fahrenheit.

C. In furtherance of the public policy and purpose set forth in Section 1301 of this part, and particularly Subsection C of said Section, this tax shall be deemed a cost associated with uses made by the owner in preparation of marketing of the natural gas. Any agreement or contract by which an owner of natural gas at the time a taxable use first occurs claims a right to reimbursement or refund of such taxes from any other party in interest, other than a purchaser of such natural gas, is hereby declared to be against public policy and unenforceable to that extent. Notwithstanding any such agreement or contract, such an owner shall not have an enforceable right to any reimbursement or refund on the basis that this tax constitutes a cost incurred by such owner by virtue of the separation or processing of natural gas for extraction of liquid or liquefiable hydrocarbons, or that this tax constitutes any other grounds for reimbursement or refund under such agreement or contract, unless there has been a final and unappealable judicial determination that such owner is entitled to such reimbursement or refund, notwithstanding the public policy and purpose of this part and the foregoing provisions of this Subsection C. In any legal action pursuant to this Subsection, the state shall be an indispensable party in interest.

D. When natural gas subject to the tax levied in this Part is commingled with oil and/or natural gas not subject to the tax levied herein, it shall be presumed that the volumes withdrawn from the commingled mass by the first use shall be in the same ratio as the ratio of the resources entering the commingled mass.

E. Nothing in this Part shall be construed as imposing any tax on the production, severance, or ownership of natural gas produced outside of the boundaries of the state of Louisiana, it being the intention of this Part that the incidence of this tax shall not be upon the natural gas nor upon the property or rights from which it

is produced, but rather shall be only upon the privilege of performance or allowing the performance, by the owner, of the enumerated actions comprising first use within the state.

F. If any use as defined in this Part and first occurring is determined not to be a constitutionally taxable incident, the tax shall be imposed upon the use first occurring thereafter.

§1304. Authority of the collector of revenue to promulgate rules and regulations

The collector of revenue is authorized to promulgate rules and regulations necessary to effect the intent and purpose of this Part, including regulations concerning the measurement of products associated with the incidents taxed herein.

§1305. Reports and payments; reimbursement limitations

A. The owner or owners of the natural gas at the time a use first occurs in this state shall file with the Department of Revenue and Taxation on or before the last day of each month following the month of first use, statements on forms procured from the department, showing the volumes, values, owners and such other information as the department may require by law or regulation for computing and assessing the amount of tax due under this Part.

B. The taxes levied by this Part shall be due and payable to the Department of Revenue and Taxation monthly on or before the last day of the month following the month to which the tax is applicable by the owner or owners of the natural gas stream at the time any use, as defined herein, first occurs within the state.

§1306. Delinquent tax; failure to report or pay

A. The tax provided by this Part shall become delinquent after the date fixed for each monthly report to be filed in the office of the collector, and from such time shall be subject to the addition of interest, penalties, and costs as provided in Chapter 18, Subtitle [illegible] of this Title.

B. The failure to report or pay, within ninety days, in the manner and at the time required herein, the tax imposed by this Part on the first use of natural gas is unlawful, and the natural gas shall be deemed illegal gas subject to the provisions of R.S. 30:19 and, as

such, shall be treated as contraband and shall be seized and sold as provided by R.S. 30:20.

§1307. Disposition of collections

The secretary shall remit all collections of taxes provided by this Part each month to the state treasurer, not later than the tenth day of the month following the month in which collections are made. The state treasurer shall credit all such collections to the state treasury.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

This Act shall become effective immediately upon signature by the governor and the adoption by the legislature of House Bill 140 of the 1978 Regular Session; provided however that taxes shall not begin to accrue on natural gas subject to the tax levied by this Part until 7:00 A.M. on April 1, 1979.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Section 4. Notwithstanding the provisions of Section 2 of this Act, in the event that a final and unappealable judicial decision is rendered upholding the right of an owner to enforce a contract or agreement otherwise rendered unenforceable by R.S. 47:1303(C) of this Act, the following consequences shall ensue:

(1) If the right upheld arises from the provisions of a contract or agreement requiring any other party to reimburse or refund to an owner taxes incurred by such owner by virtue of the separation or processing of natural gas for extraction of liquid or liquifiable hydrocarbons, then the tax levied in this Act shall not be due in respect to natural gas previously and thereafter sold pursuant to any contract or agreement containing such requirement, and the secretary of the Department of Revenue and Taxation shall forthwith return to each taxpayer all taxes previously paid in respect to such natural gas, together with interest at the rate

of six percent per annum from the date the taxes were paid; or

(2) If the right upheld arises from the provisions of a contract or agreement requiring any other party to reimburse or refund to an owner costs or expenses incurred by such owner by virtue of separation or processing of natural gas for extraction of liquid or liquefiable hydrocarbons, then this Act shall be null and void and the secretary shall forthwith return to each taxpayer all taxes previously paid, together with interest at the rate of six percent per annum from the date of payment.

All taxpayers receiving refunds and interest pursuant to this Section shall in turn remit such refunds and interest to all other parties from whom they have received payments pursuant to the aforesaid provisions of such contracts.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED:_____

ENROLLED

Regular Session, 1973

HOUSE BILL NO. 1137

BY MESSRS. R. J. LABORDE AND BARES ACT NO. 436

AN ACT

To amend Chapter 6 of Title 47 of the Louisiana Revised Statutes of 1950 by adding thereto a new Part I-B, to be comprised of R.S. 47:647; to provide a severance tax credit to persons liable for the payment of the first use tax levied in R.S. 47:1301 through R.S. 47:1307; to provide for the amount of the tax credit; to provide for parish allocations; to provide for regulations; and otherwise to provide with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Part I-B of Chapter 6 of Title 47 of the Louisiana Revised Statutes of 1950, consisting of R.S. 47:647 is hereby enacted to read as follows:

PART I-B. SEVERANCE TAX CREDIT

§647. Severance tax credit

A. Every taxpayer liable for and remitting taxes levied and collected pursuant to R.S. 47:1301 through 1307 and each taxpayer who bears such taxes as a direct result of contractual terms or agreements applied in disregard of R.S. 47:1303C, shall be allowed a direct tax credit, at any time following payment of such tax, but, not in excess of the amount which must be borne by such taxpayer, against severance taxes owed by such taxpayer to the state, the amount of which credit shall not exceed the amount of severance taxes for which such taxpayer is liable to the state as a direct consequence of the privilege of severing natural resources from the surface of the soil or water of the state. A taxpayer who bears any portion of the tax levied pursuant to R.S. 47:1301 through 1307 as

a direct result of contractual terms or agreements applied in disregard of R.S. 47:1303C, shall be entitled to a credit under this Section only after there has been a determination by the Louisiana Supreme Court or the appropriate United States District Court that such taxpayer must bear the tax, provided that if the taxpayer or the state has sought and been denied a preliminary injunction enjoining the application of such contractual terms or agreements sought to be rendered inapplicable by R.S. 47:1303(C), then such taxpayer shall be entitled to a credit under this Section from the date of denial of the preliminary injunction.

B. No tax credit pursuant to this Section shall be allowed for any taxes remitted pursuant to R.S. 47:1301 through 1307 for which a taxpayer has an enforceable right to reimbursement from a third party. A taxpayer claiming any credit under this Section shall furnish to the secretary of the Department of Revenue and Taxation all applicable contracts and other information requested by the secretary, which relate to such taxpayer's possible right to reimbursement. If the secretary determines that the taxpayer has an enforceable right to reimbursement, which the taxpayer is not actually receiving, the secretary shall so rule. Within thirty days of receipt of notice of such ruling the taxpayer shall have the right to appeal such ruling to the Louisiana Board of Tax Appeals which board shall determine in open meeting whether there is sufficient evidence to support the ruling of the secretary. If the board determines that there is not sufficient evidence it shall overrule the secretary and the taxpayer shall not be required to take any other action in order to receive the tax credit provided by this Section. If the board determines that there is sufficient evidence, the taxpayer shall thereafter have a period of ninety days within which to institute any administrative or judicial proceedings necessary to assert such right to reimbursement. The taxpayer shall pursue such administrative or judicial proceedings with due diligence. At all times prior to commencement of such administrative or judicial proceedings and during the pendency thereof, and during any appeals therefrom, the taxpayer shall continue to be entitled to the credit provided in this Section;

provided that if no action is taken by the taxpayer to assert the right to reimbursement within ninety days no further credit shall be granted and the state shall have the right to recover from the taxpayer any credits granted prior to the expiration of such time. If it is determined in any administrative proceedings that a taxpayer has no right to such reimbursement, then the taxpayer shall not be entitled to continue receiving the credit allowed by this Section, unless the taxpayer within the time allowed by applicable law seeks judicial review of such administrative determination and pursues such judicial review to a final and unappealable judgment. If the administrative or judicial determination establishes that the taxpayer has an enforceable right to reimbursement of the taxes levied pursuant to R.S. 47:1301 through 1307, and if the taxpayer is so reimbursed, then such taxpayer shall be liable to the state for additional severance taxes equivalent to the amount of taxes levied under R.S. 47:1301 through 1307 for which such taxpayer has received reimbursement. The taxpayer shall also pay to the state interest on such taxes at the rate prescribed in R.S. 47:1601, accruing from the date on which the credit attributable to such taxes was taken to the date of final payment but only to the extent of any interest which the taxpayer has itself received on the amount of reimbursement.

C. The credit allowed by this Section shall not affect the percentage allocation of severance tax proceeds otherwise due to any parish, and the secretary of the Department of Revenue and Taxation, with the concurrence of the state treasurer shall, by regulation, establish such procedures as may be deemed necessary to provide therefor.

D. The secretary of the Department of Revenue and Taxation shall promulgate rules and regulations necessary for the implementation and administration of the tax credit provided for herein.

Section 2. Notwithstanding the provisions of R.S. 47:1351, the treasurer shall, after any funds have first been deposited to the credit of the Bond Security and Redemption Fund, pay into the general fund, from the total proceeds of the first use tax authorized by R.S. 47:1301 through 1307, such amounts as are necessary to fully reimburse said

general fund for tax credits granted pursuant to this Act.

Section 3. Tax credits authorized by this Act shall not be granted until there has been a final decision upholding the validity of the first use tax authorized and levied pursuant to R.S. 47:1301 through 1307, except to the extent that taxes levied pursuant to said Part are collected without either protest or suit for recovery filed directly by the person claiming the credit. In the event that tax credits authorized under this Act are granted, the recipient thereof shall be deemed to have waived his right to recovery of any taxes paid and collected pursuant to R.S. 47:1301 through 1307 to the extent of the tax credit granted.

Section 4. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

Section 5. All laws or parts of laws in conflict herewith are hereby repealed.

Section 6. The provisions of this Act shall become effective upon the enactment into law of House Bill 768 of the 1978 Regular Session of the Louisiana Legislature.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED:_____

Regular Session, 1973

HOUSE BILL NO. 767 ACT NO. 293 ENROLLED

BY MESSRS. FAUZIN, FREEMAN, ACKAL, ALARIO, CHABERT, CHARBONNET, DELPIT, D'GEROLAMO, DOWNER, DUPUIS, FOWLER, HOGAN, A. JACKSON, J. JACKSON, JASPER, JOHN, KIMBALL, R. LABORDE, LONG, LEITHMAN, PATTI, RICE, SHANNON, STRAIN, F. THOMPSON, TOCA, TURNLEY, VEDRINE AND WALL AND SENATORS MOUTON, BROWN, KIEFER, BRINKHAUS, DOUCET, DUVAL, EAGAN, GERALD, GIBBS, LAURICELLA, NUNEZ, O'KEEFE, RAYBURN, TIEMANN AND WINDHORST AND MESSRS. SCHMITT, DYER, BEL, MORRIS, ULLO, DIMOS, MORRISON, REILLY, CAIN, CONNOR, RUSSO, BAGERT, DISCHLER, PICARD, CROSBY, GUIDRY, GUNTER, SCOGIN, R. THOMPSON, ALEXANDER, CHAMPAGNE, FUDGE, HUMPHRIES AND LANIER

AN ACT

To amend Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950 by adding thereto a new Chapter to be designated Chapter 16 thereof to contain a Part II containing Section 1351, to create and provide for the First Use Tax Trust Fund in the state treasury as a special and irrevocable trust fund for the proceeds to be derived from a first use tax and any new or alternate tax on the same resources; to establish certain accounts within said trust fund to be used for state debt retirement, redemption of outstanding debt, capital improvements of the barrier islands, reefs, and shores of the coastline; and to provide for reimbursement to the general fund for certain tax credits.

Be it enacted by the Legislature of Louisiana:

Section 1. Part II of Chapter 16 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950 containing Section 1351 is hereby enacted to read as follows:

PART II. USE TAX PROCEEDS

SUBPART A. FIRST USE TAX TRUST FUND

§1351. Creation

A. (1) The First Use Tax Trust Fund is hereby created in the state treasury as a special and irrevocable trust fund for the deposit of the proceeds, and investment income derived therefrom, of the first use tax imposed by law in 1978 or thereafter and any new or alternative tax hereafter imposed by law on uses of those

resources subject to any such tax. Out of the first proceeds of the first use tax the treasurer shall pay into the State General Fund such amounts as are determined by the secretary of the Department of Revenue and Taxation to be necessary to fully reimburse the State General Fund for monies lost to that fund by reason of the tax credits granted by law which are related to the imposition of the first use tax. The remainder of such tax proceeds shall be credited to the following accounts, which are hereby created within the First Use Tax Trust Fund, and shall not be deposited in the Bond Security and Redemption Fund or the State General Fund.

(2) Distribution; debt accounts. Seventy-five percent of the proceeds, and all investment earnings derived therefrom, shall be deposited in the Initial Proceeds Account and the Debt Retirement and Redemption Account, which are hereby created, in the following manner:

(a) Initial Proceeds Account. From this portion of the proceeds of the tax, amounts shall be credited to the Initial Proceeds Account until the sum of five hundred million dollars has been so credited. The sum of five hundred million dollars credited to this account from the proceeds of the tax shall be maintained in that amount at all times and, except for investment and except as provided in Paragraph C of this Section, monies in the Initial Proceeds Account shall not be used for any purpose. Monies in this account shall be invested, in accordance with law, and the investment earnings shall accrue to that account.

(b) Debt Retirement and Redemption Account. All proceeds of this portion of the tax over and above the amount required to be credited to and be maintained in the Initial Proceeds Account shall be credited to the Debt Retirement and Redemption Account. Monies in this account shall be invested, and the investment earnings shall accrue to that account. Except for investment, monies in the Debt Retirement and Redemption Account shall be used solely to purchase, in advance of maturity, on the open market any outstanding obligations of the state, or to call, pay, or redeem

in advance of maturity any outstanding bonds, notes, or other evidences of state debt, or both. No purchase or redemption of state debt shall be made unless the purchase or redemption results in interest savings to the state. The methods by which this Section shall be implemented shall be determined by the state treasurer, with concurrence of two-thirds of the members of the State Bond Commission, acting in open session.

(3) Distribution conservation account. Twenty-five percent of the proceeds, and all investment earnings derived therefrom, shall be deposited in the Barrier Islands Conservation Account. The monies in the Barrier Islands Conservation Account shall be invested and the investment earnings shall accrue to that account. Except for such investment, monies in this account shall be used exclusively to fund capital improvement projects designed to conserve, preserve, and maintain the barrier islands, reefs, and shores of the coastline of Louisiana. Only such capital improvements as are contained in the comprehensive capital budget adopted by the legislature each year shall be so funded.

B. The state treasurer shall invest all monies in the accounts created by Subsection A hereof in accordance with the laws governing the investment of idle funds of the state.

C. If the state treasurer determines that the best interest of the state would be served, but only if the Debt Retirement and Redemption Account is not funded or for any reason is depleted, the treasurer, with concurrence of two-thirds of the members of the State Bond Commission, acting in open session, may expend such portion of the investment earnings in the Initial Proceeds Account as are not necessary to provide the balance of five hundred million dollars in the Initial Proceeds Account required by Subsection A hereof for any purpose for which the Debt Retirement and Redemption Account may be used.

D. The funds deposited in the First Use Tax Trust Fund shall be considered escrowed and shall not be used for any of the purposes enumerated herein until the proceeds of the first use tax are determined to be available for such uses by the

treasurer, with concurrence of two-thirds of the members of the State Bond Commission acting in open session. If by final action of a court of last resort the tax held in escrow in the state treasury is held to be invalid as to any taxpayer who paid the tax, the taxes paid, with interest accrued thereon, shall be repaid to the taxpayer.

E. The secretaries of the Department of Wildlife and Fisheries, the Department of Natural Resources, and the Department of Transportation and Development shall meet and annually make recommendations to the governor as to capital improvement projects designed to conserve, preserve, restore, and maintain the barrier islands, reefs, and shores of the coastline of the state. The governor shall place such of those projects as he deems to be in the best interest of the state in the comprehensive capital budget for consideration by the legislature. Only those projects approved by the legislature shall be funded.

Section 2. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

Section 3. All laws or parts of laws in conflict herewith are hereby repealed.

Section 4. The provisions of this Act shall remain in full force and effect unless expressly repealed.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED:_____

m 337

ENROLLED

Regular Session, 1978

HOUSE BILL NO. 140

BY MESSRS. TAUZIN, LEACH, ALARIO, ACKAL, CHAMPAGNE, GUIDRY, JOHN, KIMBALL, M. J. LABORDE, SCOGIN, HAINKEL AND BARES AND MS. BAJOIE AND MESSRS. FERNANDEZ, S. LEBLANC, ALEXANDER, BEL, BOPP, CONNOR, DISCHLER, DYER, FOWLER, FREEMAN, FUDGE, HUMPHRIES, R. J. LABORDE, LANIER, LONG, MORRISON, PATTI, RICE, SHANNON, STRAIN, R. THOMPSON, ULLO AND VIDRINE

ACT NO. 797

A JOINT RESOLUTION

Proposing an amendment to Article IX of the Constitution of Louisiana, by adding thereto a new Section to be designated as Section 9 thereof, to provide for the creation of the First Use Tax Trust Fund in the state treasury as a special and irrevocable trust fund for the proceeds to be derived from a first use tax; to establish certain accounts within said trust fund to be used for state debt retirement, redemption of outstanding debt, and capital improvements for the conservation, preservation, and maintenance of the barrier islands, reefs, and shores of the coastline of Louisiana; and to provide for reimbursement of the general fund for certain tax credits.

Section 1. Be it resolved by the Legislature of Louisiana, two-thirds of the members elected to each house concurring, that there shall be submitted to the electors of the state of Louisiana for their approval or rejection, in the manner provided by law, a proposal to amend Article IX of the Constitution of Louisiana, to add thereto a new Section to be designated as Section 9 thereof, which shall read as follows:

§9. First Use Tax Trust Fund.

Section 9.(A)(1) Creation. The First Use Tax Trust Fund is hereby created and established in the state treasury as a special and irrevocable trust fund for the deposit of the proceeds, and interest derived therefrom, of the first use tax imposed by law in 1978 or thereafter and any other tax imposed by law which would have the

effect of imposing any new or alternative tax on uses of those resources subject to the tax levied by the first use tax. The treasurer shall pay into the state general fund, from the total proceeds of the first use tax, as imposed by law in 1978 or thereafter such amounts as are necessary to fully reimburse the state general fund for tax credits granted in 1978 against that tax pursuant to Part I-B of Chapter 6 of Title 47 of the Louisiana Revised Statutes. The remainder of such tax proceeds shall be credited to the following accounts within the First Use Tax Trust Fund and shall not be deposited into the Bond Security and Redemption Fund or the general fund.

(2) Distribution; debt accounts. Seventy-five percent of the proceeds, and interest derived therefrom, shall be deposited into the following accounts:

(a) Initial Proceeds Account. From this portion of the initial proceeds of the tax, the sum of five hundred million dollars shall be maintained in an account within the First Use Tax Trust Fund in the state treasury to be known as the "Initial Proceeds Account". Monies in the Initial Proceeds Account shall be invested, and the investment earnings shall accrue to that account. Except for investment and except as provided in Paragraph (C), monies on deposit in the Initial Proceeds Account shall not be used. If the balance of the Initial Proceeds Account at any time is less than five hundred million dollars, then an amount from the next proceeds of the tax shall be credited to the Initial Proceeds Account until there is a balance therein of five hundred million dollars.

(b) Debt Retirement and Redemption Account. All proceeds of this portion of the tax over and above the amount required to be maintained in the Initial Proceeds Account shall be maintained in an account in the First Use Tax Trust Fund to be known as the "Debt Retirement and Redemption Account". Monies in the Debt Retirement and Redemption Account shall be invested and the investment earnings shall accrue to that account. Except for investment, monies on deposit in the Debt Retirement and Redemption Account shall be used

only to purchase, in advance of maturity, on the open market any outstanding obligations of the state, or to call, pay or redeem in advance of maturity any outstanding bonds, notes or other evidence of state debt, or both. No purchase or redemption of state debt shall occur with the monies unless the purchase or redemption results in interest savings to the state. The methods used for retiring such future debt shall be determined by the state treasurer, with concurrence of two-thirds of the members of the State Bond Commission acting in open session.

(3) Distribution; conservation account. Twenty-five percent of the proceeds, and interest derived therefrom, shall be deposited into the following account:

(A) Barrier Islands Conservation Account. Twenty-five percent of the proceeds of the tax shall be maintained in an account in the First Use Tax Trust Fund to be known as the "Barrier Islands Conservation Account". Monies in the Barrier Islands Conservation Account shall be invested and the investment earnings shall accrue to that account. Except for investment, monies on deposit in the Barrier Islands Conservation Account shall be used exclusively to fund capital improvement projects designed to conserve, preserve and maintain the barrier islands, reefs, and shores of the coastline of Louisiana. Only such capital improvements contained in the comprehensive capital budget adopted by the legislature each year shall be funded.

(B) Investments. The state treasurer shall invest all monies on deposit in the accounts established under Paragraph (A) in accordance with the law governing the investment of idle funds of the state.

(C) Use of Investment Earnings of Initial Proceeds Account. If in the judgment of the state treasurer the best interest of the state would be served, and only if the Debt Retirement and Redemption Account is depleted or otherwise not funded, the treasurer may, with concurrence of two-thirds of the members of the State Bond Commission, acting in open session, expend the investment earnings which have accrued in excess of five hundred million dollars in the

Initial Proceeds Account for any purpose for which the Debt Retirement and Redemption Account may be used.

(D) The funds deposited in the First Use Tax Trust Fund shall be considered escrowed and shall not be used for the purposes enumerated herein until the proceeds of the first use tax are determined to be available for such uses by the treasurer with concurrence of two-thirds of the members of the State Bond Commission, acting in open session. During the time these funds are escrowed such funds may be ordered remitted upon final action by a court of last resort, with the interest earned thereon, as provided by law, if the tax is held to be invalid as to any taxpayer who has paid the tax.

Section 2. This proposed amendment shall be submitted to the electors of the state of Louisiana at the next election for Representatives in Congress to be held in Louisiana on the first Tuesday next following the first Monday of November, 1978.

Section 3. On the official ballot to be used at said election there shall be printed:

FOR the proposed amendment to Article IX, of the Louisiana Constitution to add thereto a new Section 9, creating a First Use Tax Trust Fund in the state treasury for the proceeds from a first use tax to be used for debt retirement, redemption of debt, reimbursement of the general fund for certain tax credits and for certain capital improvements for the barrier islands, reefs, and shores of the coastline.

and also:

AGAINST the proposed amendment to Article IX, of the Louisiana Constitution to add thereto a new Section 9, creating a First Use Tax Trust Fund in the state treasury for the proceeds from a first use tax to be used for debt retirement, redemption of debt, reimbursement of the general fund for certain tax credits and for certain capital improvements for the barrier islands, reefs, and shores of the coastline.

Each elector voting on this proposition for so amending the Constitution shall indicate his vote relative thereto in the manner provided by the election laws of the state of Louisiana.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

S E N A T E O F M A R Y L A N D

81r4064 No. 1240

By: Senator Mason
Introduced and read first time: February 24, 1978
Assigned to: Economic Affairs
Re-referred to: Budget and Taxation, March 8, 1978

Committee report: Favorable with amendments
Senate action: Adopted
Read second time: March 20, 1978

CHAPTER 853

AN ACT concerning

Coal Mining - Severance Surcharge

FOR the purpose of adding to the declaration of the policy of the State in the protection and conservation of the natural resources of this State; providing for a redistribution of the amounts collected for the severance surcharge; providing for certain reports to be filed with the Secretary of the Department of Natural Resources; and generally relating to the collection and distribution of the coal mining severance surcharge.

BY repealing and reenacting, with amendments,

Article - Natural Resources
Section 7-502, 7-507.1, 7-514(a), 7-5A02, and 7-5A12
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article - Natural Resources

7-502.

This subtitle is an exercise of the police powers of the State for the general welfare of the people, by providing for the protection and conservation of the natural resources of the State and the improvement of areas of land AND COMMUNITIES affected in the mining of bituminous coal by

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

the open-pit, strip mining, or auger mining method. Its purpose is to aid in the protection of wildlife and restore these lands to productive purposes while decreasing soil erosion; to aid in preventing pollution of rivers and streams; prevent combustion of unmined coal; provide for reclamation of the stripped areas; [and] generally improve the use and enjoyment of these lands AND GENERALLY IMPROVE THE HEALTH, WELFARE, AND LIVING CONDITIONS IN THE COMMUNITIES AND COUNTIES IN WHICH COAL MINING IS AN IMPORTANT INDUSTRY.

7-507.1.

On the basis of the approved annual and monthly progress reports, the Department shall assess a 15-cent mine reclamation surcharge for each ton of coal removed by the open-pit or strip method. [The amounts collected shall be deposited to the credit of the Bituminous Coal Open-Pit Mining Reclamation Fund.] ~~SEVEN AND ONE-HALF~~ NINE CENTS OF THE AMOUNTS COLLECTED FROM EACH TON OF COAL REMOVED SHALL BE DEPOSITED TO THE CREDIT OF THE BITUMINOUS COAL OPEN-PIT MINING RECLAMATION FUND, AND ~~7 1/2~~ 6 CENTS SHALL BE REMITTED DIRECTLY TO THE COUNTY IN WHICH THE COAL WAS REMOVED.

7-514.

(a) Any funds that the Department receives AND RETAINS from license and special reclamation fees, mine reclamation surcharge, forfeiture of bonds, cash deposits, or securities shall be deposited to the credit of the State Treasurer in a bank he designates. The funds shall be maintained as a special fund on the books of the Comptroller of the Treasury in an account known as the "Bituminous Coal Open-Pit Mining Reclamation Fund." The Secretary shall use the funds to implement this subtitle and to backfill, grade, and plant areas affected by open-pit mining. However, funds received from the reclamation surcharge under § 7-507.1 of this article , EXCEPT FOR THOSE FUNDS TO BE REMITTED DIRECTLY TO THE COUNTY IN WHICH THE COAL WAS REMOVED, shall only be used by the Secretary for reclamation of land affected by open-pit or strip method mining in the county in which the surcharge is assessed and collected. However, funds received from forfeiture on bonds, cash, or securities shall be used to backfill, grade, and plant the area of land affected by the operation on which the liability was charged on the bond. Funds received on a forfeiture in excess of the amount required for reclamation may be used to reclaim any other land affected by open-pit mining of bituminous coal. ~~The Secretary shall use the fund to reimburse counties from which coal is removed by strip or open-pit mining for the additional cost of road maintenance attributable to the coal mining industry. All payments to counties, EXCEPT FOR THOSE FUNDS TO BE REMITTED DIRECTLY TO THE COUNTIES PURSUANT TO SECTION 7-507.1 OF THIS ARTICLE, shall be subject to approval by the General Assembly.~~

7-5A02.

In this subtitle the General Assembly intends to provide for the reclamation of the land affected by deep mining operations [and]; PROVIDE for the protection of the waters of the State that otherwise might be affected adversely by pollution from deep mines ; AND PROVIDE FOR THE IMPROVEMENT OF THE HEALTH, WELFARE, AND LIVING CONDITIONS IN THE COMMUNITIES AND COUNTIES IN WHICH COAL MINING IS AN IMPORTANT INDUSTRY.

7-5A12.

(a) [At the end of each year of operation] BY THE TWENTY-FIFTH DAY OF EACH MONTH, a deep mine operator shall file [an annual] A MONTHLY progress report with the Secretary on a form furnished by the Secretary. [The] IN THE REPORT, THE operator shall indicate the total area affected, number of mine openings, tonnage of coal removed, and changes in this information over previous [years] MONTHS. AN ANNUAL REPORT SHALL BE FURNISHED TO THE SECRETARY NOT LATER THAN FEBRUARY 25 OF EACH YEAR FOR THE PRECEDING YEAR COVERING FACTS THE SECRETARY MAY REQUIRE REGARDING THE PRODUCTION AND CONDITION OF THE OPERATION DURING THE CALENDAR YEAR PRECEDING. The operator also shall update the information on the maps previously supplied with the permit application.

(b) On the basis of the approved annual AND MONTHLY progress or completion reports the Secretary shall assess a 15-cent surcharge for each ton of coal removed during the past year. ~~SEVEN AND ONE-HALF~~ NINE CENTS OF THE AMOUNTS COLLECTED FROM EACH TON OF COAL REMOVED SHALL BE RETAINED BY THE SECRETARY AND ~~7 1/2~~ 6 CENTS SHALL BE REMITTED DIRECTLY TO THE COUNTY IN WHICH THE COAL WAS REMOVED.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
President of the Senate.

_____
Speaker of the House of Delegates.

APPROVED
JUN 12 1978

SECOND REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED]

SENATE BILL NO. 499

79TH GENERAL ASSEMBLY

AN ACT

Relating to the issuance of additional bonds to finance water pollution control programs as authorized by section 37(b) of article III of the Missouri constitution.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. In addition to the seventy-four million four hundred ninety-four thousand two hundred forty dollars heretofore authorized, the board of fund commissioners of the state of Missouri is authorized to borrow an additional twenty-eight million dollars on the credit of the state in the manner and for the purposes set out in sections 204.500 to 204.560, RSMo.

An Act

ENROLLED HOUSE
BILL NO. 1303

BY: GRANTHAM of the SENATE

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING 68 O.S. 1971, SECTIONS 225, 226, 227, 228 AND 1022; PROVIDING FOR APPEALS; PROVIDING CERTAIN PROCEDURES; PROVIDING FOR JURISDICTION; PROVIDING FOR A CAUSE OF ACTION TO RECOVER TAXES; PROVIDING FOR THE GROSS PRODUCTION TAX LEVIED ON A CONDITIONAL INCREASE IN THE VALUE OF NATURAL GAS, CASINGHEAD GAS AND LIQUIDS EXTRACTED THEREFROM PENDING APPROVAL OF FEDERAL AGENCY OR COURT APPEAL OF AGENCY DECISION; PROVIDING FOR THE HANDLING AND DISTRIBUTION OF TAX LEVIED THEREON; PROVIDING CERTAIN PROCEDURES RELATING TO REFUNDS OF TAXES UNDER CERTAIN CIRCUMSTANCES; PROVIDING CERTAIN PROCEDURES RELATED TO HEARINGS ON CLAIMS FOR REFUNDS; DELETING CERTAIN REQUIREMENTS; DIRECTING CODIFICATION; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. 68 O.S. 1971, Section 225, is amended to read as follows:

Section 225. (a) Any taxpayer aggrieved by any order, ruling, or finding of the Tax Commission directly affecting such taxpayer may appeal therefrom directly to the Supreme Court of Oklahoma. A taxpayer so desiring to appeal shall, within ten (10) days from the date of mailing to the taxpayer of any such order, ruling, or finding, file with the Tax Commission a written notice of his intention to appeal.

(b) Within thirty (30) days from the date of mailing to the taxpayer of the order, ruling, or finding complained of, the taxpayer desiring to appeal shall file in the office of the Clerk of the Supreme Court a petition in error specifying the grounds upon which such appeal is based. At the same time the taxpayer shall request that the Tax Commission prepare for filing with the Supreme Court,

within thirty (30) days, the record of the appeal, certified to by the Secretary of the Tax Commission, and consisting of any citations, findings, judgments, motions, orders, pleadings and rulings, together with a transcript of all evidence introduced at any hearing relative thereto, or such portion of such citations, findings, judgments, motions, orders, pleadings, rulings, and evidence as the appealing parties and the Tax Commission may agree to be sufficient to present fully to the Court the questions involved. Upon request of the taxpayer, the Tax Commission shall furnish him a copy of the proceedings had in connection with the matter complained of.

(c) As a condition precedent to the right of the taxpayer to prosecute such an appeal, and as a jurisdictional prerequisite of the Supreme Court to entertain such appeal, it is specifically provided that, if the appeal be from an order, judgment, finding, or ruling of the Tax Commission assessing a tax or an additional tax, penalties, and interest, the taxpayer shall pay to the Tax Commission the amounts assessed. If, upon a final determination of the appeal the order assessing such tax, penalties, and interest is reversed or modified and it is determined that said tax or part thereof was erroneously or illegally assessed, said amounts so paid by the taxpayer, together with the interest thereon at the rate of three percent (3%) per annum, shall be refunded to the taxpayer by the Tax Commission.

(d) Such refunds and interest thereon shall be paid by the Tax Commission out of monies in the Tax Commission clearing account from subsequent collections from the same source as the original tax assessment, provided that in the event there are insufficient funds for refunds from subsequent collections from the same source, the refund shall be paid by the Tax Commission from monies appropriated by the Legislature to the special refund reserve account for such purposes as hereinafter provided. There is hereby created within the official depository of the State Treasury an agency special account

Correctly Enrolled: ____ the Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

for the Tax Commission for the purpose of making such refunds as may be required under this section, not otherwise provided. This account shall consist of monies appropriated by the Legislature for the purpose of making refunds under this section.

(e) In lieu of the cash payment provided for in the preceding paragraph, the taxpayer may file with the Tax Commission a bond in double the amount of the tax, additional tax, penalties and interest so assessed, conditioned that he will faithfully and diligently prosecute such appeal to a final determination, and in the event the order, judgment, ruling or finding of the Tax Commission be affirmed on appeal, will pay such tax, additional tax, penalties and interest, and costs so assessed against him.

(f) If the appeal be from an order, judgment, finding or ruling of the Tax Commission other than one assessing a tax and from which a right of appeal is not otherwise specifically provided for in this article, any aggrieved taxpayer may appeal from any such order, judgment, finding or ruling as provided in this section and may supersede the effect of such order, judgment, ruling or finding by filing with the Tax Commission a bond in an amount fixed by the Tax Commission payable to the State of Oklahoma conditioned that such appeal will faithfully and diligently be prosecuted to a final determination, and in the event the order, judgment, ruling or finding of the Tax Commission be affirmed on appeal, that such person will immediately conform thereto.

(g) This section shall be construed to provide to the taxpayer a legal remedy by action at law in any case where a tax, or the method of collection or enforcement thereof, or any order, ruling, finding or judgment of the Tax Commission is complained of, or is sought to be enjoined in any action in any court of this state or the United States of America.

SECTION 2. 68 O.S. 1971, Section 226, is amended to read as follows:

Section 226. (a) In addition to the right of appeal to the Supreme Court provided for in the preceding section, a right of action is hereby created to afford a remedy to any taxpayer aggrieved by the provisions of this article or of any other state tax law, or who resists the collection of or the enforcement of the rules or regulations of the Tax Commission relating to the collection of any state tax.

(b) Within thirty (30) days from the date of mailing to the taxpayer of the order, ruling or finding of the Tax Commission, any such taxpayer shall pay the tax to the Tax Commission, and at the time of making such payment shall give notice to the Tax Commission of his intention to file suit for recovery of such tax. If the taxpayer prevails the Tax Commission shall, by cash voucher drawn by the Tax Commission upon its official depository clearing account or special refund reserve account with the State Treasurer, refund to the taxpayer the amount of tax determined not to be due pursuant to the final judgment of the court having jurisdiction, together with interest on such amount at the rate of three percent (3%) per annum from the date of payment by the taxpayer to the date of the court's final order. The refunds paid shall be payable as provided in Section 225(d).

(c) This section shall afford a legal remedy and right of action in any state or Federal court having jurisdiction of the parties and the subject matter. It shall be construed to provide a legal remedy in the State or Federal Courts by action at law in cases where the taxes complained of are claimed to be an unlawful burdon on interstate commerce, or the collection thereof violative of any Congressional Act or provision of the Federal Constitution, or in cases where jurisdiction is vested in any of the Courts of the United States. In all actions brought hereunder service of process upon the Chairman of the Tax Commission shall be sufficient service, and the Tax Commission shall be the sole, necessary and proper party

Correctly Enrolled, Vice Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

defendant in any such suit, and the State Treasurer shall not be a necessary or proper party thereto.

(d) Upon request of any taxpayer and upon proper showing that the principle of law involved in the assessment of any tax is already pending before the courts for judicial determination, the taxpayer, upon agreement to abide by the decision of the court, may pay the tax so assessed under protest, but need not file a suit.

SECTION 3. 68 O.S. 1971, Section 227, is amended to read as follows:

Section 227. (a) Any taxpayer who has paid to the State of Oklahoma, through error of fact, or computation, or misinterpretation of law, any tax collected by the Tax Commission may, as hereinafter provided, be refunded the amount of such tax so erroneously paid, without interest.

(b) Any taxpayer who has so paid any such tax may, within three (3) years from the date of payment thereof if such payment was made through error of fact or computation, or within one (1) year from the date of payment thereof if such payment was made through misinterpretation of law, file with the Tax Commission a verified claim for refund of such tax so erroneously paid.

Said claim so filed with the Tax Commission shall specify the name of the taxpayer, the time when and period for which said tax was paid, the nature and kind of tax so paid, the amount of the tax which said taxpayer claimed was erroneously paid, the grounds upon which a refund is sought, and such other information or data relative to such payment as may be necessary to an adjustment thereof by the Tax Commission. It shall be the duty of the Commission to determine what amount of refund, if any, is due as soon as practicable after such claim has been filed and advise the taxpayer about the correctness of his claim. Provided, the provisions of this Section shall not apply: (1) to refunds of income tax erroneously paid, refunds of which tax shall be payable out of the income tax adjustment fund as provided by

law; (2) to estate tax because the payment of such tax is covered by an order of the Tax Commission and the estate and interested parties are given notice that Commission's position and computation of the tax will become final unless they protest and resist the payment thereof as provided by statute; nor, (3) in any case where the tax was paid after an assessment thereof was made by the Tax Commission which assessment became final under the law.

SECTION 4. 68 O.S. 1971, Section 228, is amended to read as follows:

Section 228. (a) Upon the demand of the taxpayer, the Oklahoma Tax Commission shall set the claim for refund authorized in the preceding section down for hearing within sixty (60) days after the filing thereof, of which time of hearing the taxpayer shall be duly notified.

If, upon such hearing, the Tax Commission finds that such tax was erroneously paid through mistake of fact, or computation or misinterpretation of law, it shall enter its written order allowing said claim for refund, which refund may be paid to the taxpayer as provided by law, or credited against any taxes due or to become due by the taxpayer as the case may be; otherwise, the Tax Commission shall deny said claim. The taxpayer shall have the right of appeal to the Supreme Court from a decision of the Commission denying said claim for refund as provided in Section 225 of this Article.

(b) Any order entered by the Tax Commission, disallowing a claim for refund, shall become final within thirty-one (31) days from the date it is entered, unless an appeal is prosecuted therefrom, in which event said order shall not become final until the appeal shall have been determined. In the event the Tax Commission allows said claim for refund, it shall pay the claimant the amount of refund, so allowed out of funds in the official depository clearing account of the Tax Commission, derived from collections in said fund from the same source from which the overpayment occurred; and an appropriation

Correctly Enrolled: _____ Vice Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

of so much of said fund as is necessary to pay said claims for refund erroneously paid or collected is hereby made; provided, that in the case of refunds due hereunder to taxpayers who are required to remit taxes to the Tax Commission on a monthly or quarterly basis, the Commission may, in lieu of a refund of the tax erroneously paid, credit the account of the taxpayer for such amount.

SECTION 5. 68 O.S. 1971, Section 1022, is amended to read as follows:

Section 1022. When an increase in the gross value of petroleum or other crude or mineral oil, natural gas, casinghead gas or liquids extracted therefrom sold by a producer is subject to the approval of an agency of the United States of America or a court of competent jurisdiction adjudicating an appeal from said agency, the gross production tax provided for in this article on any such proposed increase in gross value when collected by a producer shall be separately reported and conditionally paid, subject to and pending the final outcome of any proceeding by such agency or court relating to a determination of the amount of such increase in gross value; provided, however that nothing herein shall be construed to impose any duty upon a producer to collect any proposed increase in gross value; and provided further, that "gross value" or "increase in gross value" as used in this section shall mean the amount a producer is collecting for the sale of any petroleum or other crude or mineral oil, natural gas, casinghead gas or liquids extracted therefrom sold which is subject to the jurisdiction of such agency or court. All monies so conditionally collected by the Tax Commission under the provisions of this section shall be accounted for in the following manner:

(a) At least once each month the Tax Commission shall deposit such collections in a special account in a bank or banks approved as a depository for monies of the State of Oklahoma. Each bank in which such monies are deposited shall credit the account at the end of each

calendar quarter with the highest rate of interest then being paid by such bank for deposited monies of the State of Oklahoma, calculated on the total daily average balance on deposit during such calendar quarter.

(b) When a producer or purchaser gives written notice to the Tax Commission that such agency or court has, by final order, disapproved, in whole or in part, the proposed increase in gross value, then the Tax Commission shall, within thirty (30) days after receipt of such notice, withdraw from the bank holding such monies an amount of money equal to the tax conditionally paid on the proposed increase in gross value which has been disapproved, together with the interest earned on such money, and remit it to the person, firm, association or corporation which conditionally paid such tax.

(c) When such agency or court approves, by final order, the proposed increase in gross value, in whole or in part, the producer or purchaser involved having paid the tax conditionally shall immediately give written notice of such approval to the Tax Commission and it shall promptly withdraw from the bank holding such monies an amount of money equal to said tax conditionally paid on the proposed increase in gross value which has been approved, together with the interest earned on such money, and shall distribute the same as provided by the law then in force for the distribution of gross production taxes.

SECTION 6. In the event the gross value of petroleum or other crude or mineral oil, natural gas, casinghead gas or liquids extracted therefrom is adjusted downward by any agency of the United States of America or a court of competent jurisdiction adjudicating an appeal from said agency, then the amount of the tax paid in excess of the tax due on the adjusted gross value shall be considered excess tax. Within one (1) year following the final determination of the gross value, any producer or purchaser who has paid any such excess tax may apply for a refund, and the Tax Commission, upon proper

Correctly Enrolled: ... Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

finding, shall have the authority to refund the amount of excess tax paid. Any refund may, at the discretion of the Tax Commission, be made in the form of a credit against future tax payments.

SECTION 7. Section 6 of this act shall be codified in the Oklahoma Statutes as Section 1023 of Title 68, unless there is created a duplication in numbering.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Certified Enrolled Copy — The Oklahoma Senate on Engrossed and Enrolled Bills

Passed the House of Representatives the 13th day of April, 1978.

Wm P. Willis
Speaker of the House of Representatives.

Passed the Senate the 17th day of April, 1978.

Acting J. M. Manston
President of the Senate.

OFFICE OF THE GOVERNOR

Received by the Governor this 18th
day of April, 1978
at 3:30, o'clock P M.

By: Robert Smith

Approved by the Governor of the State of Oklahoma the 19th day of April, 1978, at 10:27 o'clock A m.

David L. Boren
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 19th
day of April, 1978,
at 1:25, o'clock P M.

Joyce W. Boyd

By:

Corrected, Examined and Signed by Committee on Engrossed and Enrolled Bills

Chairman

ENR. H. B. NO. 1303
rg

An Act

ENROLLED HOUSE
BILL NO. 1578

BY: WILLIS, DUCKETT and ROGERS of the HOUSE

and

HOWARD and HOWELL of the SENATE

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING SECTION 5, CHAPTER 85, O.S.L. 1977 (68 O.S. SUPP. 1977, SECTION 1111); APPORTIONING REVENUES FROM CONSERVATION EXCISE TAX LEVIED ON ALL NATURAL GAS AND/OR CASINGHEAD GAS; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. Section 5, Chapter 85, O.S.L. 1977 (68 O.S. Supp. 1977, Section 1111), is amended to read as follows:

Section 1111. There is hereby created in the State Treasury a special fund to be designated the "Special Conservation Fund" in which all of the receipts received by the Oklahoma Tax Commission from the tax levied by Section 1108 of this title shall be credited monthly. No money on deposit with the State Treasurer to the credit of the Special Conservation Fund shall be expended except pursuant to legislative appropriation.

SECTION 2. The provisions of this act are severable and if any part or provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 8th day of March, 1978.

Speaker of the House of Representatives.

Passed the Senate the 6th day of March, 1978.

President of the Senate.

OFFICE OF THE GOVERNOR

Received by the Governor this 9th day of March, 1978, at 1:35 o'clock P M.

By: Peter W. Smith

Approved by the Governor of the State of Oklahoma the 10th day of March, 1978, at 12:51 o'clock P m.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 10th day of March, 1978, at 1:55 o'clock P M.

By:

Certified by Enrolling Committee Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

ENROLLED COPY
S. B. NO. 1706

BY: ROGERS of the HOUSE

and

STIPE of the SENATE

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING SECTION 2, CHAPTER 85, O.S.L. 1977 (68 O.S. SUPP. 1977, SECTION 1108); PROVIDING FOR CONSERVATION EXCISE TAX INCLUDING METHOD OF PAYMENT; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. Section 2, Chapter 85, O.S.L. 1977 (68 O.S. Supp. 1977, Section 1108), is amended to read as follows:

Section 1108. A. There is hereby levied on all natural gas and/or casinghead gas produced and saved, excluding nontaxable royalty, a conservation excise tax of seven cents ($0.07) per thousand cubic feet (MCF), less seven percent (7%) of the gross value of each such MCF of natural gas and/or casinghead gas; provided that the conservation excise tax hereby levied shall not exceed one-third (1/3) of the gross value of each such MCF of the natural gas and/or casinghead gas so produced and saved. Provided further, the conservation excise tax herein levied shall never be less than zero.

B. For the purposes of this section, natural gas and/or casinghead gas, when produced and utilized in any manner, shall be considered as the amount of gas produced and saved, except gas which is:

1. Injected into a formation for the purpose of recycling, repressuring or pressure maintenance or for any other purpose which enhances the ultimate recovery of oil or other hydrocarbons;

Correctly Enrolled: [illegible] Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

2. Lawfully vented or flared;

3. Used in a gas-lift operation or field operations;

4. Used in the operation of compression facilities or of gasoline or recycling plants; or

5. Attributable to the shrinkage volume for the extraction of liquid hydrocarbons.

C. The purchaser of the natural gas and/or casinghead gas shall remit that portion of the tax for which the producer and/or the royalty owner is reimbursed by the purchaser. The producer and/or royalty owner shall remit that portion of the tax for which he is not reimbursed by the purchaser. If any purchaser, producer and/or royalty owner so elects, he may remit the share of conservation excise tax due hereunder from other interest owners which is not reimbursed by the purchaser. The tax levied by this section shall be due at the end of any month in which the accrued total due from the remitter reaches One Hundred Thousand Dollars ($100,000.00); however, the tax due shall not be required to be remitted more frequently than once per calendar month. The tax will be considered delinquent forty-five (45) days after it becomes due. A remitter whose total tax due fails to reach One Hundred Thousand Dollars ($100,000.00) during any calendar year shall remit the taxes accrued for that year by February 1 of the year following accrual.

D. In addition to any other data sent monthly to a producer and/or the royalty owner, the purchaser shall also furnish an accounting of the nonreimbursed conservation tax liability which is due and remittable by the producer and/or the royalty owner.

E. Any tax reimbursement received as a result of taxes levied under this section shall not be considered by the Oklahoma Tax Commission as part of the gross value for the computation of gross production taxes, petroleum excise taxes or the tax herein levied.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

Correctly Enrolled: _____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 13th day of April, 1978.

Speaker of the House of Representatives.

Passed the Senate the 17th day of April, 1978.

President of the Senate.

OFFICE OF THE GOVERNOR

Received by the Governor this ..... day of April, 1978, at 3:50 o'clock P M.

By: .....

Approved by the Governor of the State of Oklahoma the 24th day of April, 1978, at 1:40 o'clock P m.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 25th day of April, 1978, at 3:50 o'clock P M.

By: .....

Corrected Enrolled H.B. No. 1706 By ..... Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

An Act

ENROLLED HOUSE
BILL NO. 1717

BY: ROGERS and CLEVELAND of the HOUSE

and

STIPE and HOWARD of the SENATE

AN ACT RELATING TO REVENUE AND TAXATION; AMENDING 68 O.S. 1971, SECTION 2357, AS LAST AMENDED BY SECTION 1, CHAPTER 47, O.S.L. 1977 (68 O.S. SUPP. 1977, SECTION 2357); PROVIDING FOR CREDITS AGAINST INCOME TAXES; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. 68 O.S. 1971, Section 2357, as last amended by Section 1, Chapter 47, O.S.L. 1977 (68 O.S. Supp. 1977, Section 2357), is amended to read as follows:

Section 2357. A. The withhold taxes and estimated taxes paid shall be allowed as credits as provided by law.

B. 1. There shall be allowed as a credit against the tax imposed by Section 2355 of this title the amount of tax paid another state by a resident individual, as defined in Section 2353, paragraph 4, of this title, upon income received as compensation for personal services in such other state. The credit shall not exceed such proportion of the tax payable under Section 2355 of this title as the compensation for personal services subject to tax in the other state and also taxable under Section 2355 bears to the Oklahoma adjusted gross income as defined in Section 2353, paragraph 13, of this title.

2. For tax years beginning after December 31, 1975, there shall be allowed to a resident individual or part-year resident individual as a credit against the tax imposed by Section 2355 of this title twenty percent (20%) of the credit for child care expenses allowed

under the Internal Revenue Code of the United States. The credit shall not exceed the tax imposed by Section 2355 of this title. The maximum child care credit allowable on the Oklahoma income tax return shall be prorated on the ratio that Oklahoma adjusted gross income bears to the federal adjusted gross income.

C. 1. Every taxpayer who operates a manufacturing establishment in the State of Oklahoma shall be allowed a direct credit against income taxes owed by such taxpayer to the State of Oklahoma, the amount of which credit shall be proportioned to the amount of gas used or consumed in Oklahoma by such taxpayer in the operation of a manufacturing establishment, at a rate of three mills per thousand cubic feet of gas used or consumed after May 1, 1971, and during each taxable year of such taxpayer provided that the credit allowed herein shall not apply to the first twenty-five thousand MCF of gas used or gas used to generate electricity or consumed after May 1, 1971, and during each taxable year of such taxpayer.

2. As used in this subsection:

a. "Manufacturing establishment" means a plant or establishment which engages in the business of working raw materials into wares suitable for use or which gives new shapes, new qualities or new combinations to matter which has already gone through some artificial process.

b. "Gas used or consumed" shall include all natural or casinghead gas used in the operation of the manufacturing establishment for whatever purposes, but shall not include the following:

(1) Gas which, after being severed from the earth, is subsequently injected into a formation in the State of Oklahoma for the purpose of storing, recycling, repressuring or pressure maintenance.

(2) Gas vented or flared directly into the atmosphere.

Correctly Enrolled, Chairman, Committee on Enrolled and Engrossed Bills

(3) Gas used for fuel in connection with the operation and development for or production of oil or gas in the field where produced.

(4) Gas, any part of which is resold by the manufacturing establishment, except as to that part and quantity of the gas which is actually used by the establishment and not resold.

c. "One thousand cubic feet of gas" (MCF) means that quantity of gas which, measured at a pressure of 15.025 pounds per square inch absolute and at a temperature of 69° Fahrenheit, would have the volume of one thousand cubic feet.

D. 1. There shall be allowed as a credit against the tax imposed by Section 2355 of this title the excise taxes levied by the State of Oklahoma on asphalt, ores bearing lead, zinc, jack, gold, silver, copper, petroleum or other crude oil or other mineral, oil, natural gas and/or casinghead gas or coal where the combined total of such taxes amounts to more than seven and eighty-five one-thousandths percent (7.085%) of the gross value of production of the mineral, oil, gas or coal produced, as follows:

a. If, under the terms of a contract between a producer and his purchaser which has continued in force since December 31, 1976, the excise taxes in excess of seven and eighty-five one-thousandths percent (7.085%) are not reimbursed to a producer and/or royalty owner, then that unreimbursed portion of the excise taxes in excess of seven and eighty-five one-thousandths percent (7.085%) shall be allowed as a direct credit against income taxes owed by the purchaser, producer and/or royalty owner who pays the said unreimbursed portion of excise tax, whether paid on his own behalf or on the behalf of other interest owners to the State of Oklahoma.

Correctly Enrolled — Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

b. If the purchaser, producer and/or royalty owner who pays the said unreimbursed portion of excise tax elects to take the tax credit, the credit shall not be limited to the tax liability under Section 2355 of this title. If the tax credit exceeds the liability, the purchaser, producer and/or royalty owner may apply for a refund.

2. Any excise taxes for which the producer and/or royalty owner is actually reimbursed shall not be included as a credit against the tax imposed by Section 2355 of this title, regardless of the contract provisions.

3. No excise taxes paid by a producer and/or royalty owner whether reimbursed or not under the terms of contracts entered into or renegotiated, as to tax-reimbursement provisions, after December 31, 1976, shall be allowed as a credit against the Oklahoma income tax under Section 2355 of this title by the purchaser, producer and/or royalty owner.

E. No additions to tax shall be made in Oklahoma income tax returns by reason of the recapture or restoration of credits under the Internal Revenue Code, and no other credits against tax shall be allowed in Oklahoma income tax returns except as follows:

1. Those credits provided in this section.

2. Those credits authorized by Sections 921 through 925 of Title 82, Oklahoma Statutes and/or Sections 2001 through 2008 of Title 63, Oklahoma Statutes, which have been, or may hereafter be, certified pursuant to applications therefor made on or before March 22, 1971. Provided, the total amount of the credits referred to in this subparagraph 2. to be taken by taxpayer shall not exceed the certified net investment cost of the facilities and/or processes to which such credits pertain, reduced by the greater of:

a. the reduction in federal income tax of taxpayer as the result of deducting depreciation on such facilities

Correctly Enrolled: Joan Caldwell, Acting Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

and/or processes, and/or deducting nondepreciable costs for which credit has been so certified; or

b. the increase in the amount of Oklahoma income tax that would result if taxable income were increased by the amount deducted as set forth in subparagraph a., above.

And, provided further, that, after such credits have been exhausted, taxpayer shall each year thereafter adjust taxable income by adding any depreciation taken on such facilities and/or processes, and/or any nondepreciable costs having been included in the net investment cost allowed as credit, and which depreciation and/or costs have been allowed as a deduction in arriving at federal taxable income for such year.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Carefully Examined by [illegible], Committee on Engrossed and Enrolled Bills

Passed the House of Representatives the 13th day of April, 1978.

Speaker of the House of Representatives.

Passed the Senate the 13th day of April, 1978.

acting President of the Senate.

OFFICE OF THE GOVERNOR

Received by the Governor this 17th day of April, 1978, at 3:00 o'clock P M.

By: Bruton N Smith

Approved by the Governor of the State of Oklahoma the 19th day of April, 1978, at 11:26 o'clock A m.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 19th day of April, 1978, at 1:35 P. M.

By: Jesse W. Boyd

Correctly Enrolled, [illegible], Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

HB 1007

ENTITLED, An Act to increase the percentage and distribute the proceeds of the severance tax on oil and gas and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That subdivision (3) of § 10-39-23 be amended to read as follows:

(3) "Mineral or mineral product," any gold, silver, other precious metals, iron ore, limestone when used in manufacture of cement at the state cement plant, soda, saline, trona, or bentonite;

Section 2. That chapter 10-39A be amended by adding thereto a new section to read as follows:

Terms used in this chapter, unless the context otherwise requires, mean:

(1) "Energy minerals," any mineral fuel including, but not limited to, coal, lignite, petroleum, oil, natural gas, uranium, and thorium and any combination of minerals used in the production of energy;

(2) "Owner of interest" or "owner," an owner of a landowner's royalty, of an overriding royalty, or of profits and working interests, or any combination thereof. The term does not include an owner of federal, state, or local governmental royalty interest;

(3) "Secretary," the secretary of the South Dakota department of revenue;

(4) "Severor," a person engaging in the business of severing energy minerals that he owns or a person who is the owner of energy minerals and has another person performing the severing of such

energy minerals, except that such term shall not include the state of South Dakota or its political subdivisions;

(5) "Severing," the mining, extracting or producing of any energy minerals in South Dakota;

(6) "Sale price," the total consideration received in exchange for energy minerals;

(7) "Market Value," the price at which the property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the facts.

Section 3. That § 10-39A-1 be amended to read as follows:

10-39A-1. For the privilege of severing energy minerals in this state, there is imposed on the owners of energy minerals an excise tax, to be termed a "severance tax," equal to four and one-half percent of the taxable value of any energy minerals severed and saved by or for him.

Section 4. That § 10-39A-2 be amended to read as follows:

10-39A-2. Except as otherwise provided in this chapter, the taxable value of any energy mineral which has been sold is the sale price of such mineral less any rental or royalty payment belonging to the United States or the state of South Dakota or its political subdivisions and the taxable value of any severed and saved energy mineral which has not been sold is the market value of such mineral less any rental or royalty payment belonging to the United States or the state of South Dakota or its political subdivisions.

Section 5. That chapter 10-39A be amended by adding thereto a new section to read as follows:

When any energy mineral has a posted field price at the point of productions, the taxable value of such mineral is the posted field price.

Section 6. That chapter 10-39A be amended by adding thereto a new section to read as follows:

The taxable value of severed and saved uranium bearing material is the sales price per pound of the content of triuranium octa-oxide contained in the severed and saved uranium ore or processed yellow-cake concentrate, regardless of the form in which the product is actually disposed of. However, if the severed and saved uranium ore or processed uranium yellow-cake concentrate is not sold, the taxable value is the market value of the triuranium octa-oxide in such material.

Section 7. That chapter 10-39A be amended by adding thereto a new section to read as follows:

An energy mineral is subject to the severance tax when it is sold, transported out of South Dakota or consumed, whichever occurs first.

Section 8. That § 10-39A-4 be amended to read as follows:

10-39A-4. All owners of interests in energy minerals produced from a single well or mine shall designate an operator to file all required returns and to pay the tax due hereunder, which tax, subject to any provisions to the contrary in any written contract, lease or other form of agreement, shall be withheld from distributions which would otherwise be made to each owner by the operator for payment to the state. If any owner or owners of interests in energy minerals produced from a single well or mine fail to designate such an operator, then the person designated as operator by the owner or owners of the working interest in such well or mine, or, if no such person has been designated, then the person holding the greatest portion of the working interest in such well or mine, shall be deemed to be the designated operator for purposes of this section.

Section 9. That § 10-39A-5 be amended to read as follows:

10-39A-5. Within thirty days after the close of each quarter ending respectively on March thirty-first, June thirtieth, September thirtieth and December thirty-first of each year, each owner of severed energy minerals or person designated to remit the tax on behalf of the owners shall file with the secretary of revenue under oath a report of the amount of energy minerals which became subject to the severance tax in the previous quarter and the amount of tax due under the provisions of this chapter and shall remit with such report the amount of tax thereof shown to be due. Reports shall be made on forms and in accordance with rules prescribed by the secretary of revenue.

Section 10. That § 10-39A-6 be amended to read as follows:

10-39A-6. Every person who fails to file with the department the statements required by this chapter during the time and in the manner required by this chapter is liable for a penalty of not less than one hundred dollars nor more than five thousand dollars, and, if any operator shall so fail to file such statements, then the secretary may ascertain and certify the taxable value of the energy minerals subject to taxation under this chapter from all the data and information obtainable.

Section 11. That chapter 10-39A be amended by adding thereto a new section to read as follows:

All taxes, interest, and penalties imposed and collected by the secretary under this chapter shall be distributed as follows:

(1) Two-thirds shall be returned to the county in which the energy minerals were extracted or mineral products were severed;

(2) One-third shall be paid into the state treasury and credited to the general fund.

Section 12. That chapter 10-39A be amended by adding a new section to read as follows:

All taxes, interest, and penalties imposed and collected by the secretary under this chapter shall be distributed as follows:

(1) One-half shall be returned to the county in which the energy minerals or mineral products were severed;

(2) One-half shall be paid into the state treasury and credited to the general fund. No county shall receive more than three hundred thousand dollars in a calendar year. Any excess over three hundred thousand shall be credited to the state general fund.

Section 13. All funds remitted to counties under this Act shall be paid out on warrants drawn by the state auditor on vouchers approved by the secretary of the department of revenue, or his designee.

Section 14. Upon receipt of any funds remitted to a county under the provisions of this Act, the county treasurer shall deposit the funds in a trust and agency account. The county treasurer shall, at the direction of the board of county commissioners, allocate the funds for school, roads, law enforcement and municipal purposes to offset social, economic or physical impacts, either direct or indirect, resulting from the extraction of severed energy minerals in the county.

Section 15. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval, except for section 12, which shall be effective January 1, 1980. Section 11 shall be in effect until December 31, 1979.

RE-ENROLLED

CHAPTER 646

An Act to amend the Code of Virginia by adding a section numbered 58-266.1:2, relating to severance taxes on coal and gases; use of funds from such taxes; expiration of certain taxes.

[H 742]

Approved APR 8 1978

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 58-266.1:2 as follows:

§ 58-266.1:2. Local coal road improvement tax.—A. In addition to the taxes authorized under § 58-266.1:1, any county or city may adopt a license tax on every person engaging in the business of severing coal or gases, except methane, propane and other migratory gases, as stated in § 55-154.1 from the earth, for use in the improvement of the roads used in the transportation of coal in such county or city. The rate of such road tax shall not exceed one-half of one per centum on and after January one, nineteen hundred seventy-nine, and one per centum on and after January one, nineteen hundred eighty. The provisions of § 58-266.1:1 as to measurement of gross receipts, filing of reports and record keeping shall be applicable to the tax imposed under this section.

The monies collected for each county or city from the tax imposed under authority of this section shall be paid into a special fund of such county or city to be called the Coal Road Improvement Fund of such county or city, and shall be spent for such improvements to public coal hauling roads as the Coal Road Improvement Advisory Committee and the governing body of such county or city may determine as provided in subsection B. of this section. The county may also, in its discretion, elect to improve city or town roads with its funds if consent of the city or town council is obtained. Such funds shall be in addition to those allocated to such counties from State highway funds which allocations shall not be reduced as a result of any revenues received from the tax imposed hereunder.

B. Any county or city imposing the tax authorized hereunder shall establish a Coal Road Improvement Advisory Committee, to be composed of three members, (1) a member of the governing body of such county or city, appointed by the governing body, (2) the resident engineer from the Department of Highways and Transportation, and (3) a citizen of such county or city connected with the coal industry, appointed by the chief judge of the circuit court.

Such committee shall develop on or before July one of each year a plan for improvement of roads during the following fiscal year. Such plan must have the unanimous approval of all members of the Committee and shall be submitted to the governing body of the county or city for approval. The governing body may approve or disapprove such plan, but may make no changes without the unanimous consent of the Committee.

2. That no tax authorized by this act shall be imposed prior to January one, nineteen hundred seventy-nine and that this act shall

expire on December thirty-one, nineteen hundred eighty-six, except that any taxes assessed hereunder prior to such expiration date may be collected thereafter, and any moneys collected hereunder shall be expended as provided herein.

President of the Senate

Speaker of the House of Delegates

Approved:

Governor

AN ACT to add Title VI-B to the "Environmental Protection Act", approved June 29, 1970, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Title VI-B is added to the "Environmental Protection Act", approved June 29, 1970, as amended, the added title to read as follows:

TITLE VI-B: ENERGY

(Ch. 111 1/2, new par. 1025b)

Sec. 25b. 1. The General Assembly finds:

A. That energy resources are vital to the health, welfare and safety of the citizens of this State and Nation and should be developed and utilized wisely and efficiently;

B. It is therefore the intent of the General Assembly that the Institute, Board and the Agency carefully consider the impact on energy supplies and use of any rule, regulation or policy adopted or any action taken pursuant to this Act.

2. The Agency shall propose by November 1, 1978, and the Board shall, by November 1, 1979, adopt an appropriate regulation permitting the shutoff of natural gas-fired afterburners installed to control hydrocarbon emissions for the purpose of reducing ambient oxidant concentration during those months where there is at least a 95% probability that maximum daily temperatures will be 59 degrees Fahrenheit or less, except that such Agency shall not propose and the Board shall not adopt such regulation where said afterburner is used to control odors, particulate matter or carbon monoxide. To the extent practicable, this regulation shall be consistent with United States Environmental Protection Agency's policy on the "SEASONAL OPERATION OF NATURAL GAS-FIRED AFTERBURNERS".

Section 2. This Act takes effect upon becoming a law.

CHAPTER 63

AN ACT

RELATING TO THE NEW MEXICO COMMUNITY ASSISTANCE ACT; AMENDING SECTIONS 14-64-4, 14-64-5 AND 14-64-8 NMSA 1953 (BEING LAWS 1977, CHAPTER 299, SECTIONS 4, 5, AND 9); AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 14-64-4 NMSA 1953 (being Laws 1977, Chapter 299, Section 4) is amended to read:

"14-64-4. NEW MEXICO COMMUNITY ASSISTANCE COUNCIL--ESTABLISHED--APPOINTMENT--TERMS--OFFICERS.--

A. The "New Mexico community assistance council" is created.

B. The council shall consist of:

(1) the secretary of the department of finance and administration or a member of his staff designated by him;

(2) the director of the planning division, or a member of his staff designated by him;

(3) the director of the health and environment department, or a member of his staff designated by him;

(4) the secretary of the energy and minerals department, or a member of his staff designated by him; and

(5) three members appointed by the governor for initial terms ending on January 1 of 1979, 1980 and 1981; thereafter appointments shall be made for three-year terms in such a manner that the term of one appointed member expires on January 1 of each year.

Not more than one appointed member shall reside in any one county. One appointed member shall have financial expertise; one appointed member shall have expertise in the extractive industries; and one appointed member shall be a member at large.

C. An appointed member's term may be terminated by the governor for good cause shown.

D. Appointed members shall serve in office until their successors are appointed unless sooner removed according to law. If a vacancy occurs in the office of an approved member by death, resignation or otherwise, the governor shall appoint a successor to serve for the balance of the unexpired term.

E. The council shall annually select one member to act as chairperson of the council, and such other officers as the council shall determine, all of whom shall serve at the pleasure of the council."

Section 2. Section 14-64-5 NMSA 1953 (being Laws 1977, Chapter 299, Section 5) is amended to read:

"14-64-5. POWERS OF THE COUNCIL.--The council shall have all the powers necessary to carry out the purposes and provisions of the New Mexico Community Assistance Act, including, but not limited to the power to:

A. develop and administer community assistance programs;

B. adopt, amend and repeal, in accordance with the provisions of the State Rules Act, and with technical assistance from the energy and minerals department staff, all regulations necessary

to administer and enforce the provisions of the rules of the New Mexico Community Assistance Act;

C. apply to any appropriate agency of the United States for participation in and for receipt of aid from any program designed to assist areas of rapid growth occasioned by the impact of energy or mineral development;

D. administer federal and other funds which are received, controlled or disbursed for the purposes of carrying out the provisions of the community assistance program;

E. coordinate and mobilize assistance and funding resources in regard to the construction, extension or repair of projects;

F. coordinate with, assist and seek input from political subdivisions, community organizations and civic groups;

G. make and enter into all contracts and agreements necessary or incidental to its duties and the execution of its powers under the New Mexico Community Assistance Act; and

H. do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in the New Mexico Community Assistance Act."

Section 3. Section 14-64-8 NMSA 1953 (being Laws 1977, Chapter 299, Section 9) is amended to read:

"14-64-8. STAFF.--The staff of the energy and minerals department shall be the staff of the council and shall provide technical assistance, compile data, evaluate the effectiveness of the program, and report its findings to the legislature."

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is March 31, 1978.

Section 5. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

LAWS OF ALASKA

1978

Source: CSHB 266

Chapter No.: 29

AN ACT

Relating to the creation of an alternative power resource revolving loan fund.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45 is amended by adding a new chapter to read:

CHAPTER 88. ALTERNATIVE POWER RESOURCE REVOLVING LOAN FUND.

Sec. 45.88.010. FUND ESTABLISHED. There is established in the Department of Commerce and Economic Development the alternative power resource revolving loan fund to carry out the purposes of this chapter. Loans made under this chapter are to be used to develop means of energy production utilizing energy sources other than fossil or nuclear fuel, including, but not limited to, windmills, water and solar power devices. The fund may be used for no other purpose.

Sec. 45.88.020. POWERS AND DUTIES OF THE DEPARTMENT IN ADMINISTERING THE FUND. (a) The department may

(1) make loans for the purchase, construction, and installation of alternative power resources;

(2) promulgate regulations necessary to carry out the provisions of this chapter.

(b) The department shall develop eligibility standards for loans made under this chapter and adopt guidelines for the determination of loan terms.

Sec. 45.88.030. LOAN TERMS. (a) A loan for the development of an alternative power resource under this

chapter may not exceed $10,000.

(b) The duration for repayment of the loan may not exceed 20 years.

(c) Loans made under this chapter may be used to finance no more than 80 per cent of the cost of purchase, construction, and installation of the alternative power resource.

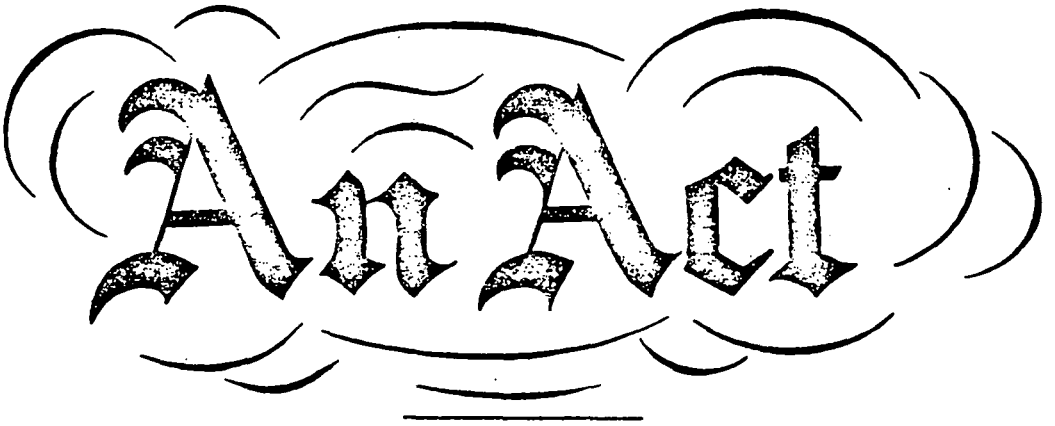
(d) All principal and interest payments on loans made under this chapter shall be paid into the alternative power resource revolving loan fund.

(e) The rate of interest may not exceed eight per cent a year on the unpaid balance of the loan.

Sec. 45.88.040. SALE OR TRANSFER OF MORTGAGES AND NOTES. (a) The commissioner may sell or transfer at par value or at a premium or discount to any bank or other private purchaser for cash or other consideration the mortgages and notes held by the Department of Commerce and Economic Development as security for loans made under this chapter.

(b) The commissioner may sell or transfer at par value to the Department of Revenue the mortgages and notes held by the Department of Commerce and Economic Development as security for loans made under this chapter. The Department of Revenue shall purchase all of these mortgages and notes offered, allowing the Department of Commerce and Economic Development a one-half of one per cent service fee.

Approved by the Governor: April 14, 1978
Actual Effective Date: July 13, 1978



SENATE BILL NO. 80. BY SENATORS Kinnie, Anderson, Schieffelin, Bishop, Hatcher, Soash, Wunsch, Allshouse, Comer, Cooper, H. Fowler, L. Fowler, Gallagher, Groff, Harding, Hughes, Kadlecek, Kogovsek, MacManus, McCormick, Meiklejohn, Noble, Phelps, Plock, Stewart, Stockton, Strickland, Wham, and Woodard; also REPRESENTATIVES Yost, Burns, Younglund, Durham, Hinman, Lillpop, Babitz, Baca Barragan, DeHerrera, DeMoulin, DeNier, Dittemore, Gustafson, Hamlin, Jones, Knox, Kramer, Orten, Schaefer, Sears, Showalter, Smith, Spano, Strahle, Taylor, Valdez, Waldow, Winkler, and Zakhem.

CONCERNING PROMOTION OF GASOHOL AND OF COMPONENT AND RELATED COMPONENT PARTS THEREOF, AND MAKING AN APPROPRIATION THEREFOR.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 35, Colorado Revised Statutes 1973, as amended, and as further amended by Session Laws of Colorado 1977, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 39

Gasohol Production and Use

35-39-101. Legislative declaration. The general assembly hereby declares that the production and use of alcohol-gasoline motor fuel and alcohol-related industrial hydrocarbons derived from Colorado agricultural products and forest products will benefit the people of the state through reduced air pollution, decreased dependence on foreign oil production, and increased markets for Colorado agricultural products and forest products. In enacting this article, the general assembly intends to promote the production and use of alcohol and related industrial hydrocarbons derived from Colorado agricultural products and forest products, foster the development and utilization of such alcohol and related industrial hydrocarbons, and promote the use

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

of such alcohol and hydrocarbons by the general public.

35-39-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of agriculture.

(2) "Committee" means the gasohol promotion committee created by section 35-39-103.

(3) "Department" means the department of agriculture.

(4) "Gasohol" means a motor fuel containing a minimum of ten percent blend of ethyl alcohol derived from agricultural products and forest products.

35-39-103. Committee established. (1) There is hereby established a gasohol promotion committee, comprised of nine members to be appointed for terms of two years and as provided in subsection (2) of this section, which shall be responsible for the promotion of production, development, and utilization of gasohol and alcohol and related industrial hydrocarbons derived from Colorado agricultural products and forest products as provided in this article.

(2) (a) Seven members of the committee shall be appointed by the governor from nominations as recommended by each of the following groups:

(I) Colorado cattlemen's association;

(II) Colorado energy research institute;

(III) Colorado wheat administrative committee;

(IV) Rocky mountain farmers union;

(V) Colorado farm bureau;

(VI) Colorado state university;

(VII) Colorado association of commerce and industry.

(b) Two members shall be appointed to represent the general assembly, one by the president of the senate and one by the speaker of the house of representatives.

(3) Members of the committee shall receive no compensation but shall be reimbursed for actual expenses necessarily incurred in the performance of their official duties.

(4) The committee shall exercise its powers and perform its duties and functions specified by this article as if the same

were transferred to the department by a type 2 transfer, as such transfer is defined in article 1 of title 24, C.R.S. 1973.

35-39-104. Duties of committee. (1) The committee shall seek to promote the production of gasohol and alcohol and related industrial hydrocarbons derived from Colorado agricultural products and forest products and shall advise the department and the commissioner with regard to rules and regulations to be promulgated pursuant to their authority having an effect on gasohol and such alcohol and related hydrocarbons produced from Colorado agricultural products and forest products.

(2) In performing its duties pursuant to this article, the committee has the power to:

(a) Conduct or contract for scientific research to discover and develop the commercial value and uses of gasohol and alcohol and related industrial hydrocarbons derived from Colorado agricultural products and forest products;

(b) Disseminate reliable information founded upon the research undertaken under this article, showing the uses or probable uses of gasohol and alcohol and related industrial hydrocarbons derived from Colorado agricultural products and forest products;

(c) Study state and federal legislation with respect to matters concerning gasohol and alcohol and related industrial hydrocarbons derived from Colorado agricultural products and forest products;

(d) Sue and be sued as a committee, without individual liability, for acts of the committee within the scope of the powers conferred upon it by this article;

(e) Enter into contracts which it deems appropriate to carry out the purposes of the committee as authorized by this article;

(f) Borrow money, not in excess of its estimate of its revenue from the current year's contributions;

(g) Make grants to research agencies for financing special or emergency studies or for the purchase or acquisition of facilities necessary to carry out the purposes of the committee as authorized by this article;

(h) Appoint subordinate officers and employees of the committee and prescribe their duties and fix their compensation;

(i) Cooperate with any local, state, or nationwide organization or agency engaged in work or activities similar to that of the committee and enter into contracts with such

organizations or agencies for carrying on joint programs;

(j) Act jointly and in cooperation with the federal government or any agency thereof in the administration of any program of the government or of a governmental agency deemed by the committee as beneficial and in accord with the purposes of this article and expend funds in connection therewith if that program is compatible with the powers conferred by this article.

(k) Adopt, rescind, modify, or amend all proper regulations, orders, and resolutions for the exercise of its powers and duties;

(l) Accept grants and moneys from the federal or state government or from any other source.

(3) No later than January 1, 1980, the committee shall submit to the general assembly a report of the research undertaken at its direction and any recommendations formulated as a result of such research. Such report shall be filed in the office of the legislative council.

35-39-105. Rules and regulations. The provisions of article 4 of title 24, C.R.S. 1973, shall govern the promulgation of any rules and regulations pursuant to this article.

35-39-106. Repeal. This article shall be repealed July 1, 1985.

SECTION 2. Appropriation. In addition to any other appropriation heretofore made for the current fiscal year, there is hereby appropriated, out of any moneys in the state treasury not otherwise appropriated, to the department of agriculture, the sum of eighty thousand dollars ($80,000), or so much thereof as may be necessary, for the purpose of immediate implementation of this act.

SECTION 3. Safety clause. The general assembly hereby

finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Fred E. Anderson
PRESIDENT OF
THE SENATE

Ronald H. Strahle
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Marjorie L. Rutenbeck
SECRETARY OF
THE SENATE

Lorraine F. Lombardi
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED_____

Richard D. Lamm
GOVERNOR OF THE STATE OF COLORADO

ENROLLMENT

H. B. No. 1811 Act No. 1364

General Assembly

Mar. 15, 1978

The Committee of the House on Auditing, Enrolling, Engrossing and Journals has examined the within and finds the same properly enrolled.

Chairman

Speaker of the House

Clerk of the House

President of the Senate

Secretary of the Senate

Received Joan L. Underwood
Secretary, Executive Department
This 15th day of March 1978

Approved
Governor
This 5th day of April 1978

AN ACT

To amend Code Title 69, relating to municipal corporations, so as to provide for the creation of Resource Recovery Development Authorities in certain counties and municipalities; to provide a short title ("Resource Recovery Development Authorities Law"); and for other purposes.

IN HOUSE

Read 1st time Feb. 15, 1978
Read 2nd time Feb. 16, 1978
Read 3rd time Feb. 24, 1978
And Passed
Ayes 105 Nays 2

Clerk of the House

IN SENATE

Read 1st time Feb 24, 1978
Read 2nd time Mar 2, 1978
Read 3rd time Mar 3, 1978
And Passed
Ayes 42 2 Nays

Secretary of the Senate

By: Reps. Wood, Whitmire, and Jackson of the 9th

AN ACT

To amend Code Title 69, relating to municipal corporations, so as to provide for the creation of Resource Recovery Development Authorities in certain counties and municipalities; to provide a short title; to specify purpose; to define certain terms; to provide for the creation and activation of authorities; to provide for boards of directors; to provide for organization; to specify powers; to provide for financial obligations; to specify provisions, remedies, obligations, and procedures; to provide for construction; to orovide that authority bonds and obligations are not to constitute public debt; to specify certain tax exemptions; to provide for all other matters relative to the foregoing; to provide for severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Code Title 69, relating to municipal corporations, is hereby amended by adding a new Code Chapter thereto, to be designated Code Chapter 69-15a, to read as follows:

"CHAPTER 69-15a

Resource Recovery Development Authorities Law

69-1501a. Short Title of Chapter. This Chapter may be referred to as the 'Resource Recovery Development Authorities Law.'

69-1502a. Purpose and Declaration of Need. The

recovery and utilization of resources contained in sewage sludge and solid waste promotes trade, commerce, industry and employment opportunities by creating a new industry to recover and utilize such resources and a climate highly favorable to the location of other new industrial facilities in areas where such resources are recovered by providing an additional source of energy production and a method of processing and disposing of industrially generated sewage sludge and solid waste in an efficient and environmentally sound manner. It is therefore in the public interest and is vital to the public welfare of the people of Georgia, and it is hereby declared to be the purpose of this Act, to create resource recovery development authorities to recover and utilize resources contained in sewage sludge and solid waste.

69-1503a. Definitions. (a) 'Authority' shall mean each public corporation created pursuant to this Chapter.

(b) 'Municipal Corporation' shall mean each city and town in the State.

(c) 'County' shall mean any county of this State or a governmental entity formed by the consolidation of a county and one or more municipal corporations.

(d) 'Governing Body' shall mean the elected or duly appointed officials constituting the governing body of each municipal corporation and county in the State.

(e) 'Resources' shall mean any natural or synthetic substance contained in sewage sludge or solid waste which can be processed and reused in the same or a different form or which can be converted into usable energy.

(f) 'Collection' means the aggregating of solid waste from its primary source and includes all

the place at which it is to be processed.

(g) 'Project' shall mean the collection and transportation of solid waste and the transportation of sewage sludge and shall also mean any property, real or personal, used as, or in connection with, a facility for the extraction, collection, storage, treatment, processing, utilization or final disposal of resources contained in sewage sludge or solid waste, including the conversion of sewage sludge, solid waste or resources contained therein into steam, electricity, oil, char, gas or any other product or energy source and the collection, storage, treatment, utilization, processing or final disposal of sewage sludge and solid waste in connection with the foregoing.

(h) 'Solid Waste' shall mean garbage, refuse or other discarded solid materials, including solid waste materials resulting from industrial and agricultural operations and from community and domestic activities. Garbage shall include putrescible wastes including animal and vegetable matters, animal offal and carcasses, and industrial by-products. Refuse shall include all nonputrescible wastes.

(i) 'Sewage Sludge' shall mean all solid or dissolved materials in domestic or industrial sewage or other significant pollutants in water resources, such as salt, dissolved or suspended solids in waste water effluents, human wastes, dissolved materials in irrigation return flows, and silt after they are extracted from the medium in which they are contained.

(j) 'Cost of Project' shall mean all costs of site preparation and other start-up costs; all costs of construction; all costs of real and personal property required for the purposes of such project and facilities

related thereto, including land and any rights or undivided interest therein, easements, franchises, fees, permits, approvals, licenses and certificates and the securing of such permits, approvals, licenses and certificates, all machinery and equipment, including motor vehicles which shall be used for project functions; financing charges, interest prior to and during construction and during such additional period as the Authority may reasonably determine to be necessary for the placing of such project in operation; costs of engineering, architectural and legal services; cost of plans and specifications and all expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses and such other expenses as may be necessary or incidental to the financing herein authorized. The costs of any project may also include funds for the creation of a debt service reserve, a renewal and replacement reserve, and such other reserves as may be reasonably required by the Authority for the operation of its projects and as may be authorized by any bond resolution or trust agreement or indenture pursuant to the provisions of which the issuance of any such bonds may be authorized. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds or notes issued hereunder for such project.

69-1504a. Authorities Created; Activation of Authorities. (a) There is hereby created in and for each county and municipal corporation in the State a public body corporate and politic to be known as the 'resource recovery development authority' of such county or municipal corporation. No authority shall transact

any business or exercise any powers hereunder until the governing body of the county or municipal corporation shall, by proper ordinance or resolution, declare that there is a need for an authority to function in such county or municipal corporation.

(b) A county and one or more municipal corporations in said county may jointly form an authority for said county and municipal corporation or corporations to be known as the 'joint resource recovery development authority' for such county and municipal corporation or corporations. No authority shall transact any business or exercise any powers hereunder until the governing authorities of the units of local government involved declare by ordinance or resolution that there is a need for an authority to function and authorize the chief elected official of the unit of local government to enter into an agreement with the other units of local government for the activation of an authority and said agreement is executed.

(c) A copy of said ordinance, resolution or agreement shall be filed with the Secretary of State who shall maintain a record of all authorities activated hereunder.

69-1505a. Board of Directors. Control and management of the authority shall be vested in a board of five directors who shall be residents of the county or municipal corporation and shall serve at the pleasure of the governing authority of the county or municipal corporation. Directors shall be appointed, and may be reappointed, for terms of four years. In the case of a joint resource recovery development authority each unit of local government participating in the authority shall appoint two members with an additional member to be appointed by the directors themselves. The directors

shall elect one of their members as chairman and another as vice chairman and shall also elect a secretary and a treasurer or a secretary-treasurer, either of whom may but need not be a director. The directors shall receive no compensation for their services, but shall be reimbursed for their actual expenses incurred in the performance of their duties. The directors may make bylaws and regulations for the governing of the authority and may delegate to one or more of the officers, agents and employees of the authority such powers and duties as may be deemed necessary and proper.

69-1506a. Quorum; Conduct of Meetings. A majority of the directors shall constitute a quorum for the transaction of business of the authority. However, any action with respect to any project of the authority must be approved by not less than the affirmative vote of a majority of the directors.

69-1507a. Powers. Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter including, but without limiting the generality of the foregoing, the power:

(a) To sue and be sued;

(b) To adopt and amend a corporate seal;

(c) To acquire, construct, improve or modify, and to place into operation and to operate or cause to be placed into operation and operated, either as owner of all or of any part in common with others, a project or projects within the county in which the authority is activated, and subject to execution of agreements with the appropriate political subdivisions affected, within other counties, and to pay all or part of the cost of any such project or projects from the proceeds of

revenue bonds of the Authority or from any contribution or loans by persons, firms or corporations or any other contribution, all of which the Authority is hereby authorized to receive and accept and use;

(d) To acquire in its own name by purchase on such terms and conditions and in such manner as it may deem proper or by gift, grant, lease or otherwise, real property or rights and easements therein and franchises and personal property necessary or convenient for its corporate purposes, including but not limited to, the purpose of constructing or acquiring a project, or improving, extending, adding to, reconstructing, renovating or remodeling any project or part thereof already constructed or acquired, or for demolition to make room for such project or any part thereof, and to insure the same against any and all risks as such insurance may, from time to time, be available, and use such property and rent or lease the same to or from others or make contracts with respect to the use thereof or to sell, lease, exchange, transfer, assign, pledge or otherwise dispose of or grant options for any such property in any manner it deems to the best advantage of the Authority and the purposes thereof. The powers to acquire, use and dispose of property herein contained shall include the power to acquire, use and dispose of any interest in such property, whether divided or undivided, which acquisition may result in the ownership of such property or any part thereof in common with any other party or parties, public or private. Title to any such property of the Authority, however, shall be held by the Authority exclusively for the benefit of the public;

(e) To make contracts, leases and to execute all instruments necessary or convenient, including contracts

for construction of projects and leases of projects or contracts with respect to the use of projects which it causes to be acquired or constructed, and all private persons, firms and corporations and the State of Georgia and all political subdivisions, departments, instrumentalities or agencies of the State or of local government are hereby authorized to enter into contracts, leases or agreements with the Authority upon such terms and for such purposes as they deem advisable; and without limiting the generality of the above, authority is specifically granted to municipal corporations and counties and to the Authority to enter into contracts, lease agreements or other undertakings relative to the furnishing of project activities and facilities or either of them by the Authority to such municipal corporations and counties and by such municipal corporations and counties to the Authority for a term not exceeding 50 years;

(f) To exercise any one or more of the powers, rights and privileges conferred hereby either alone or jointly or in common with one or more other public or private parties or public and private parties. In any such exercise of such powers, rights and privileges jointly or in common with others with respect to the construction, operation and maintenance of project facilities, the Authority may own an undivided interest in such facilities with any other party with which it may jointly or in common exercise the rights and privileges conferred by this Act. The Authority may enter into an agreement or agreements with respect to any such project facility with the other party or parties participating therein, and any such agreement may contain such terms, conditions and provisions consistent with the provisions of this Act as the

parties thereto shall deem to be in their best interests. Any such agreement may include, but need not be limited to, provisions for the construction, operation and maintenance of such project facility by any one or more party of the parties to such agreement which party or parties shall be designated in or pursuant to such agreement as agent or agents on behalf of itself and one or more of the other parties thereto or by such other means as may be determined by the parties thereto, and may include provisions for a method or methods of determining and allocating, among or between the parties, costs of construction, operation, maintenance, renewals, replacements, improvements and disposals with respect to such facility. In carrying out its functions and activities as such agent with respect to construction, operation and maintenance of such a facility, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating parties; provided, however, the agent shall act for the benefit of the public. Notwithstanding anything contained in any other law to the contrary, pursuant to the terms of any such agreement the Authority may delegate its powers and duties with respect to the construction, operation and maintenance of such facility to the party acting as agent; and all actions taken by such agent in accordance with the provisions of such agreement may be binding upon the Authority without further action or approval of the Authority;

(g) To extend credit or make loans to any person, firm, corporation or other industrial entity for the planning, design, construction, acquisition or carrying

out of any project, which credit or loans shall be secured by loan agreements, mortgages, security agreements, contracts and all other instruments or fees or charges, upon such terms and conditions as the Authority shall determine reasonable in connection with such loans, including provision for the establishment and maintenance of reserves and insurance funds, and in the exercise of powers granted by this Section in connection with a project for such person, firm, corporation or other industrial entity, to require the inclusion in any contract, loan agreement, security agreement or other instrument, such provisions for guaranty, insurance, construction, use, operation, maintenance and financing of a project as the Authority may deem necessary or desirable;

(h) To acquire, accept or retain equitable interests, security interests or other interest in any property, real or personal, by mortgage, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement or other consensual transfer in order to secure the repayment of any monies loaned or credit extended by the Authority;

(i) To accept, receive and administer gifts, grants, appropriations and donations of money, materials and property of any kind, including loans and grants from the United States of America or the State of Georgia, a unit of local government, or such agency, department, authority, or instrumentality shall impose, and to administer trusts, and to sell, lease, transfer, convey, appropriate, and pledge, any and all of its property and assets;

(j) To invest any accumulation of its funds in any fund or reserve in any manner that public funds of the State of Georgia or its political subdivisions may be

invested;

(k) To do any and all things necessary or proper for the accomplishment of the objectives of this amendment and to exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the Constitution and laws of this State, including employment of professional and administrative staff and personnel and retaining of legal, engineering, fiscal, accounting and other professional services, the purchasing of all kinds of insurance including, without limitation, insurance against tort liability and against risks of damage to property, including the power to borrow money for any of the corporate purposes of the Authority; provided, however, that obligations of the Authority other than revenue bonds, for which provision is herein made, shall be payable from the general funds of the Authority and shall not be a charge against any special fund allocated to the payment of revenue bonds, and including the power to indemnify and hold harmless any parties contracting with the Authority or its agents from damage to persons or property and the power to act as self-insurer with respect to any loss or liability;

(l) To mortgage, convey, pledge or assign any properties, revenues, income, tolls, charges or fees owned or received by the Authority;

(m) To borrow money and issue its revenue bonds and bond anticipation notes from time to time and use the proceeds thereof for the purpose of paying all or part of the cost of any project, including the cost of extending, adding to or improving such project, or for the purpose of refunding any such bonds of the Authority theretofore issued, and to otherwise carry out the purposes of this Chapter and to pay all other costs of

the Authority incident to, or necessary and appropriate to, such purposes, including the providing of funds to be paid into any fund or funds to secure such bonds and notes; provided that all such bonds and notes shall be issued in accordance with the procedures and subject to the limitations set forth in Section 69-1508a;

(n) As security for repayment of Authority obligations, to pledge, mortgage, convey, assign, hypothecate or otherwise encumber any property, real or personal, of such Authority and to execute any trust agreement, indenture or security agreement containing any provisions not in conflict with law, which trust agreement, indenture or security agreement may provide for foreclosure or forced sale of any property of the Authority upon default on such obligations either in payment of principal or interest or in the performance of any term or condition contained in such agreement or indenture; the State of Georgia on behalf of itself and each county, municipal corporation, political subdivision or taxing district therein hereby waives any right it or such county, municipal corporation, political subdivision or taxing district may have to prevent the forced sale or foreclosure of any property of the Authority so mortgaged or encumbered, and any such mortgage or encumbrance may be foreclosed in accordance with law and the terms thereof.

69-1508a. Provisions and Obligations; Remedies of Bond Holders; Limitations and Procedures. (a) Subject to the limitations and procedures provided by this Section, the obligations of any Authority evidenced by bonds, bond anticipation notes, trust indentures, deeds to secure obligations, security agreements or mortgages executed in connection therewith may contain such provisions not inconsistent with law as shall be

determined by the board of directors of the Authority, and the Authority in such instruments may provide for the pledging of all or any part of its revenues, income or charges and for the mortgaging, encumbering or conveying of all or any part of its real or personal property, may covenant against pledging any or all of its revenues, income or charges; and may further provide for the disposition of proceeds realized from the sale of any bonds and bond anticipation notes, for the replacement of lost, destroyed, stolen, or mutilated bonds and notes, and for the payment and redemption of such bonds and notes. Similarly, subject to the limitations and procedures of this Section, undertakings of an Authority may prescribe the procedure by which bondholders and note holders may enforce rights against the Authority and provide for rights upon breach of any covenant, condition or obligation of the Authority, and bonds, resolutions, trust indentures, mortgages or deeds to secure obligations executed by an Authority and bond anticipation notes executed by an Authority may contain such provisions not otherwise contrary to law as the Authority shall deem necessary or desirable.

(b) The proceeds derived from the sale of all bonds and bond anticipation notes issued by an Authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this Chapter, all or part of the cost of any project, including the cost of extending, financing, adding to or improving such project or for the purpose of refunding any bond anticipation notes issued in accordance with the provisions of this Chapter or refunding any previously issued bonds of the Authority.

(c) All bonds and bond anticipation notes issued by an Authority shall be revenue obligations of such

Authority, and may be made payable out of any revenues or other receipts, funds or monies of the Authority, subject only to any agreements with the holders of other bonds or bond anticipation notes or to particular security agreements pledging any particular revenues, receipts, funds or monies.

(d) Issuance by an Authority of one or more series of bonds or bond anticipation notes for one or more purposes shall not preclude it from issuing other bonds or notes in connection with the same project or with any other projects, but the proceeding wherein any subsequent bonds or bond anticipation notes shall be issued shall recognize and protect any prior pledge or mortgage made in any prior security agreement or made for any prior issue of bonds or bond anticipation notes, unless in the resolution authorizing such prior issue the right is expressly reserved to the Authority to issue subsequent bonds or bond anticipation notes on a parity with such prior issue.

(e) An Authority shall have the power and is hereby authorized, whenever revenue bonds of the Authority shall have been validated as provided in this Chapter, to issue, from time to time, its notes in anticipation of the issuance of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The Authority may issue notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, the Authority may sell such notes at public or private sale. Any resolution or resolutions authorizing notes of the Authority or any issue thereof may contain any

provisions which the Authority is authorized to include in any resolution or resolutions authorizing bonds of the Authority or any issue thereof, and the Authority may include in any notes any terms, covenants or conditions which it is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of such notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued.

(f) The interest rate on or rates to be borne by any bonds, notes or other obligations issued by the Authority shall be fixed by the board of directors of the Authority and any limitations with respect to interest rates found in the Revenue Bond Law (Chapter 87-8), or the usury laws of the State of Georgia shall not apply to obligations issued under this Chapter.

(g) All revenue bonds issued by an Authority under this Chapter shall be issued and validated under and in accordance with the Revenue Bond Law of the State of Georgia, as heretofore and hereafter amended, except as provided in subsection (f) of this Section and except as specifically set forth below in this subsection:

(1) Revenue bonds issued by an Authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions, as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide;

(2) Revenue bonds shall bear a certificate of validation. The signature of the clerk of the superior court of the judicial circuit in which the

issuing Authority is located may be made on the certificate of validation of such bonds by facsimile or by manual execution stating the date on which such bonds were validated and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this State;

(3) In lieu of specifying the rate or rates of interest which revenue bonds to be issued by an Authority are to bear, the notice to district attorney or Attorney General and the notice to the public of the time, place and date of the validation hearing may state that the bonds when issued will bear interest at a rate not exceeding a minimum per annum rate of interest specified in such notices or that in the event the bonds are to bear different rates of interest for different maturity dates that none of such rates will exceed the maximum rate specified in the notices; provided, however, that nothing contained herein shall be construed as prohibiting or restricting the right of the Authority to sell such bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices;

(4) The term 'cost of project' shall have the meaning prescribed in subsection (j) of Section 69-1503a whenever referred to in bond resolutions of an Authority, bonds and bond anticipation notes issued by an Authority, or notices and proceedings to validate such bonds.

69-1509a. Construction of Chapter. (a) The provisions hereof shall be liberally construed to effect

the purposes hereof. Sale or issuance of bonds by any authority shall not be subject to regulation under the Georgia Security Law (Title 97) or any other law. No proceeding or publication not herein required shall be necessary to performance of any Act herein authorized nor shall any such Act be subject to referendum.

(b) A city, county or a county and one or more municipal corporations shall have the right to activate an authority under this Act notwithstanding the existence of any other development authority within the county or municipal corporation created pursuant to any general law or amendment to the Constitution of this State. However, nothing in this Act shall be construed as repealing, amending, superseding or altering the organization of or abridging the powers of such authorities now in existence.

69-1510a. Bonds or Obligations not to Constitute Public Debt. No bonds or other obligations of and no indebtedness incurred by any Authority shall constitute an indebtedness or obligation of the State of Georgia or any county, municipal corporation or political subdivision thereof nor shall any act of any Authority in any manner constitute or result in the creation of an indebtedness of the State or any such county, municipal corporation or political subdivision. All such bonds and obligations shall be payable solely from the revenues therein pledged to such payment, including pledged rentals, sales proceeds, insurance proceeds and condemnation awards, and no holder or holders of any such bonds or obligations shall ever have the right to compel any exercise of the taxing power of the State or any county, municipal corporation or political subdivision thereof nor to enforce the payment thereof against any property of the State or any such county,

municipal corporation or political subdivision.

69-1511a. Constitutional Authority for Chapter; Tax Exemption of Authorities. This Chapter is passed pursuant to authority granted the General Assembly by the Constitution of Georgia of 1976, duly ratified and proclaimed. Each Authority hereby created is created for nonprofit and public purposes, and it is hereby found, determined and declared that the creation of each such Authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the State, that the Authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this Chapter, and for such reasons, the State covenants with the holders from time to time of the bonds issued hereunder that such Authority shall be required to pay no taxes or assessments imposed by the State or any of its counties, municipal corporations, political subdivisions or taxing districts upon any property acquired by the Authority or under its jurisdiction, control, possession or supervision or leased by it to others, or upon its activities in the operation or maintenance of any such property or on any income derived by the Authority in the form of fees, recording fees, rentals, charges, purchase price, installments or otherwise, and that the bonds of such Authority, their transfer and the income therefor shall at all times be exempt from taxation within the State. The tax exemption herein provided shall not include any exemption from sales and use tax on property purchased by the Authority or for use by the Authority."

Section 2. In the event any section, subsection,

sentence, clause or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

Section 3. This Act shall become effective upon its approval by the Governor or upon its becoming law without his approval.

Section 4. All laws and parts of laws in conflict with this Act are hereby repealed.

(To be made one and twelve copies)

THE SENATE

NINTH LEGISLATURE, 1978

STATE OF HAWAII

S.B. NO. 1773-78 S.D. 2 H.D. 1

A BILL FOR AN ACT

RELATING TO COUNTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

"Sec. 46- Development of alternative energy resources. Each of the counties may participate in the development of alternative energy resources defined as geothermal, solar, wind, ocean power, biomass and solid wastes in joint venture with an end user or public utility pursuant to a plan for the direct utilization of the energy sources by an end user or public utility; provided that should a joint-venture partner not be available the counties may proceed with the development of alternate energy resources for their own consumption or for the furtherance of a plan for direct utilization by an end user or public utility."

SECTION 2. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the underscoring.

SECTION 3. This Act shall take effect upon its approval.

CHAPTER 367
(H.B. No. 606)

AN ACT

RELATING TO IRRIGATION DISTRICTS; ADDING A NEW CHAPTER 23, TITLE 43, IDAHO CODE, PROVIDING FOR THE RECONSTRUCTION OF DAMS AND RELATED APPURTENANCES INCLUDING HYDROELECTRIC FACILITIES; PROVIDING FOR THE ISSUANCE OF BONDS FOR SUCH PURPOSES; PROVIDING FOR THE ISSUANCE OF INTERIM NOTES; PROVIDING FOR PUBLICATION OF THE RESOLUTION OF AN IRRIGATION DISTRICT AND LIMITING LEGAL RECOURSE; ESTABLISHING A PROCEDURE FOR HOLDING AN ELECTION AUTHORIZING ISSUANCE OF BONDS; ESTABLISHING A PROCEDURE FOR COMPELLING ACTS OF OFFICIALS; PROVIDING THAT BONDS ISSUED ARE EXEMPT FROM IDAHO INCOME TAX; PROVIDING THAT THE CHAPTER IS THE EXCLUSIVE PROCEDURE FOR THE ISSUANCE OF THE BONDS THEREIN PROVIDED AND PROVIDING FOR LIBERAL CONSTRUCTION; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 43, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 23, Title 43, Idaho Code, and to read as follows:

43-2301. RECONSTRUCTION OF DAMS AND RELATED APPURTENANCES -- HYDROELECTRIC FACILITIES -- EXECUTION OF CONTRACTS -- REVENUES -- TRUSTS. Any irrigation district organized and existing under the provisions of title 43, Idaho Code, in addition to any other powers which it might enjoy, for the purpose of preserving, restoring, protecting and maintaining rights of storage, diversion and delivery of water necessary and appurtenant to the purposes for which such district and other like similarly situated districts were organized, is hereby granted the following additional powers:

(a) To reconstruct, rehabilitate, replace and improve dams and other related structures and works together with all necessary appurtenances related thereto, whether located within or without the boundaries of the district and whether or not legal title thereto is owned by the district, including without limitation as a part thereof the reconstruction and relocation of all roads, bridges and highways made necessary by reason of such reconstruction, rehabilitation, replacement and improvement, and the acquisition of related facilities for flood control, public recreation, and fish

and wildlife mitigation and enhancement purposes made necessary in order to comply with applicable state and federal requirements;

(b) To construct hydroelectric generating facilities, properties and related structures in connection with and as a part of the reconstruction, rehabilitation, and improvement of a dam pursuant to subsection (a) of this section, together with all necessary equipment and appurtenances related thereto, used in or useful for the generation of electricity, including power plants, turbine generators, penstocks, transformers, electrical equipment and other facilities related to hydroelectric production plant;

(c) To enter into all necessary agreements, contracts and other legal arrangements with the United States and its agencies, departments and political subdivisions, and public and private persons, firms, corporations and associations in order to carry out the reconstruction, rehabilitation, replacement and improvement of any such dam and other related structures and works and appurtenances and the financing thereof pursuant to the provisions of this chapter and the sale of electric energy or the sale or use of rights to falling water;

(d) To issue bonds of the district in the manner provided in this chapter for the purpose of paying all or part of the cost of the reconstruction, rehabilitation, replacement and improvement of any such dam and other related structures and works and appurtenances and the acquisition of hydroelectric generation facilities as further described in subsections (a), (b) and (c) above, and for the purpose of paying all expenses preliminary and incidental thereto, including all engineering, fiscal and legal expenses and costs of issuance, printing, advertising, establishment of necessary reserves and payment of interest during construction;

(e) To provide that any bonds issued and sold pursuant to the provisions of this chapter shall be payable solely out of a special fund into which the district shall be obligated to deposit, as from time to time received, all or a designated portion of the proceeds from the sale of electric energy generated by hydroelectric generation facilities to be so acquired by the district or from the sale or use of rights to falling water from the dam to be so reconstructed, rehabilitated, replaced and improved, pursuant to contracts to be entered into by the irrigation district issuing the bonds with a public or private person, firm, corporation or association, and which contracts may provide for the reconstruction, rehabilitation, replacement and improvement of any such dam and other related structures and works and appurtenances, the acquisition of hydroelectric generation facilities, the coordination of the construction of hydroelectric generation facilities, the conditions under which the contracting party shall make payments to the district issuing the bonds, the rights and remedies of the parties thereto in the event of the failure of the contracting party to make the required payments thereunder and the securing of all necessary permits and licenses required in connection therewith; and

(f) To enter into a trust indenture securing the bonds issued pursuant to the provisions hereof with a bank or trust company doing business either within or without the state of Idaho, and to assign the rights of the district to receive the payments provided for in subsection (e) of this section to such bank or trust company as trustee for and on behalf of the bondholders.

43-2302. ISSUANCE OF BONDS -- TERMS AND CONDITIONS. The board of directors is authorized to issue the bonds of the district in the manner for which provision is made in this chapter, which bonds shall be fully negotiable for all purposes of the uniform commercial code of the state of Idaho as the same may be in force from time to time.

Bonds issued hereunder shall be authorized by resolution or resolutions of the board. They shall be in coupon form but may be made registrable as to principal only or as to both principal and interest. Such bonds shall be in denominations of one hundred dollars ($100) or a multiple thereof, shall bear interest at such rate or rates, payable annually or semiannually as the board shall elect, shall mature serially or otherwise at any time or times, shall be payable at such place or places within or without the state, may be made redeemable prior to maturity in such manner and at such premiums, shall be executed in such manner, and shall be sold in such manner and at such price or prices as may be determined by the board.

Bonds may be issued hereunder at one time or from time to time. If more than one issue or series of bonds is delivered hereunder the bonds or the respective issues or series shall have such priorities of payment as may be provided in the proceedings authorizing the bonds.

Any resolution or indenture providing for the issuance of bonds hereunder shall provide for the creation of a sinking fund into which shall be paid from the revenues pledged to such payment sums fully sufficient to pay the principal of and interest on the bonds and to create such reserves as may be required therein. Any resolution or indenture may contain such covenants with the future holders of the bonds as to the disposition of such revenues, the issuance of future bonds and the creation of future liens and encum-

brances against the revenues and other pertinent matters deemed necessary or proper by the board to assure the merchantability of the bonds, provided such covenants and agreements are not inconsistent with the provisions of this chapter.

It may be provided in any such resolution or indenture that any holder of the bonds or of any of the coupons thereto attached may by appropriate legal action compel performance of all duties required of the board and the officials of the district by the provisions of title 43, Idaho Code, and the provisions of the resolution or indenture. If any bond issued hereunder is permitted to go into default, as to principal or interest, any court of competent jurisdiction may, pursuant to the application of the holder of any bond, or if applicable the trustee pursuant to a trust indenture, appoint a receiver to collect and distribute the revenues pledged to the repayment of the bonds pursuant to the provisions and requirements of the resolution or indenture and of this act and as the court may direct.

The board of any district which shall have issued any bonds under the provisions of this chapter may authorize the issuance of bonds hereunder for the purpose of refunding all or any part of such outstanding bonds. Refunding bonds may be either sold and the proceeds thereof applied to or deposited in an escrow for the retirement of the outstanding bonds or may be delivered in exchange for the outstanding bonds. The refunding bonds shall be authorized and secured in the manner herein provided for the issuance and securing of other bonds and may but shall not be required to have the same source of security and payment as the bonds refunded.

43-2303. INTERIM NOTES. In addition to the permanent financing contemplated in this chapter the board of any district may borrow money and issue interim notes in evidence thereof whenever it is deemed advisable and in the interests of the district to borrow funds temporarily for any of the purposes herein provided in advance of permanent financing. The board may from time to time and pursuant to appropriate resolution borrow money and issue interim notes to evidence borrowing for the purpose of obtaining funds for any of the purposes authorized in section 43-2301, Idaho Code. Any resolution authorizing the issuance of interim notes shall describe generally the purpose for which such notes are to be issued and shall specify the principal amount, rate of interest and maturity date, which shall be the same for all interim notes and which shall be not to exceed five (5) years from the date of issue of such notes, and such other pertinent terms as may be specified in such resolution. The interim notes shall be issued from time to time by the board as funds are borrowed, in the manner the board may determine. Interest on the interim notes may be made payable semiannually, annually or at maturity. The interim notes may be made redeemable prior to maturity at the option of the board in the manner and upon the terms fixed by the resolution authorizing their issuance. Such interim notes shall be sold at such price or prices as may be determined by resolution of the board. All such interim notes and the interest thereon may be secured by a pledge of the proceeds of the revenues provided in subsection (e) of section 43-2301, Idaho Code, and shall be payable solely from such revenues and from the proceeds to be derived from the sale of any bonds for permanent financing authorized to be issued pursuant to this chapter. Contemporaneously with the issuance of the bonds as provided by this chapter, all interim notes, even though they may not have then matured, shall be paid, both principal and interest and applicable premium, if any, to date of payment, from the funds derived from the sale of bonds authorized hereunder for the permanent financing, and such interim notes shall thereupon be surrendered and canceled.

43-2304. PUBLICATION -- LEGAL REMEDIES. The resolution authorizing the issuance of any bonds or interim notes hereunder or any resolution authorizing the execution of any contract hereunder may be published one time in a newspaper of general circulation in the district. For a period of thirty (30) days from the date of such publication, any person in interest may file suit in any court of competent jurisdiction to contest the regularity, formality or legality of the proceedings authorizing the bonds, the interim notes, the execution of such contract or the legality of such resolution and its provisions or of the contract or of the bonds or interim notes to be issued pursuant thereto and the provisions securing the bonds or interim notes. After the expiration of such thirty (30) day period no one shall have any right of action to contest the validity of the contract or of the bonds or interim notes or of such proceedings or of such resolution or the validity of the pledges and covenants made in such proceedings and resolution and the contract and the bonds and interim notes and the provisions for their payment shall be conclusively presumed to be legal and no court shall thereafter have authority to inquire into such matters.

43-2305. ELECTION FOR ISSUING BONDS. Whenever the board shall by resolution adopted by a four-fifths (4/5) majority of said board, determine that the interest of said district and the public interest or necessity demand the reconstruc-

tion, rehabilitation, and improvement of any dam and the construction of hydroelectric generating facilities, properties and related structures in connection and as an improvement to such dam, such resolution shall set forth the amount of obligation or bonded or other indebtedness proposed to be issued by the district under the provisions of this chapter, said board shall be required to order the submission of the proposition of issuing such obligation or bonded or other indebtedness for the purposes set forth in said resolution to the vote of the qualified electors of the district as defined in section 34-103, Idaho Code, at an election to be held for that purpose. The resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred; the estimated cost of the reconstruction, rehabilitation, and improvement of the dam and/or construction of hydroelectric generating facilities as the case may be; the amount of principal of indebtness to be incurred therefor; and the sources of the revenues pledged to the payment of said bonds, as set forth in 43-2301(e), Idaho Code.

Any election required to be held hereunder shall be called by resolution, which resolution shall also fix the date upon which such election shall be held, the manner of holding the same and the method of voting for or against the issuance of the bonds. Such resolution shall also fix the compensation to be paid the officers of the election and shall designate the precincts and polling places and shall appoint for each polling place, from each precinct from the electors thereof, the officers of such election, which officers shall consist of three (3) judges, one (1) of whom shall act as clerk, who shall constitute a board of election for each polling place. Description of precincts may be made by reference to any order or orders of the board of county commissioners of the county or counties in which the district or any part thereof is situated, or by reference to any previous order, or resolution of the board or by detailed description of such precincts. The resolution calling the election shall prescribe an official notice of election, which notice shall be published once a week for two (2) consecutive weeks, the last publication of which shall be at least ten (10) days prior to the date set for said election, in a newspaper of general circulation printed and published in the district, and no other or further notice of such election or publication of the names of election officers or of the precincts or polling places need be given or made.

The respective election boards shall conduct the election in their respective precincts in a manner prescribed by

law for the holding of district elections to the extent the same shall apply and shall make their returns to the secretary of the district. At any regular or special meeting of the board held not earlier than five (5) days following the date of such election, the returns thereof shall be canvassed and the results thereof declared.

If it shall appear from said returns that a two-thirds (2/3) majority of the qualified electors of the district who shall have voted on any proposition submitted hereunder at such election voted in favor of such proposition, the district shall thereupon be authorized to incur such indebtedness or obligations, enter into such contracts or issue and sell such bonds of the district, all for the purpose or purposes and object or objects provided for in the proposition submitted hereunder or in the resolution therefor, and in the amount so provided. Submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent election or elections called for such purpose.

43-2306. ACTS REQUIRED. In the event that any official required to participate in any act leading to the execution of any required contract or the issuance of such bonds shall refuse to perform such act alleging as his reason illegality of the proposed contract or the bonds proposed to be issued, the board may institute judicial proceedings to compel such steps to be taken and legality of the contract or bonds to be determined. All cases in which there may arise a question of the validity of any proceeding under this act shall be advanced as a matter of immediate public interest and concern, and heard at the earliest practicable moment. The courts shall be open at all times for the purposes of this act.

43-2307. BONDS TAX EXEMPT. Bonds and interim notes, and the interest thereon, issued pursuant to the authority contained in this chapter shall be exempt from taxation under the Idaho income tax law.

43-2308. CONSTRUCTION. Any restrictions, limitations or regulations relative to the issuance of such bond or the execution of such contracts pursuant to the authority herein contained in any other act shall not apply to the bonds issued under this chapter or the execution of such contracts pursuant to the authority herein contained, it being intended that this chapter is full authority for the issuance of such bonds and the execution of such contracts. This chapter being necessary to secure and preserve the public

SENATE FILE 2209

AN ACT

RELATING TO ENERGY RESOURCES BY ENCOURAGING THE DEVELOPMENT AND USE OF SOLAR ENERGY AND BY PROVIDING PROPERTY TAX EXEMPTIONS FOR COAL HELD IN INVENTORY, SOLAR ENERGY SYSTEMS, AND METHANE GAS PRODUCTION SYSTEMS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Chapter ninety-three (93), Code 1977, is amended by adding sections two (2) through eleven (11) of this Act.

Sec. 2. NEW SECTION. LEGISLATIVE FINDINGS. The general assembly finds that:

1. The public health, safety, and welfare of the people of the state of Iowa require that an adequate supply of energy be made available to them at all times.

2. Nonrenewable energy sources are becoming more limited.

3. State government has an obligation to encourage the use of alternative renewable energy sources.

4. Solar energy systems are an effective means of reducing the dependence of the state government and the people of the state on imported energy sources and of conserving valuable fossil fuel and other nonrenewable energy sources.

5. It is in the public interest to define solar energy systems, demonstrate and study solar energy applications, apply incentives for using solar energy including property tax exemptions, educate the public on solar technology and coordinate governmental programs affecting solar energy.

Sec. 3. NEW SECTION. DEFINITIONS. As used in this Act, unless the context otherwise requires:

1. "Conventional energy system" means an energy system using fossil fuel, nuclear or hydroelectric energy and the components of the system, including transmission lines, burners, furnaces, tanks, boilers, related controls, distribution systems, room or area units and other components.

2. "Joint solar energy system" means a solar energy system involving at least two owners or users that supplies energy for structures or processes on more than one lot or in more than one condominium unit or leasehold, but not to the general public.

3. "Solar energy system" means a system of equipment capable of collecting and converting incident solar radiation, wind energy or organic materials into heat, mechanical or electrical energy and transforming these forms of energy by a separate apparatus to a point of storage or end use.

4. "Solar skyspace" means the maximum three dimensional space extending from a solar energy collector to all positions of the sun necessary for efficient use of the collector.

5. "Public energy supplier" means any publicly, privately, municipally or cooperatively owned utility that furnishes electricity or gas to the general public for a fee.

Sec. 4. NEW SECTION. PROGRAM CREATED. There is created the Iowa comprehensive solar energy program under the direction of the council. The director of energy policy shall administer the program and may accept, receive and administer and may expend with the approval of the council, any gifts, grants or other public or private funds for the program. The director shall cooperate with and use the facilities and resources of existing state agencies, public and private educational institutions, business, civic associations, industrial and professional representatives and local governments in carrying out the provisions of this Act.

Sec. 5. NEW SECTION. DEMONSTRATION PROJECTS. The council shall prepare a plan for instituting a variety of solar energy system demonstration projects in public and private buildings or for public and private use throughout the state and shall make such plan available to the general assembly.

Sec. 6. NEW SECTION. INCENTIVE PROGRAM. The council, in cooperation with appropriate state agencies, shall develop an incentive program for encouraging the construction and use of cost effective solar energy systems within this state. Development of the incentive program shall include studies of:

1. Laws, regulations, ordinances, rules and plans for the purpose of determining the extent to which the laws, regulations, ordinances, rules and plans inhibit or encourage the use of solar energy systems.

2. The market penetration of solar energy systems.

3. Solar skyspace rights.

4. Performance standards for solar energy systems.

The council shall submit a progress report of its findings and recommendations concerning incentive programs and studies mandated by this section to the general assembly not later than January 15, 1979 and periodically thereafter as necessary. The initial progress report shall include bill drafts necessary to implement the council's solar skyspace rights recommendations.

Sec. 7. NEW SECTION. ASSISTANCE PROGRAM. The council may provide upon request any technical or available financial assistance deemed necessary to encourage the development of solar energy systems in this state, under the provisions of section ninety-three point fourteen (93.14) of the Code.

Sec. 8. NEW SECTION. PUBLIC EDUCATION. The council may, in cooperation with other state agencies, units of local government, and other institutions, plan, prepare, and develop educational programs for the public regarding the use of solar energy systems. However to the maximum extent feasible, the council shall leave the responsibility for actually implementing the solar energy educational programs to existing state agencies, units of local government, and other institutions responsible for educating the public.

Sec. 9. NEW SECTION. STUDY OF PUBLIC ENERGY SUPPLIERS AND SOLAR ENERGY. The council shall, in cooperation with the Iowa state commerce commission, study the relationship between public energy suppliers and the use of solar energy systems and shall make recommendations concerning its findings to the general assembly. The study shall identify different scenarios relating to the development and use of solar energy and shall determine for each scenario ways to:

1. Integrate the supply of conventional energy with solar

energy systems at reasonable rates and under reasonable conditions of service; and

2. Minimize the economic and load impact on public energy suppliers of the use of solar energy systems; and

3. Develop criteria for load forecast projections in the service area of public energy suppliers which consider the potential use of solar energy systems.

Sec. 10. NEW SECTION. SOLAR ENERGY SYSTEM REGULATION STUDY. The Iowa state commerce commission shall, in cooperation with the council, study the impacts of the use of joint solar energy systems and shall make recommendations concerning its findings to the general assembly. The study shall:

1. Estimate the rate of development and use of joint solar energy systems through 1985.

2. Examine the need for regulation of joint solar energy systems, the administrative costs of regulation and enforcement mechanisms.

3. Examine the need for the use of the power of eminent domain.

4. Determine the effects on service areas, cost of service and other effects of the use of joint solar energy systems on public energy suppliers.

5. Identify ways to prevent undue economic hardship on the public energy supplier and its customers.

6. Identify ways to promote the development and use of joint solar energy systems.

The study shall also examine the need for regulation of the financing, sales and service of solar energy systems.

Sec. 11. NEW SECTION. PROVISION OF SOLAR ENERGY SYSTEMS BY PUBLIC ENERGY SUPPLIERS. The financing, sales and service of solar energy systems shall be a valid service and purpose of a public energy supplier. However nothing in this section shall be construed to prohibit within the service area as determined under sections four hundred seventy-six point twenty-two (476.22) through four hundred seventy-six point twenty-five (476.25) of the Code of a public energy supplier:

1. The financing, sales and service of solar energy systems by an individual, corporation or institution that is not a public energy supplier.

2. The financing of solar energy systems by a unit of government that is not a public energy supplier.

Sec. 12. Section four hundred forty-one point twenty-one (441.21), subsection three (3), Code 1977, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. Notwithstanding unnumbered paragraph one (1) of this subsection, any construction or installation of a solar energy system or gas production systems using waste or manure to produce gas completed on property classified as agricultural, residential, commercial, or industrial property shall not increase the actual, assessed and taxable values of such property for assessment years beginning on January 1, 1979 and ending on or before December 31, 1985.

NEW UNNUMBERED PARAGRAPH. As used in this subsection "solar energy system" means a system of equipment capable of collecting and converting incident solar radiation or wind energy into heat, mechanical or electrical energy, and transforming these forms of energy by a separate apparatus to storage or to point of use.

Sec. 13. Section four hundred twenty-seven point one (427.1), Code 1977, is amended by adding the following new subsection:

NEW SUBSECTION. Coal which is held in inventory to be used for methane gas production or other purposes by a person, corporation, partnership, or other business entity, except coal held in inventory which is owned by a person, corporation, partnership, or other business entity whose property is assessed by the department of revenue pursuant to sections four hundred twenty-eight point twenty-four (428.24) to four hundred twenty-eight point twenty-nine (428.29) of the Code or chapters four hundred thirty-three (433) to four hundred thirty-eight (438) of the Code.

Sec. 14. Chapter four hundred seventy-six (476), Code

1977, is amended by adding the following new section:

NEW SECTION. DISCRIMINATION PROHIBITED. A municipality, corporation or cooperative association providing electrical or gas service shall not consider the use of renewable energy sources by a customer as a basis for establishing discriminatory rates or charges for any service or commodity sold to the customer or discontinue services or subject the customer to any other prejudice or disadvantage based on the customer's use or intended use of renewable energy sources. As used in this section, "renewable energy sources" includes but is not limited to, solar heating, wind power and the conversion of urban and agricultural organic wastes into methane gas and liquid fuels.

Sec. 15. The code editor shall place sections two (2) through eleven (11) of this Act as a new division in chapter ninety-three (93) of the Code.

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2209, Sixty-seventh General Assembly.

KEVIN P. LIGHT
Acting Secretary of the Senate

Approved _____, 1978

ROBERT D. RAY
Governor

HOUSE FILE 187

AN ACT

RELATING TO THE CONTROL OF LITTER, BY REGULATING THE SALE AND USE OF CERTAIN BEVERAGE CONTAINERS; STRIKING A PROVISION RELATING TO THE RESPONSIBILITY FOR DISCARDING LITTER FROM A MOTOR VEHICLE; AND PROVIDING A PENALTY FOR VIOLATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. DEFINITIONS. As used in this Act unless the context otherwise requires:

1. "Beverage" means alcoholic liquor as defined in section one hundred twenty-three point three (123.3), subsection eight (8) of the Code, beer as defined in section one hundred twenty-three point three (123.3), subsection nine (9) of the Code, mineral water, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.

2. "Beverage container" means any sealed glass, plastic, or metal bottle, can, jar or carton containing a beverage.

3. "Consumer" means any person who purchases a beverage in a beverage container for use or consumption.

4. "Dealer" means any person who engages in the sale of beverages in beverage containers to a consumer.

5. "Distributor" means any person who engages in the sale of beverages in beverage containers to a dealer in this state, including any manufacturer who engages in such sales.

6. "Manufacturer" means any person who bottles, cans, or otherwise fills beverage containers for sale to distributors or dealers.

7. "Director" means the executive director of the department of environmental quality.

8. "Department" means the department of environmental quality.

9. "Commission" means the solid waste disposal commission of the department of environmental quality.

Sec. 2. NEW SECTION. REFUND VALUES.

1. Except purchases of alcoholic liquor as defined in section one hundred twenty-three point three (123.3), subsection eight (8), of the Code by holders of class "A", "B" and "C" liquor control licenses, a refund value of not less than five cents shall be paid by the consumer on each beverage container sold in this state by a dealer for consumption off the premises. Upon return of the empty beverage container upon which a refund value has been paid to the dealer or person operating a redemption center and acceptance of the empty beverage container by the dealer or person operating a redemption center, the dealer or person operating a redemption center shall return the amount of the refund value to the consumer.

2. In addition to the refund value provided in subsection one (1) of this section, a dealer, or person operating a redemption center, who redeems empty beverage containers shall be reimbursed by the distributor required to accept the empty beverage containers an amount which is one cent per container. A dealer or person operating a redemption center may compact empty metal beverage containers with the approval of the distributor required to accept such containers.

The provisions of this subsection shall apply for two years from the effective date of this Act and thereafter the amount shall be one-half cent per container.

Sec. 3. NEW SECTION. PAYMENT OF REFUND VALUE. Except as provided in section four (4) of this Act:

1. A dealer shall not refuse to accept from a consumer any empty beverage container of the kind, size and brand sold by the dealer, or refuse to pay to the consumer the refund value of a beverage container as provided under section two (2) of this Act.

2. A distributor shall accept and pick up from a dealer

served by the distributor or a redemption center for a dealer served by the distributor any empty beverage container of the kind, size and brand sold by the distributor, and shall pay to the dealer or person operating a redemption center the refund value of a beverage container and the reimbursement as provided under section two (2) of this Act. This subsection shall not apply to a distributor selling alcoholic liquor to the Iowa beer and liquor control department.

Sec. 4. NEW SECTION. REFUSAL TO ACCEPT CONTAINERS.

1. Except as provided in section five (5), subsection two (2), of this Act, a dealer, a person operating a redemption center, a distributor or a manufacturer may refuse to accept any empty beverage container which does not have stated on it a refund value as provided under section two (2) of this Act.

2. A dealer may refuse to accept and to pay the refund value of any empty beverage container if the place of business of the dealer and the kind and brand of empty beverage containers are included in an order of the department approving a redemption center under section six (6) of this Act.

Sec. 5. NEW SECTION. REFUND VALUE STATED ON CONTAINER.

1. Each beverage container sold or offered for sale in this state by a dealer shall clearly indicate by embossing or by a stamp, label or other method securely affixed to the container, the refund value of the container. The department shall specify, by rule, the minimum size of the refund value indication on the beverage containers.

2. The provisions of subsection one (1) of this section shall not apply to refillable glass beverage containers having a brand name permanently marked on them which have a refund value of not less than five cents or a refillable beverage container which has a five cent deposit on it and which may be exempted by the director in accordance with rules adopted by the commission.

Sec. 6. NEW SECTION. REDEMPTION CENTERS.

1. To facilitate the return of empty beverage containers and to serve dealers of beverages, any person may establish a redemption center, subject to the approval of the department, at which consumers may return empty beverage containers and receive payment of the refund value of such beverage containers.

2. An application for approval of a redemption center shall be filed with the department. The application shall state the name and address of the person responsible for the establishment and operation of the redemption center, the kind and brand names of the beverage containers which will be accepted at the redemption center, and the names and addresses of the dealers to be served by the redemption center. The application shall contain such other information as the director may reasonably require.

3. The department shall approve a redemption center if it finds that the redemption center will provide a convenient service to consumers for the return of empty beverage containers. The order of the department approving a redemption center shall state the dealers to be served by the redemption center and the kind and brand names of empty beverage containers which the redemption center must accept. The order may contain such other provisions to insure that the redemption center will provide a convenient service to the public as the director may determine.

4. The department may review the approval of any redemption center at any time. After written notice to the person responsible for the establishment and operation of the redemption center, and to the dealers served by the redemption center, the commission may, after hearing, withdraw approval of a redemption center if the commission finds there has not been compliance with the department's order approving the redemption center, or if the redemption center no longer provides a convenient service to the public.

5. All approved redemption centers shall meet applicable

health standards.

Sec. 7. NEW SECTION. UNAPPROVED REDEMPTION CENTERS. Any person may establish a redemption center which has not been approved by the department, at which a consumer may return empty beverage containers and receive payment of the refund value of the beverage containers. The establishment of an unapproved redemption center shall not relieve any dealer from the responsibility of redeeming any empty beverage containers of the kind and brand sold by the dealer.

Sec. 8. NEW SECTION. SNAP-TOP CANS PROHIBITED. A person shall not sell or offer for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable in opening the container.

Sec. 9. NEW SECTION. RULES ADOPTED. The commission shall adopt, upon recommendation of the director, the rules necessary to carry out the provisions of this Act, subject to the provisions of chapter seventeen A (17A) of the Code.

Sec. 10. NEW SECTION. APPEAL. Any person aggrieved by an order of the department relating to the approval or withdrawal of approval for a redemption center may seek judicial review of such order as provided in chapter seventeen A (17A) of the Code.

Sec. 11. NEW SECTION. ANNUAL APPROPRIATION. For the fiscal year commencing July 1, 1979, and each fiscal year thereafter, there is appropriated from the beer and liquor control fund to the Iowa department of substance abuse the sum of one hundred thousand (100,000) dollars, or so much thereof as may be available, which appropriation shall be made only from the difference between the funds collected from the deposit required on beverage containers containing alcoholic liquor and the funds dispersed in the payment of the refund value on such beverage containers. The Iowa department of substance abuse shall use the appropriated funds only for the care, maintenance and treatment of alcoholics under chapter one hundred twenty-five (125) of the Code.

Sec. 12. NEW SECTION. PENALTY. Any person violating the provisions of sections two (2), three (3), five (5), and eight (8) of this Act shall be guilty of a simple misdemeanor.

Sec. 13. Section four hundred fifty-five B point ninety-seven (455B.97), Code 1977, is amended by striking unnumbered paragraph two (2).

Sec. 14. EFFECTIVE DATES.

1. This Act shall be effective May 1, 1979 for beverage containers purchased from state liquor stores in this state.

2. This Act shall be effective July 1, 1979 for all beverage containers sold in this state except as provided in subsection one (1) of this section.

DALE M. COCHRAN
Speaker of the House

ARTHUR A. NEU
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 187, Sixty-seventh General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved _____, 1978

ROBERT D. RAY
Governor

HOUSE BILL No. 2842

AN ACT relating to public utilities; relating to rates of return on certain investments of a public utility; amending K.S.A. 66-117 and repealing the existing section.

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

Section 1. K.S.A. 66-117 is hereby amended to read as follows: 66-117. Whenever any common carrier or public utility governed by the provisions of this act shall desire to make any change in any rate, joint rate, toll, charge or classification or schedule of charges, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, such public utility or common carrier shall file with the corporation commission a schedule showing the changes desired to be made and put in force by such public utility or common carrier, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, schedules or classifications, or in new issues thereof.

No change shall be made in any rate, toll, charge or classification or schedule of charges, joint rates, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, without the consent of the commission, and within thirty days after such changes have been authorized by said corporation commission, then copies of all tariffs, schedules, and classifications, and all rules and regulations, shall be filed in every station, office or depot of every such public utility and every common carrier in this state, for public inspection.

Upon a showing by a public utility before the state corporation commission at a public hearing and a finding by the commission that such utility has invested in projects or systems designed to generate or produce energy from other than nuclear sources but which generate such energy from renewable resources including, but not limited to, solar energy, geothermal energy, wind sources and biomass, which projects or systems are capable of, or in fact are, generating or producing energy for commercial purposes, the commission may allow a return on such investment equal to an increment of from one-half percent (½%) to two percent (2%) plus an amount equal to the rate of return fixed for the utility's other investment in property found by the commission to be used or required to be used in its services to the public. The commission may also allow such higher rate of return on investments by a public utility in experimental projects, such as load management devices, which it determines after public hearing to be reasonably designed to cause more efficient utilization of energy.

Sec. 2. K.S.A. 66-117 is hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE and passed that body.

_____

HOUSE concurred in
SENATE amendments _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE
as amended _____

_____
President of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.

CHAPTER 112

(S.B. 136)

AN ACT relating to solid waste demonstration projects.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) It shall be the policy of the Commonwealth of Kentucky to encourage and promote the development and demonstration of efficient, environmentally acceptable and commercially feasible technologies, techniques, processes and markets for resource recovery and energy generation from solid waste in Kentucky.

(2) This policy may be implemented by contracts and agreements with the federal government and its agencies and with other organizations, including private industry, and through organizations that may be formed jointly by the state, the federal government or its agencies, and private industry to conduct developmental and demonstration projects in such organizational form or legal entity deemed appropriate by the participants.

(3) This policy may be implemented by the expenditure of state funds for the preliminary engineering and planning, design, construction and operation of developmental and demonstrative projects in Kentucky, including pilot and demonstration plants, and for the acquisition and improvement of land, construction of roads, and provision of other public facilities incidental and necessary to the accomplishment of developmental and demonstrative projects in Kentucky; provided that the expenditure of state funds for the construction and operation of projects shall be limited to projects for which funds of the federal government have also been committed by grant, loan or other contractual agreement with the Commonwealth, or one or more of its political subdivisions, or one or more corporations doing business in the Commonwealth of Kentucky.

(4) This policy may be implemented by the sale or lease of state property or property rights to organizations engaged in developmental and demonstrative projects in Kentucky, either for a fair and reasonable consideration or solely or partly as all or a portion of the state's participation in developmental and demonstrative projects.

(5) This policy may be implemented by acquisition, by purchase, or by option to purchase and if the Commonwealth is unable to contract or agree with the owner after a good faith effort to do so, by the exercise of eminent domain the fee simple title to, or any acceptable lesser interest in such lands, rights of way, franchises, or easements, including submerged lands and riparian rights that are necessary for the construction, use or operation of any authorized demonstration project or projects and for the construction and operation of a line of railroad, truck road, overhead conveyor, or other transportation facilities together with the necessary rights of ingress and egress to construct, examine, alter, repair, maintain, operate, or remove such transportation facilities. The proceedings for condemnation shall be as provided in KRS 416.410 to 416.530.

(6) This policy may be implemented by contracts and agreements for the Commonwealth to purchase all or a portion of the usable output of developmental and demonstration projects, either for a fair and reasonable consideration or solely or partly as all or a portion of the state's participation in developmental and demonstrative projects, and to dispose of this output by use in state facilities or by resale at fair market value.

SECTION 2. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The administrator of the Kentucky center for energy research with the approval of the governor, may execute contracts to design, construct, or operate development or demonstration projects.

SECTION 3. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The general assembly recognizes that the chance of failure as well as the promise of success affects the developmental and demonstration projects for which state support and joint participation is herein authorized. The liability of the Commonwealth in such projects shall be limited to the express provisions of the contracts and agreements herein authorized, and the Commonwealth's claims against other participants in projects herein authorized shall also be limited to the expressed provisions of such contracts and agreements.

SECTION 4. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The general assembly recognizes that although the purpose of this Act is to promote and encourage the development and demonstration of commercially feasible and environmentally acceptable technologies, techniques, and processes, state funds shall not be used directly to assist private industry in production for profit. Therefore, the Commonwealth shall not provide further support of or participation in any project if and when the environmentally acceptable output of the project can be sold or otherwise used to yield a profit to the project. In such event, or in the event of abandonment or termination of a project, the administrator, Kentucky center for energy research, shall negotiate terms and conditions in an agreement or contract of participation which:

(1) Shall provide for the repayment to the Commonwealth of all funds held and moneys realized from the sale or liquidation of the assets of the joint demonstration project in the same proportion as the Commonwealth's share in the total of funds, property, or other assets expended, contributed, or invested in the project; and

(2) May provide for the preemptive right of any or all of the other participants in the project to purchase the Commonwealth's share of any assets, lands, or property rights acquired or constructed by the joint participants.

SECTION 5. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

To be eligible for assistance under this Act, projects must:

(1) Conform with the state plan for solid waste management;

(2) Be consistent with a regionalized approach to solid waste management and designate the area to be affected initially and potentially by the project;

(3) Designate specific project responsibilities at the state, district and local level;

(4) Demonstrate that private industry would not otherwise develop and demonstrate such a project in a timely fashion;

(5) Show that adequate research has preceded the application by including at least the following information:

(a) Methods for waste collection, storage, processing and residue disposal;

(b) Consideration of alternative small-scale, low-level technology;

(c) Letters of intent from potential purchasers of recovered materials and energy generated;

(d) Potential for eventual self-sufficiency in project operation.

(6) Show that there is substantial support for the proposal by including at least the following information:

(a) Steps which have been taken to guarantee the waste stream;

(b) Steps which have been taken to enact long-term contracts for sale of recovered products and energy generated, and for the supply of waste products;

(c) Sources of other committed funds;

(7) Conform to other requirements set down by regulations issued by the center for energy research.

SECTION 6. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) The secretary for finance and administration in consultation with the administrator of the Kentucky center for energy research and other appropriate agencies, shall attempt to implement by January 1,

1979, a pilot project in state government to recycle used ledger-grade paper, produced by one or more agencies of state government, as a trial program for the Commonwealth and shall report to the legislative research commission by July 1, 1979, on the effectiveness and viability of the program and make recommendations for a state-wide program if appropriate.

(2) The administrator of the Kentucky center for energy research shall take or cause to be taken such actions as may be necessary to:

(a) Identify the geographical location of existing or potential markets for recovered materials and energy generated;

(b) Identify the economic and technical barriers to the use of recovered materials and energy generated;

(c) Identify sound technologies, techniques, and processes for resource recovery and energy generated applicable to both urban and rural areas of Kentucky;

(d) Encourage the development of new uses for recovered materials;

(e) Encourage and promote the development of new markets for recovered materials; and

(f) A summary of the findings and actions taken and any recommendations resulting therefrom shall be transmitted to the governor and to the 1980 general assembly.

Approved March 28, 1978

CHAPTER 113

(S.B. 174)

AN ACT relating to solid and hazardous wastes.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 224.005 is amended to read as follows:

As used in this chapter unless the context clearly indicates otherwise:

(1) "Air contaminant" includes smoke, dust, soot, grime, carbon, or any other particulate matter, radioactive matter, noxious acids, fumes, gases, odor, vapor, or any combination thereof;

(2) "Air contaminant source" means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops, and stores, and heating and power plants and stations, buildings and other structures of all types, including single and multiple family residences, apartments, houses, office buildings, public buildings, hotels, restaurants, schools, hospitals, churches, and other institutional buildings, automobiles, trucks, tractors, buses and other motor vehicles, garages and vending and service locations and stations, railroad locomotives, ships, boats and other waterborne craft, portable fuel-burning equipment, incinerators of all types (indoor and outdoor), refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing;

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or threatens to be injurious to human, plant, or animal life, or to property, or which unreasonably interfere with the comfortable enjoyment of life or property;

(4) "Cesspool" means a cavity in the ground which receives human excrement and domestic wastes to be partially absorbed directly by the surrounding soil;

(5) "Commission" means the environmental quality commission;

(6) "Secretary" means the secretary of environmental protection;

(7) "Department" means the department for natural resources and environmental protection;

(8) *"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;*

(9) "District" means an air pollution control district as provided for in KRS chapter 77;

(10) [(9)] "Effluent limitations" means any restrictions or prohibitions established under state law which includes, but is not limited to, effluent limitations, standards of performance for new sources, and toxic effluent standards on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into waters;

(11) "Generating" means the act or process of producing wastes;

(12) [(10)] "Person" means any individual, public or private corporation, political subdivision, government agency, municipality, copartnership, association, firm, trust, estate, or other entity whatsoever;

(13) [(11)] "Publicly owned treatment works" means any facility for the treatment of pollutants owned by the state, any political subdivision thereof, municipality, or other public entity;

(14) "Recycling" means any process by which wastes are transformed into new products, useful materials, products, or energy;

(15) [(12)] "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with any limitation or standard;

(16) [(13)] "Seepage pit" means a dry well, leaching pit or any other cavity in the ground which receives the liquid discharge of a septic tank;

(17) [(14)] "Septic tank" means a septic toilet, chemical closet and any other watertight enclosure used for storage and decomposition of human excrement and domestic wastes;

(18) [(15)] "Sewage system" means individually or collectively those constructions or devices used for collecting, pumping, treating, and disposing of liquid or waterborne sewage, industrial wastes or other wastes;

[(16) "Solid waste" means all putrescible and nonputrescible refuse in solid form. Solid waste includes but is not limited to garbage, rubbish, ashes, incinerator residue, street refuse, dead animals, demolition wastes, construction wastes, solid commercial and industrial wastes, and special wastes including explosives, pathological wastes and radioactive materials;]

(19) [(17) "Solid] "Waste disposal site or facility" means any place *where solid waste is managed, processed or disposed* [at which solid waste is disposed] of by incineration, landfilling or any other method;

(20) "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous wastes;

(21) [(18)] "Tank" means any container when placed on a vehicle to carry in transport wastes removed from a septic tank, cesspool or seepage pit;

(22) "Transportation" means any movement of hazardous waste by any mode, and any loading, unloading, or storage incidental thereto;

(23) "Treatment" means any method, technique, or process designed to alter the physical, chemical, or biological character or composition of any pollutant or hazardous waste so as to render it less hazardous, nonhazardous, safer for transport, amenable to recycling, amenable for storage, or reduced in volume;

(24) "Waste" means:

(a) "Hazardous waste" means any waste substance or combination of substances, in any form which because of its quantity, concentration or physical, chemical or infectious characteristics may create a threat to public health or to animal, plant, and aquatic life forms, and includes but is not limited to substances which are toxic, flammable, corrosive, radioactive, irritants, strong sensitizers, or which generate pressure through decomposition, heat or other means; nothing in this chapter shall be construed to apply to any activity or substance which is subject to the federal atomic energy act of 1954 or to wastes produced by livestock;

(b) "Solid waste" means all putrescible and nonputrescible refuse in solid, semi-solid, liquid and contained gaseous form, but does not include sewage. Solid waste includes but is not limited to garbage, rubbish, ashes, incinerator residue, street refuse, dead animals, demolition wastes, construction wastes, solid commercial and industrial wastes, residential wastes, and special wastes including explosives, pathological and radioactive materials;

(25) [(19)] "Water" or "waters of the commonwealth" means and includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the commonwealth or within its jurisdiction;

(26) [(20)] "Water pollution" means the alteration of the physical, thermal, chemical, biological, or radioactive properties of the waters of the commonwealth in such a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life or marine life, to the use of such waters as present or future sources of public water supply or to the use of such waters for recreational, commercial, industrial, agricultural or other legitimate purposes.

Section 2. KRS 224.032 is amended to read as follows:

The department for natural resources and environmental protection shall enforce the rules and regulations adopted by the secretary of the department for natural resources and environmental protection for the regulation and control of the matters set out below and shall formulate, promote, establish and execute policies, plans and programs relating to natural resources and environmental protection, including but not limited to the following matters:

(1) The proper disposal of [garbage,] waste [and other refuse];

(2) The safe installation and operation of plumbing and plumbing fixtures;

(3) The purification of water for public and semi-public use;

(4) The proper construction and operation of public water purification plants, distribution systems and swimming pools;

(5) The review, approval or disapproval of plans for construction, modification or extension of water purification and distribution systems and swimming pools; and

(6) The certification of water and sewage plant operators.

Section 3. KRS 224.033 is amended to read as follows:

In addition to any other powers and duties vested in it by law, the department shall have the authority, power, and duty to:

(1) Exercise general supervision of the administration and enforcement of Acts 1972 (1st Ex. Sess.), ch. 3, and all rules, regulations and orders promulgated thereunder;

(2) Prepare and develop a comprehensive plan or plans related to the environment of the commonwealth;

(3) Encourage industrial, commercial, residential and community development which provides the best usage of land areas, maximizes environmental benefits and minimizes the effects of less desirable environmental conditions;

(4) Develop and conduct a comprehensive program for the management of water, land, and air resources to assure their protection and balance utilization consistent with the environmental policy of the commonwealth;

(5) Provide for the prevention, abatement, and control of all water, land, and air pollution including but not limited to that related to particulates, pesticides, gases, dust, vapors, noise, radiation, odor, nutrients, heated liquid, or other contaminants;

(6) Provide for the control and regulation of strip mining and reclamation in a manner to accomplish the purposes of KRS chapter 350;

(7) Secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract or otherwise;

(8) Collect and disseminate information and conduct educational and training programs relating to the protection of the environment;

(9) Appear and participate in proceedings before any federal regulatory agency involving or affecting the purposes of the department;

(10) Enter and inspect any property or premises for the purpose of investigating either actual or suspected sources of pollution or contamination or for the purpose of ascertaining compliance or noncompliance with Acts 1972 (1st Ex. Sess.), ch. 3, or any rule or regulation which may be promulgated thereunder;

(11) Conduct investigations and hold hearings and compel the attendance of witnesses and the production of accounts, books and records by the issuance of subpoenas;

(12) Accept, receive, and administer grants or other funds or gifts from public and private agencies including the federal government for the purpose of carrying out any of the functions of the department. Such funds received by the department shall be deposited in the state treasury to the account of the department;

(13) Request and receive the assistance of any state or municipal educational institution, experiment station, laboratory, or other agency when it is deemed necessary or beneficial by the department in the performance of its duties.

(14) Advise, consult, and cooperate with other agencies of the commonwealth, other states, the federal government, and interstate and interlocal agencies, and affected persons, groups and industries;

(15) Formulate guides for measuring presently unidentified environmental values and relationships so they can be given appropriate consideration along with social, economic, and technical considerations in decision making;

(16) Monitor the environment to afford more effective and efficient control practices, to identify changes and conditions in ecological systems and to warn of emergency conditions;

(17) Adopt, modify or repeal with the recommendation of the commission any standard, rule, regulation or plan specified in subsections (5) and (6) of KRS 224.045.

(18) Issue, after hearing, orders abating activities in violation of this chapter, or the provisions of Acts 1972 (1st Ex. Sess.) ch. 3, or the regulations promulgated pursuant thereto and requiring the adoption of such remedial measures as the department may deem necessary;

(19) Issue, continue in effect, revoke, modify, suspend or deny under such conditions as the department may prescribe, permits to discharge into any waters of the commonwealth, and for the installation, alteration, expansion, or operation of any sewage system; the installation, alteration, or use of any machine, equip-

ment, device or other article that may cause or contribute to air pollution or is intended primarily to prevent or control the emission of air pollution; or the establishment or construction and the operation or maintenance of [solid] waste disposal sites and facilities; and require that applications for such permits be accompanied by plans, specifications, and such other information as the department deems necessary;

(20) May establish, by regulation, a fee or schedule of fees for the cost of processing applications for permits authorized by this chapter, and for the cost of processing applications for exemptions or partial exemptions which may include but not be limited to the administrative costs of a hearing held as a result of such exemption application, except that applicants for existing or proposed publicly owned facilities shall be exempt from any such charge;

(21) May require for persons discharging into the waters *or onto the land* of the commonwealth, by regulation, order or permit, technological levels of treatment and effluent limitations;

(22) Require, by regulation, that any person engaged in any operation regulated pursuant to this chapter install, maintain, and use at such locations and intervals as the department may prescribe any equipment, device or test and the methodologies and procedures for the use of such equipment, device or test to monitor the nature and amount of any substance emitted or discharged into the ambient air or waters *or land* of the commonwealth and to provide any information concerning such monitoring to the department in accordance with the provisions of subsection (23) of this section;

(23) Require by regulation that any person engaged in any operation regulated pursuant to this chapter file with the department reports containing information as to location, size, height, rate of emission or discharge, and composition of any substance discharged or emitted into the ambient air or into the waters *or onto the land* of the Commonwealth, and such other information as the department may require; [and]

(24) *Establish a comprehensive waste management plan in order to ensure that wastes are properly collected, stored, processed, transported, disposed, and recycled; and*

(25) [(24)] Perform such other and further acts as may be necessary to carry out the duties and responsibilities herein described.

Section 4. KRS 224.037 is amended to read as follows:

The department is hereby designated as the water pollution agency for this state and for any city, county, or district, or authority within this state for all purposes of the Water Pollution Control Act (Public Law 80-845, approved June 30, 1948), as amended; as air pollution agency for this state for all purposes of the Federal Air Quality Act (Public Law 90-148, approved November 21, 1948), as amended, and as solid waste agency for this state for all purposes of the Federal Solid Waste Disposal Act (Public Law 89-272, approved October 20, 1965), as amended, *and as management agency for solid waste and hazardous waste for purposes of the resource conservation and recovery act (Public Law 94-580, approved October 21, 1976).* The department may take all action necessary or appropriate to secure to this state and all cities, counties, districts, and authorities within this state the benefits of such federal acts.

Section 5. KRS 224.045 is amended to read as follows:

The environmental quality commission shall have the power, duty and authority to:

(1) Establish such advisory committees as may be necessary and convenient.

(2) Advise the secretary on any matter within his responsibility which it deems necessary.

(3) Advise the governor on any matter covered by the provisions of Acts 1972 (1st Ex. Sess.), ch. 3.

(4) Serve as a working public forum for the exchange of views, concerns, ideas, information, and recommendations relating to the quality of the natural environment.

(5) Recommend adoption or rejection by a majority of its membership present and voting any proposal by the department to adopt, modify or revoke:

(a) Any positions proposed to be taken by the department on behalf of the state before interstate and federal agencies or federal legislative bodies on matters relating to or affecting the quality of the environment of the state;

(b) Any rule or regulation pertaining to the procedural aspects of hearings, appeals, the filing of reports, the issuance of orders, the issuance of permits, and the application for and the granting of exemptions; or

(c) Any procedures for the financial assistance grants proposed to be given to municipal, regional, county, or state organizations for environmental purposes.

(6) Recommend adoption or rejection after public hearing by a majority of its membership present and voting any proposal by the department to adopt, modify, or revoke:

(a) Any comprehensive environment quality plan, program or policy proposed for adoption as a state plan or policy pertaining to an environmental management activity; or

(b) Any rule or regulation pertaining to the prevention, abatement, and control of existing or threatened air or water pollution, disposal of [solid] waste, control of noise, or the use of air, land, or water resources, or strip mining and reclamation.

(7) Establish an advisory committee on noise control, which shall consist of a sound engineer, an audiologist, and one representative from each of the following: transportation industry, manufacturing industry, labor, citizenry, and the general assembly. Such members shall be appointed with the approval of the secretary, who shall be an ex officio member.

Section 6. KRS 224.250 is amended to read as follows:

It is hereby declared to be the policy of this commonwealth and the purpose of this chapter to provide for the disposal of [solid] waste in a manner that will protect the public health and welfare, prevent the spread of disease and creation of nuisances, conserve our natural resources, and enhance the beauty and quality of our environment.

Section 7. KRS 224.255 is amended to read as follows:

(1) No person shall *transport to or* dispose of *hazardous* [solid] waste at any site or facility other than a site or facility for which a permit for *hazardous* [solid] waste disposal has been issued by the department. *Upon request, any transporter of hazardous waste shall receive from the department a current list of permitted hazardous waste disposal sites or facilities and shall be subsequently notified of any new permits or changes in the status of permits for hazardous waste disposal sites and facilities in the Commonwealth.*

(2) The use of open dumps is prohibited.

Section 8. KRS 224.850 is amended to read as follows:

(1) For purposes of KRS 224.850 and 224.852 only, "pollution control facility" shall mean and include:

(a) Any property designed, constructed, or installed as a component part of any commercial or industrial premises for the primary purpose of eliminating or reducing the emission of, or ground level concentration of, particulate matter, dust, fumes, gas, mist, smoke, vapor, or odorous substances, or any combination thereof which renders air harmful or inimical to the health of persons or to property within this commonwealth;

(b) Any disposal system or any treatment works, pre-treatment works, appliance, equipment, machinery, or installation constructed, used, or placed in operation primarily for the purpose of reducing, controlling, or eliminating thermal pollution or water pollution caused by industrial waste, or what would be industrial waste, if discharged into the waters of the commonwealth;

(c) Any disposal system or any appliance, equipment, machinery or installation constructed, used or placed in operation primarily for disposing of solid waste or converting solid waste into an item of real economic value;

(d) Any property designed, constructed, or installed as a component part of any commercial or industrial premises for the primary purpose of eliminating or reducing the emission of sound which is harmful or inimical to the health of persons or to property, or materially reduces the quality of the environment in this commonwealth;

(e) Any property designed, constructed, or installed for the primary purpose of removing substances from raw materials, which substances, if permitted to become a component part of the finished product, would have a deleterious effect on the environment when the finished product was utilized.

(2) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any natural resource, together with such sewage as is present, which pollutes the waters of the commonwealth.

(3) "Solid waste" means *all putrescible and nonputrescible refuse in solid, semi-solid, liquid and contained gaseous form, but does not include sewage. Solid waste includes but is not limited to garbage, rubbish, ashes, incinerator residue, street refuse, dead animals, demolition wastes, construction wastes, solid commercial and industrial wastes, residential wastes, and special wastes including explosives, pathological and radioactive materials* [any residue in a solid or semi-solid form resulting from any process of industry, manufacture, trade or business or from the development, processing, or recovery of any natural resource, which has insignificant economic value].

(4) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding sewage, industrial waste, or other wastes.

(5) "Water pollution" shall mean the placing of any noxious or deleterious substances in any waters of the commonwealth which render such waters harmful or inimical to aquatic life, or to the use of such waters for domestic water supply, or industrial or agricultural purposes or for recreation.

(6) "Waters of the commonwealth" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this commonwealth, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters.

(7) "Department" shall mean the Kentucky department for natural resources and environmental protection.

(8) "Pollution control tax exemption certificate" shall mean that certificate issued by the department pursuant to KRS 224.852.

Section 9. KRS 224.852 is amended to read as follows:

(1) Application for a pollution control tax exemption certificate shall be filed with the department in such manner and in such form as may be prescribed by regulations issued by the department and shall contain plans and specifications of the structure or structures including all materials incorporated and to be incorporated therein and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of air, noise, [solid] waste or water pollution control and any additional information deemed necessary by the department of revenue for the proper administration of Acts 1974, Chapter 137. If the department finds that the facility qualifies as a pollution control facility as defined in KRS 224.850(1), it shall enter a finding and issue a certificate to that effect. The effective date of said certificate shall be the date of the making of the application for such certificate.

(2) Before issuing a pollution control tax exemption certificate, the department shall give notice in writing by mail to the commissioner of revenue, and shall afford to the applicant and to the commissioner of revenue an opportunity for a hearing. On like notice and opportunity for a hearing, the department shall on its own initiative revoke such certificate whenever any of the following appears:

(a) The certificate was obtained by fraud or misrepresentation;

(b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of the pollution control facilities;

(c) The structure or equipment or both to which the certificate relates has ceased to be used for the primary purpose of pollution control and is being used for a different purpose.

(3) Provided, however, that where the circumstances so require, the department in lieu of revoking such certificate may modify the same.

(4) On the mailing of notice of the action of the department revoking or modifying a certificate as provided in subsection (5) of this section, such certificate shall cease to be in force or shall remain in force only as modified as the case may require.

(5) A pollution control tax exemption certificate, when issued, shall be sent by certified mail to the applicant and notice of such issuance in the form of certified copies thereof shall be sent to the commissioner of revenue. Notice of an order of the department denying, revoking, or modifying a certificate in the form of certified copies thereof shall be sent by certified mail to the applicant or the holder thereof and shall be sent to the commissioner of revenue. The applicant or holder and the commissioner of revenue are deemed parties for the purpose of the review afforded by subsection (6) of this section.

(6) Any party aggrieved by the issuance, refusal to issue, revocation, or modification of a pollution control tax exemption certificate may appeal from the final ruling of the department to the Kentucky board of tax appeals as provided in KRS 131.340.

(7) In the event of the sale, lease, or other transfer of a pollution control facility, not involving a different location or use, the holder of a pollution control tax exemption certificate for such facility may transfer the certificate by written instrument to the person who, except for the transfer of the certificate, would be obligated to pay taxes on such facility. The transferee shall become the holder of the certificate and shall have all rights pertaining thereto, effective as of the date of transfer of the facility or the date of transfer of the certificate, whichever is earlier. The transferee shall give written notice of the effective date of the transfer, together with a copy of the instrument of transfer to the Department and to the Department of Revenue.

(8) In the event a pollution control facility for which an exemption certificate is held ceases to be used for the primary purpose of pollution control or is used for a different purpose than that for which the exemption certificate was granted, the holder of the certificate shall give written notice by certified mail of such change to the department and to the department of revenue.

Section 10. KRS 224.855 is amended to read as follows:

(1) No [construction] permit shall be issued until a complete application has been submitted to the department and the applicant has published that he has made application for a *waste disposal* [landfill] site *or facility* in a manner reasonably calculated to inform that portion of the public which is most likely to be affected by the operation of the proposed *waste disposal* [landfill] site *or facility*.

(2) At a minimum, publication shall be made at least once by advertisement in a daily or weekly newspaper of general circulation in the locality where the proposed site is to be located.

(3) The contents of the public notice of an application for a *waste disposal* [landfill] site *or facility* shall include the following:

(a) The name and address of the applicant;

(b) A brief description of the activity for which a permit is being sought;

(c) A description of the proposed location;

(d) The name and address of this department; and

(e) The following statement: "Any person who may be aggrieved by the issuance of a permit for this proposed *waste disposal site or facility* [landfill] may file with the department a [verified] petition which sets forth the grounds *of the objection* [whereby he may be injured] and demand a hearing pursuant to KRS 224.081(2)." Such hearing shall be held within the county where the *solid waste disposal site or facility* [landfill] is proposed.

(4) No permit shall issue until at least thirty (30) days have expired following publication of the application. The applicant for a permit must establish the date of publication by a verified affidavit from the newspaper which publishes the advertisement. If a hearing is requested, no permit shall be issued prior to a completed hearing.

(5) No permit shall be issued by the department for a hazardous waste disposal site for long-lived wastes that may require long term or perpetual care and maintenance except with the consent and approval of a majority of the members of the Kentucky house of representatives, a majority of the members of the Kentucky senate and the approval of the governor of Kentucky.

(6) Before an application to locate such a hazardous waste disposal site in Kentucky can be submitted for approval to the Kentucky general assembly, it must first receive the approval of the secretary of the department for natural resources and environmental protection. It shall be the responsibility of the department for natural resources and environmental protection to ensure that a comprehensive environmental impact statement is submitted and that public hearings are held in the county in which it is proposed to locate such a hazardous waste disposal site.

Section 11. KRS 224.890 is amended to read as follows:

(1) The department shall promulgate regulations which establish reporting procedures and standards for the generation, storage, treatment, recycling and disposal of hazardous wastes.

(2) The department shall promulgate regulations identifying the characteristics of hazardous wastes and listing hazardous wastes.

(3) The department shall promulgate regulations establishing requirements for record-keeping concerning the origin, composition, quantity, handling, and disposition of hazardous wastes.

(4) No person shall engage in the generation, storage, treatment, recycling or disposal of hazardous wastes without first obtaining a permit from the department. Every application for a permit to generate hazardous waste shall be accompanied by a plan which shall include:

(a) A statement of the kind and chemical composition of the waste to be generated;

(b) The plan for disposal inbluding the location of the disposal site and the method of disposal utilized at the site;

(c) The proposed method for transportating the waste for purposes of disposal including the kind of transportation to be utilized. If the name and address of the transporter is known the same shall be included, or if not known, then the plan for advising the department of such information in advance of such transportation. [Hazaradous waste means any substance or combination of substances depositions of which may create a threat to public health or to animal and aquatic life forms.

(2) No person engaged in collecting, hauling and the disposal of hazardous wastes for hire on a seasonal or continuing basis shall dump at any permitted or unpermitted disposal facility after July 1, 1974 without having first obtained a permit from the department. The permit shall authorize the operator to engage in collecting, hauling and the disposal of hazardous wastes for a period of one year from the date of its issuance.]

(5) [(3)] A person desiring a permit shall file an application *on forms supplied by the department* which shall *contain such information the department deems necessary and provide evidence that the hazardous wastes shall be treated, stored, or disposed of at an approved site or facility in the manner prescribed by the department.* [state:]

(6) In conjunction with the application for permits under (4), the applicant shall post a bond with the department in an amount determined by the department to be sufficient to insure compliance.

[(a) The business name and address and phone number of the hauler;

(b) The locations where the hauler shall dispose of hazardous wastes;

(c) The name of any person contracting with the hauler for the disposal of hazardous wastes; and

(d) The nature of the hazardous waste.]

(7) [(4)] Hazardous waste may only be disposed of at an approved site or facility.

Section 12. KRS 224.994 is amended to read as follows:

(1) Any person who violates KRS 224.060, 224.330 or who fails to perform any duties imposed by these sections, or who violates any determination or order of the department promulgated pursuant thereto shall be liable to a civil penalty not to exceed the sum of five thousand dollars ($5,000) for each day during which such violation continues, and in addition, may be enjoined from continuing such violations as hereinafter provided in this section.

(2) Any person who willfully violates KRS 224.060, 224.330 or any determination or order of the department promulgated pursuant to those sections which has become final shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000) or by imprisonment for a term of not more than one year or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation.

(3) Any person who violates any *provision* [other provisions] of this chapter other than KRS 224.060, [and KRS] 224.330, *and 224.890* except as provided in KRS 224.992, or who fails to perform any duties imposed by those sections, or who violates any determination or order of the department promulgated pursuant thereto shall be liable to a civil penalty [of] not to exceed the sum of one thousand dollars ($1,000) for said violation and an additional civil penalty [of] not to exceed one thousand dollars ($1,000) for each day during which such violation continues, and in addition, may be enjoined from continuing such violations as hereinafter provided in this section.

(4) The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil, criminal, and injunctive actions instituted by the department or by the Attorney General on its behalf for the enforcement of the provisions of this chapter or the orders, rules, and regulations of the department promulgated pursuant thereto.

SECTION 13. A NEW SECTION OF KRS. 224.990 TO 224.997 IS CREATED TO READ AS FOLLOWS:

(1) Any person who violates any of the provisions of KRS 224.890 or who fails to perform any duties imposed by KRS 224.890 or who violates any determination or order of the department promulgated pursuant thereto shall be liable for a civil penalty not to exceed the sum of twenty-five thousand dollars ($25,000) for each day during which such violation continues, and in addition, may be enjoined from continuing such violations as hereinafter provided in this section.

(2) It shall be the duty of the department's office of general counsel, or upon the secretary's request, of the attorney general, to bring an action in the name of the Commonwealth for the recovery of the penalties hereinabove provided for, and to bring an action for an injunction against any person violating or threatening to violate any provision of KRS 224.890 or violating or threatening to violate any order or determination of the department promulgated pursuant thereto. In any such action any finding of the agency shall be prima facie evidence of the fact or facts found therein.

(3) Any person who shall wilfully violate any of the provisions of KRS 224.890 or any determination or order of the department promulgated pursuant thereto shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed twenty-five thousand dollars ($25,000) for each day of violation or by imprisonment for a term not to exceed one (1) year or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation. If the conviction is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine not to exceed fifty thousand dollars ($50,000) for each day of violation or by imprisonment for a

term not to exceed two (2) years or by both fine and imprisonment.

(4) Nothing herein contained shall abridge the right of any person to recover actual compensatory damages resulting from any such violation.

SECTION 14. A NEW SECTION OF KRS CHAPTER 109 IS CREATED TO READ AS FOLLOWS:

Any county or solid waste district may require the use of any solid waste management facility or other facility meeting the standards of the department under KRS Chapter 109 by all persons, firms and governmental entities situated within the geographical boundaries thereof; provided, however, that such mandatory use of any solid waste management facility shall not be applicable to any city situated within the geographical boundaries of any such county which owns and operates a municipal solid waste management facility, and which complies with the intent and purposes herein provided, other than a sanitary landfill upon the effective date of this Act.

Section 15. KRS 224.870 and 224.900 are repealed.

SECTION 16. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

Any regulation promulgated relating to hazardous and solid waste shall be no more stringent than federal requirements.

Approved March 28, 1978

CHAPTER 115

(S.B. 301)

AN ACT relating to solid waste.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 109 IS CREATED TO READ AS FOLLOWS:

The general assembly of the Commonwealth of Kentucky hereby finds, determines and declares, as follows:

(1) That an ever-increasing volume of solid waste within the Commonwealth is being generated as a result of increasing economic and commercial activity, continuing technological progress and changes in methods of manufacturing, packaging and marketing of consumer products, which results in additional solid wastes discarded by the users of such products;

(2) That the continued economic and population growth of the Commonwealth has required increased industrial and commercial expansion and has made necessary the demolition of obsolete structures, the construction of new structures, the provision of highways and other avenues of transportation and the construction and installation of public works which, together with pre-existing commercial, industrial and agricultural operations, have resulted in the generation of further volumes of solid wastes;

(3) That the handling of solid wastes has been primarily carried out through the dumping of such wastes on open soil and in landfills, which in some cases are inimical to the public health, safety and welfare;

(4) That by the enactment by the Congress of the United States of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580), the collection, sanitary disposal and recovery of solid wastes has been determined to be a matter of nationwide importance, recognizing that the management of solid wastes should continue to be primarily the function of state, regional and local agencies; and that pursuant to such federal law, the Commonwealth has taken and will take certain actions in respect to the planning and implementation of solid waste plans within the guidelines of time requirements set forth in such federal law;

(5) That as a result of the conditions described in the foregoing findings, problems of solid waste collection, management and treatment and resource recovery activities in connection therewith have become a matter of state-wide concern necessitating action by the general assembly to (a) enable responsible planning and management agencies to be created to define solid waste management requirements, with all of the foregoing subject to regulation by the department for natural resources and environmental protection, and (b) assist those units of government primarily responsible for the management of solid waste and the acquisition, financing and operation of facilities to dispose of same to fulfill their functions in a responsible and proper manner with primary emphasis on the regionalization of such functions; and

(6) That it is the intent of the general assembly of the Commonwealth of Kentucky that the primary responsibility for adequate solid waste collection, management, treatment, disposal and resource recovery shall rest with counties, or combinations of cities and counties, subject to rules, regulations, criteria and requirements promulgated by the department for natural resources and environmental protection and subject to approval by such department of the implementation of solid waste collection, treatment, disposal, and resource recovery plans, all for the purpose of effectuating the safe and sanitary management, use and handling of solid waste, the protection of the health, welfare and safety of the citizens and inhabitants of the Commonwealth and for making the most efficient use of all resources for the benefit of the citizens and inhabitants of the Commonwealth.

(7) That the general assembly recognizes that the generation of solid waste is inevitable, but that much of it is unnecesary and should be discouraged; however, where solid waste does exist, it should be considered to the extent possible as a valuable resource, and be made use of wherever and whenever desirable and economically justifiable; therefore, it shall be the policy of the Commonwealth to, above all things, encourage resource conservation and preservation of our natural resources before such waste contributes in a needless fashion to the volumes of solid waste and litter produced by our society, but in dealing with existing solid waste, materials recovery from the solid waste stream is deemed to be the most environmentally sound alternative for handling waste.

(8) It is not the intent of this Act to prohibit or discourage the participation of the private sector in any aspect of solid waste management. Moreover, it is preferable for solid waste management functions to be performed by the private sector when such is in the best interests of the public and conforms with the policies and provisions set forth in this Act.

(9) It is the intent of the general asssembly that this Act provide counties with three (3) alternative approaches to the development and implementation of solid waste management plans. With the approval of the department, a single county in conjunction with the cities in that county may function as a solid waste management area as provided in Section 8 of this Act, or counties may elect to operate as multi-county areas in which they may agree to function pursuant to the terms of a contract as provided in Section 9 of this Act, or they may elect to operate as a district pursuant to Sections 10—13 of this Act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 109 IS CREATED TO READ AS FOLLOWS:

(1) "Board of Directors" or "board" means the governing body of a solid waste management district.

(2) "City" means an existing city of any class.

(3) "County" means the governing body of a county, including urban county governments.

(4) "Department" means the department for natural resources and environmental protection.

(5) "District" means any solid waste management area electing to operate under the provisions of Sections 10—13 of this Act in conformance with Public Law 94-580.

(6) "Person" means any and all persons, natural or artificial, including any individual, firm or association, any municipal or quasi-municipal corporation or private corporation, any county and any other governmental agency and political subdivision of the Commonwealth or any subdivision or instrumentality of the United States of America.

(7) "Resource Recovery" means any process by which components of solid waste are recovered for reuse or transformed into useful materials, products or energy.

(8) "Sanitary landfill" means a facility for the disposal of solid waste consistent with and pursuant to criteria established by the Solid Waste Disposal Act (42 USC 3251) and the Resource Conservation and Recovery Act of 1976, Public Law 94-580.

(9) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

(10) "Solid waste management" means any and all processes by which solid waste is collected, transported, stored, separated, processed or disposed of in any manner according to an orderly and planned program of a county or multi-county solid waste management area duly approved by the department.

(11) "Solid waste management area" or "area" means any county or group of counties designated by the department for the purpose of solid waste management.

(12) "Solid waste management facility" means any solid waste treatment and handling or disposal facility, interim holding or transfer facility, or volume reduction plant consisting of, but not limited to, structures, incinerators, pulverizers, compactors, graters, shredders, bailers, roller grates, heat transferral units, steam and energy generating units and other related facilities which accept and process solid waste.

SECTION 3. A NEW SECTION OF KRS CHAPTER 109 IS CREATED TO READ AS FOLLOWS:

The department for natural resources and environmental protection of the Commonwealth of Kentucky is hereby designated as the official planning and management agency of the Commonwealth of Kentucky in the field of solid waste. The department shall have primary responsibility for the promulgation of rules, regulations and criteria for coordinating the solid waste planning and management activities of cities, counties, or any combination thereof and for the approval of solid waste management facilities.

SECTION 4. A NEW SECTION OF KRS CHAPTER 109 IS CREATED TO READ AS FOLLOWS:

(1) The department shall promulgate rules, regulations, guidelines and criteria for cities, and counties in creating solid waste management areas and planning for the management and recovery of solid waste, consistent with the statewide plan.

(2) Pursuant to such rules, regulations, criteria and guidelines, cities and counties, acting as solid waste management areas shall have a solid waste management plan by January 1, 1981.

(3) Any county or group of counties, or combination of cities and counties acting in accordance with the state comprehensive plan shall apply to the department for designation as a solid waste management area. Upon receipt of such application, the department shall either approve the creation of an area for solid waste management purposes or shall disapprove such application, and in the event of disapproval shall state in writing the reasons for such disapproval.

(4) Counties and cities are expressly authorized in addition to the powers enumerated in KRS Chapter 65 to contract with one another in order to regionalize solid waste management to the maximum extent practicable.

(5) In the event a solid waste management plan is prepared and submitted to and approved by the department by an area development district created pursuant to KRS Sections 147A.050 to 147A.120, inclusive, which includes any entire county or city, such county or city shall be deemed by the filing of such area development district plan to have complied with the provisions of this section.

SECTION 5. A NEW SECTION OF KRS CHAPTER 109 IS CREATED TO READ AS FOLLOWS:

Each area solid waste management plan shall be prepared in accordance with rules and regulations to be promulgated by the department and shall include, but not be limited to, the following:

(1) An estimate of the long-range needs for solid waste management facilities projected not less than twenty (20) years into the future;

(2) An inventory and description of all existing facilities wherein or whereby solid waste is being treated or disposed of, including an inventory of the deficiencies, if any, of such facilities in meeting current solid waste management needs;

(3) A description of the comprehensive land use plan, if any, of such county or counties composing the area describing the interrelationship of the solid waste management plan to such land use plan;

(4) A statement as to the ability of present solid waste management facilities to comply with state and federal environmental laws relating to solid waste;

(5) A plan for the acquisition of solid waste management facilities, together with a capital construction budget and a financing plan in respect thereto;

(6) A demographic study showing current and projected population density of each county and identifying population centers and centers of solid waste generation;

(7) A description of any proposed resource recovery plan or facility.

SECTION 6. A NEW SECTION OF KRS CHAPTER 109 IS CREATED TO READ AS FOLLOWS:

(1) In addition to all other powers enumerated in Chapter 67 and other sections of the Kentucky Revised Statutes, counties, acting by and through their fiscal courts, may plan, initiate, acquire, construct and maintain solid waste management facilities and promulgate rules and regulations with respect thereto in accordance with this Act.

It is hereby determined and declared that in the implementation, acquisition, financing and maintenance of solid waste management facilities, and in respect of enforcement of use thereof, counties will be performing state functions duly delegated thereto for the public welfare. In such regard, the right of counties to condemn land necessary for the acquisition of solid waste management facilities pursuant to the Eminent Domain Act of Kentucky and to exercise the police power in respect thereto is confirmed. Any county may contract with third parties for the management by public or private means of solid waste within the county.

(2) No solid waste management facility shall be acquired and constructed until the construction thereof has been approved in writing by the department. Permits for sanitary landfills shall be issued only in accordance with the policy set forth in Section 1(7) of this Act. No county shall prohibit any materials recovery operations unless it is established that such operation would jeopardize a city, county, or district's ability to meet financial obligations incurred in the maintenance, operation, or amortization of capital acquisition costs for a solid waste management facility.

(3) Any county undertaking the planning, implementation, construction, installation, acquisition and financing of a solid waste management facility pursuant to this Act shall have the authority set forth in Chapter 58 of the Kentucky Revised Statutes in respect of the financing of such solid waste management facility including the authority to promulgate, enforce and collect reasonable rates, rentals and charges for the use of such solid waste management facility.

(4) Bonds authorized to be issued by any county pursuant to the authority of this Act for the financing of solid waste management facilities may be sold at either private or public sale as may in the sound discretion of the county be in the best interests of the county.

(5) Any city or county undertaking solid waste management pursuant to the provisions of this Act may contract with any firm, person, corporation or governmental entity outside the geographical boundaries of such county for the provision of solid waste management services. In connection with solid waste management, any city or county may enter into contracts with any firm, person, corporation or governmental entity for any term of years.

(6) Counties are authorized to charge a reasonable fee to haulers for the handling of their waste at a solid waste management facility approved by the department.

(7) Counties are authorized to sell or market materials and energy recovered from solid waste and to enter into long-term contracts to insure markets for the sale of recovered products.

(8) In carrying out the provisions of this Act, counties shall be subject to the rules, regulations and requirements promulgated by the department in respect of solid waste.

SECTION 7. A NEW SECTION OF KRS CHAPTER 109 IS CREATED TO READ AS FOLLOWS:

Any county or district may, jointly with any city or cities of any class or with any other county or counties, plan, implement, construct, install, acquire and finance or otherwise provide by contract solid waste management pursuant to this Act, and in respect thereof shall have all authority, power, rights and duties and shall be subject to all restrictions set forth in this Act, and as provided in Chapter 58 of the Kentucky Revised Statutes.

SECTION 8. A NEW SECTION OF KRS CHAPTER 109 IS CREATED TO READ AS FOLLOWS:

Where it is consistent with the policy set forth in this Act and approved by the department one (1) county may be designated as a solid waste management area.

Section 9. KRS 109.020 is amended to read as follows:

When the governing bodies of two (2) or more [cities or] counties, *and the most populous city of each such county* [or both, have declared by ordinance, order or resolution that it is in the best interest of such cities and counties to] join with each other in the *management* [collection and disposal] or solely in the collection or solely in the disposal of *solid waste in accordance with the state solid waste management plan* [garbage and refuse] they *may* [shall] cause a contract to be prepared and executed which shall set forth:

(1) Whether and to what extent [such] cities and counties, [or both,] shall render services to the *area* [district] and receive services from the *area* [district] or from each other.

(2) Whether [such] cities *and* [,] counties [or any of them] will contract with a private party or parties for the *management* [collection] of *solid waste* [garbage and refuse].

(3) The financial responsibilities and contributions of the respective cities and counties in the joint undertaking.

(4) The extent to which the cities and counties will furnish personnel and administrative services to the *area* [district].

(5) The terms of the contract or agreement: Provided That such contract may be modified from time to time as conditions may warrant and provided one or more additional [cities and] counties desiring to participate in the joint undertaking may be permitted to become parties to the contract [or that any participant may withdraw therefrom on such conditions as shall be agreed to by all participants].

(6) Such other provisions as may be necessary to execute a workable system *for solid waste management* [of collection and disposal] or solely of collection or solely of disposal of *solid waste* [garbage and refuse].

SECTION 10. A NEW SECTION OF KRS CHAPTER 109 IS CREATED TO READ AS FOLLOWS:

Whenever two (2) or more counties elect to join together for the purposes of solid waste management they may establish and maintain a district. Districts shall have all powers and authority set forth in Section 6 of this Act.

The district shall be controlled and managed by a board of directors consisting of the county judges/executive of every county, or portion of a county, within that district and the mayor of the most populous city in each county. In the instance that a city is incorporated into a district, and the remainder of the county lies within another district, the mayor of said city shall be represented on the board of that district.

Section 11. KRS 109.120 is amended to read as follows:

The board may adopt such rules and regulations as are necessary to carry out the purposes for which the district was created and necessary to the adequate *management* [collection and disposal] of *solid waste* [garbage and refuse] in a manner adequate to protect the public health *and consistent with such rules and regulations as may be promulgated by the department.*

Section 12. KRS 109.150 is amended to read as follows:

The district may acquire by bequest, gift, grant or purchase such real and personal property or any interest therein as may be necessary to accomplish its purposes. Title to all property acquired by the district shall vest solely in the name of the district. With the approval of the department the district may apply for and receive funds made available under federal legislation in the form of grants and loans and for the purpose of improving *solid waste management* [collection systems and disposal methods of garbage and refuse].

Section 13. KRS 109.180 is amended to read as follows:

(1) *Any county or* [The] district may levy an annual tax of not to exceed ten cents (10¢) on each one hundred dollars ($100) of assessed valuation of real property within the *area* [district] subject to taxation for county purposes. The proceeds of such tax shall be used for expenses of the *area* [district] and for redemption of any bonds issued [by the district pursuant to KRS 109.170].

(2) The *county or* district may in lieu of the tax provided in subsection (1) or in addition thereto finance the maintenance, [and] operation *and capital acquisition costs* of the *area* [district] by *fees* [service charges] to be collected from all persons receiving services from the *area* [district]. Such charges shall be fixed in such amounts as can be reasonably expected to yield revenues not in excess of the cost of operation and maintenance of the system and for an adequate depreciation fund *and amortization of capital acquisition costs.*

(3) The service charges authorized by subsections *(1) and* (2) *of this section* may be collected by the *area* [district] directly or the *area* [district] may enter into an agreement with other utilities either public or private *to collect* [where possible on such terms as may be acceptable to both for the collection of] such charges.

SECTION 14. A NEW SECTION OF KRS CHAPTER 109 IS CREATED TO READ AS FOLLOWS:

This Act shall not apply to garbage and refuse districts established pursuant to KRS Chapter 109 at the time of enactment of this legislation unless such do not comply with the federal resource conservation and recovery act and with the state solid waste management plan.

SECTION 15. KRS 109.010, Definitions; 109.030, Garbage disposal districts establishment by fiscal court and cities; 109.040, Board of directors of garbage disposal district; 109.050, Oath and bond of directors; 109.060, Directors, term of office; 109.070, Plans of Districts Operation; 109.080, Methods of disposal; 109.090, Collection and disposal before plans approved unlawful; 109.095, Discontinuance by petition of majority; 109.100, Engineer and attorney for board—ersonnel—ffices; 109.130, Contracts for service outside district, are repealed.

Approved March 28, 1978

CHAPTER 119

(H.B. 253)

AN ACT relating to litter.

WHEREAS, there has been an increase in litter and littering in all are of the state of Kentucky due at least in part to the increased mobility of the citizens of the state and visitors to the state, the increased consumption of food, beverages and other products away from the home and other changes in the standards and modes of living of the public; and,

WHEREAS, there is insufficient public awareness of the extent of litter and littering in the state; and that current efforts to motivate the public to cease littering and cleanup litter are inadequate; and,

WHEREAS, current efforts and expenditures to enforce laws against littering, to cleanup and collect litter, to recover and recycle waste materials, and to study and adopt new and innovative methods for dealing with litter and littering are inadequate; and,

WHEREAS, those businesses whose products significantly contribute to litter in the state have a responsibility to financially assist in programs of litter reduction and materials recycling; and,

WHEREAS, the Commission on Solid Waste has recommended that this bill be submitted to the General Assembly, it shall not be the policy of the Commonwealth that this Act substitute for a Bottle Bill or any other such source reduction and conservation measures;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

This Act shall be known as the resource conservation, recovery and beautification act.

SECTION 2. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The legislature declares that it is the purpose of this Act to promote state-wide programs under the responsibility of a single agency to reduce litter and littering, to recover and recycle waste materials with the consequent conservation of resources and energy and to foster an attitude on the part of the citizens of the state which will result in a state-wide environment as totally litter-free as is possible. The intent of the legislature is to add to and coordinate, and not to replace, existing efforts in the areas of litter control and reduction, source separation and recycling, and research relating to resource recovery. Where feasible, it is further the intent of the legislature to create jobs through employment of youth in litter cleanup and related activities. This program shall include:

(1) Publicity, educational and motivational campaigns to build and sustain public awareness of litter and of the unacceptability of littering, and to create a litter-free ethic;

(2) Stimulation of community pride and a desire on the part of the public to have a litter-free state;

(3) Efforts to gain a better understanding of the causes of littering and effective ways to deal with littering and litter;

(4) Encouragement of and increased funds for litter cleanup and collection, litter prevention and cleanup equipment;

(5) Stepped-up enforcement of laws to control and reduce litter and littering; and,

(6) Encouragement and funding of source separation and materials recycling programs and research relating to resource recovery, designed to foster the reuse of materials with resultant savings in resources and energy.

SECTION 3. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) "Department" means the department for natural resources and environmental protection.

(2) "Fund" means the resource conservation, recovery and beautification fund.

(3) "Litter" means all waste materials including but not limited to disposable packages or containers thrown or deposited as herein prohibited but not including the waste of the primary processes of mining, logging, sawmilling, farming or manufacturing.

(4) "Litter bag" means a bag, sack or other container made of any material which is large enough to serve as a receptacle for litter inside a vehicle or watercraft.

(5) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or other entity whatsoever.

(6) "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests, including but not limited to highways or other roads upon which vehicles are moved, parks, campgrounds, trailer parks, drive-in and fast food restaurants, gasoline service stations, parking lots for taverns, shopping centers and grocery stores, parking lots, marinas, boat launching areas, boat moorage and fueling stations, public and private piers, beaches and bathing areas, school grounds, sporting event sites and business district sidewalks.

(7) "Recycling" means the process of separating, cleansing, treating, and reconstituting waste or other discarded materials for the purpose of recovering and re-using the resources contained therein.

(8) "Recycling center" means a central collection point in a community for recyclable materials.

(9) "Resource recovery" means a system or process for the recovery of materials or energy or both from waste material.

(10) "Source separation" means separation by the public from their general refuse of recyclable materials.

(11) "Vehicle" means every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(12) "Watercraft" means any boat, ship, vessel, barge or other floating craft.

SECTION 4. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The department for natural resources and environmental protection is given the authority to administer the provisions and programs of this Act and the responsibility to achieve the purposes of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

In addition to all specific responsibilities contained elsewhere in this Act, the department shall:

(1) Serve as the coordinating agency between the various government and private organizations seeking to aid in litter control and reduction, source separation and recycling efforts.

(2) Assist local governments in the adoption and revision of ordinances aimed at litter control and reduction, but in no event shall any local government enact an ordinance which imposes a tax or assessment which would duplicate the resource conservation, recovery and beautification assessment provided for in this Act.

(3) Encourage, organize, and coordinate voluntary local campaigns seeking to focus the attention of the public on programs to control and reduce litter.

(4) Encourage, organize and coordinate voluntary local source separation and recycling programs.

(5) Encourage all state and local agencies to cooperate with and aid source separation and recycling programs in whatever ways they can, including providing publicity which encourages recycling, and allowing the use of publicly owned land, buildings, or equipment for recycling efforts.

(6) Investigate the availability of, and apply for, receive and expend grants, loans or other funds available from any private or public source, and where it is deemed appropriate and feasible, to accept non-monetary funding in the form of services or equipment, for use in connection with any of the programs or purposes of this Act.

(7) Have the power to propose and adopt, rules and regulations necessary to carry out the provisions, programs, and purposes of this Act.

SECTION 6. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The environmental quality commission shall have the responsibility for advising the department with respect to the litter control and reduction source separation and recycling programs and efforts covered by this Act.

SECTION 7. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The department shall engage in, provide advice on and coordinate programs designed to:

(1) Educate and increase the awareness of the public of the need for a litter-free ethic in this state.

(2) Utilize existing, and explore new, techniques and programs aimed at reducing litter and littering.

(3) Instill in the public the desire to live in an environment free from litter.

(4) Motivate the public not to litter and to engage in cleanup efforts.

(5) Advise of and encourage the enforcement of the state's anti-litter laws and regulations.

SECTION 8. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) The department shall design and shall adopt by rule or regulation minimum standards for one (1) or more sizes of litter receptacles which are reasonably uniform as to shape and color, and each of which shall bear an anti-litter symbol as designated and adopted by the department. In addition, such receptacles shall be designed to attract attention, to encourage the depositing of litter, and to discourage removal or theft of the receptacle. To facilitate public recognition and use of such receptacles, the department shall attempt to emulate the anti-litter symbols and receptacles used by other states.

(2) As specified by the department and deemed necessary by it to achieve the goal of litter control and reduction:

(a) Litter receptacles meeting the minimum standards shall be placed along the public highways of the state and in all parks and such other public places;

(b) The department shall establish the minimum number of litter receptacles required to be placed in such public places. The requirement of this subsection shall be met by the use of any litter receptacle which was in use prior to the establishment of the minimum standards for litter receptacles by the department, and which adequately serves the purposes intended for such receptacles; provided, however, that the continued use shall be conditioned upon placement of the anti-litter symbol upon each receptacle.

(3) It shall be the responsibility of any person owning or operating any public place in which litter receptacles are required to procure, place and maintain such receptacles at its own expense in accordance with this section and rules and regulations adopted by the department.

(4) Compliance with this section shall include proper upkeep, maintenance and repair of litter receptacles sufficient to permit such receptacles to serve the functions for which they were designed and to prevent the appearance of such receptacles from becoming unsightly.

(5) Responsibility for the removal of litter from litter receptacles placed at publicly owned places shall remain with the public agencies performing litter removal. Removal of litter from litter receptacles placed on private property which is used by the public shall remain the responsibility of the owner of such private property. All such litter shall be disposed of in a manner acceptable to the department.

SECTION 9. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) The department shall design a litter bag bearing the state-wide anti-litter symbol.

(2) To the extent economically feasible the department shall produce such litter bags and make them available to the department of transportation, bureau of vehicle registration, which shall distribute them to the owners of licensed vehicles, including owners of watercraft at the time and place of license renewal and to other public agencies for proper distribution.

SECTION 10. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

In order to provide jobs and to establish litter-free areas, the department shall:

(1) Encourage the hiring of otherwise unemployable individuals for work in conjunction with this Act; and

(2) Design summer youth corps programs and grant funds, pursuant to this Act, for the use of unemployed youth on a seasonal and/or part-time basis.

(3) In designing such programs, cooperate and coordinate with federal, other governmental and private programs aimed at providing jobs for youth and otherwise unemployable individuals.

SECTION 11. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

The penalties which may be levied for littering in this state and pertinent portions of this Act shall be posted at such public places as the department determines is necessary to accomplish the purposes of this Act.

SECTION 12. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) It is the express purpose of this chapter to accomplish effective litter control within the state of Kentucky; further, is a purpose of this chapter to allocate a portion of the cost of administering it to those industries whose products including the packages, wrappings and containers thereof, are reasonably related to the litter problem in arriving at the amount upon which the assessment is to be calculated; therefore, reference to "covered items" in this Act includes but is not limited to:

(a) Cigarettes and tobacco products;

(b) Soft drinks and carbonated waters;

(c) Still fruit drinks and other noncarbonated beverages, mixes, and powders, excepting natural fruit juice in either concentrated or single strength state;

(d) Alcoholic beverages;

(e) Takeout and fast foods;

(f) Candy, chewing gum, and other confections;

(g) Snack foods, including nuts and chips;

(h) Newspapers and magazines;

(i) Glass containers;

(j) Metal containers with a capacity of less than fifty-five (55) gallons;

(k) Plastic, paper and other fiber containers;

(l) Auto and truck tires except recapped and retreaded tires;

(m) Toiletries, nondrugstore sundry items;

(n) Pet food;

(o) Flexible packaging used to package or wrap consumer goods; and

(p) Container crowns and closures.

(2) If any part of a product including packages, wrappings or containers thereof, is so designated as a "covered item" then the whole of the product, including the packages, wrappings or containers thereof, shall be deemed to be a "covered item";

(3) "Seller" means any person selling one or more covered items in the regular course of business in either of the following capacities:

(a) as a wholesaler selling to a retailer for resale to consumers, or

(b) as a manufacturer or processor selling directly to consumers.

(4) "Gross proceeds" means the total receipts from all sales of the covered items by a seller, less expenditures for the purchase of any item in this state for the purpose of recycling such item.

(5) The assessment herein provided for shall not be applied to gross proceeds of the sales of any animal, agricultural, timber or mining products, or other substance obtained therefrom, if the seller performs the growing, raising, harvesting or cutting function of such animal, agricultural, forest or mining product or any combination thereof. In all other instances, the assessment shall be applied.

(6)(a) There is hereby imposed upon every person engaged within this state in business as a seller an annual resource conservation, recovery, and beautification assessment, determined pursuant to this section, according to the gross proceeds from sales of designated items;

(b) The assessment shall be three cents (3¢) for each one hundred dollars ($100) of gross proceeds;

(c) The assessment shall be reported and paid to the department of revenue on a quarterly basis on or before the twentieth (20th) day of the month after the end of each quarter. The payment shall be accompanied by a report or return in such form as the department of revenue may prescribe.

(7) If a federal law is enacted which accomplishes or purports to accomplish the purposes set forth in this Act and which levies an assessment or tax upon any business assessed pursuant to this section, then the amount of the assessment to be levied upon said business under this section shall be reduced by the amount of the federal assessment or tax upon said business; provided, however, that such reduction shall only be authorized when funds raised by the federal assessment or tax are made available to this state for any of the activities to be funded under this Act.

SECTION 13. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created within the state treasury a trust and agency fund, which shall not lapse, to be known as the resource conservation recovery and beautification fund. The department of revenue shall be responsible for collecting and receiving funds relating to this Act.

(2) All assessments, fines, appropriations, or other funds collected or received by the state treasury or appropriated pursuant to any of the provisions of this Act shall be deposited in the fund, and shall be used exclusively for the purposes set forth in this Act.

(3) The department shall allocate and distribute funds annually from the fund for grants to state government units and agencies for the purchase, installation, and maintenance of litter reduction, collection or pickup equipment, litter receptacles and litter bags.

SECTION 14. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) Any person who deposits leaves, clippings, prunings, garden refuse or household waste materials in any litter receptacle except with permission of the owner of such receptacle is guilty of a class B misdemeanor.

(2) Any person who places litter into a receptacle in such a manner that the litter may be carried away or deposited by the elements upon any property or water not owned by him is guilty of a class B misdemeanor.

(3) Any person knowingly violating any provision of this Act or any rule or regulation adopted hereunder shall be guilty of a class B misdemeanor.

(4) In addition to or in lieu of the penalties set forth in KRS Chapters 532 and 534, any person found guilty of a second or subsequent offense related to littering may be ordered by the court to pick up litter for not less than four (4) hours.

SECTION 15. A NEW SECTION OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

(1) If any seller fails or refuses to file a return or furnish any information requested in writing by the department, the department of revenue may, from any information in its possession, make an estimate of the seller's gross proceeds and issue an assessment against such seller based on the estimated gross proceeds and add a penalty of ten percent (10%) of the amount of the assessment so determined. This penalty shall be in addition to all other applicable penalties in this chapter.

(2) If any seller fails to make and file a return required by this chapter on or before the due date of the return or the due date as extended by the department of revenue, then, unless it is shown to the satisfaction of the department of revenue, that the failure is due to reasonable cause, five percent (5%) of the assessement found to be due by the department of revenue shall be added to the assessment for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which filed, but the total penalty shall not exceed twenty-five percent (25%) of the assessment, provided, however, that in no case shall the penalty be less than ten dollars ($10).

(3) If the assessment imposed by this chapter, whether assessed by the department of revenue, or the seller, or any installment or portion of the assessment is not paid on or before the date prescribed for its

payment, there shall be collected, as a part of the assessment, interest upon the unpaid amount at the rate of eight percent (8%) per annum from the date prescribed for its payment until payment is actually made to the department of revenue.

Approved March 28, 1978

By: Senator Malkus
Introduced and read first time: January 31, 1978
Assigned to: Economic Affairs

Committee report: Favorable
Senate action: Adopted
Read second time: February 16, 1978

RESOLUTION NO. JR 45

SENATE JOINT RESOLUTION

A Senate Joint Resolution concerning

A Pilot Program for the Use of Wood for Heat and Energy in Public Buildings

FOR the purpose of requesting the Department of Health and Mental Hygiene, with the advice and assistance of the Department of General Services and of the Forest Service in the Department of Natural Resources, to initiate and conduct a pilot program at Eastern Shore Hospital Center for the use of available and waste wood products to supply heat and other energy.

WHEREAS, There are abundant and waste supplies of wood available in many portions of the State that could be utilized for providing heat and other forms of energy for public buildings.

The General Assembly is requesting the Department of Health and Mental Hygiene, with the collaboration of the Department of General Services and of the Forest Service in the Department of Natural Resources, to initiate and conduct a pilot program to determine the economy and feasibility of such a study at Eastern Shore Hospital Center in Dorchester County.

There is an ample supply of extra and waste wood products in Dorchester and other nearby counties. Wood very likely could be substituted for heating oil in this institution and thereby save quantities of this vital and scarce resource.

Similar substitutions very likely also could be made in other public buildings throughout the State, saving the use and consumption of fossil fuels. Wood is available throughout the State as a byproduct of regular forest cutting programs and site preparation work. The wood now is

EXPLANATION:
Underlining indicates amendments to the resolution.
~~Strike-out~~ indicates matter stricken by amendment.

left on the ground as wastage, so its use would not only be of economic benefit but also of assistance in clearing the land of these waste materials. There are such programs now operative in a number of states, including Tennessee, Alabama, and Vermont. In addition, there are municipal applications of this program in Burlington, Vermont, and in Binghamton, New York.

It has been estimated by the Forest Service that while the cost of such a conversion at Eastern Shore Hospital Center might be as much as one-half million dollars, the savings over a period of five or six years would pay off this initial investment. It would be necessary, of course, in the first instance, to provide funds to start the program.

The Forest Service, in the Department of Natural Resources, already has done research in these programs and is taking affirmative action in support of the feasibility and practicality of the use of wood; now, therefore, be it

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Department of Health and Mental Hygiene, with the advice and assistance of the Department of General Services and the Department of Natural Resources, is requested to conduct a pilot program at Eastern Shore Hospital Center in Dorchester County, to investigate the use of waste wood products for providing heat and other forms of energy; and be it further

RESOLVED, That the Department of Health and Mental Hygiene, with the collaboration of the Forest Service and of the Department of General Services, is requested to report the results of this pilot study to the General Assembly of 1979; and be it further

RESOLVED, That copies of this Resolution be sent to Dr. Neil Solomon, Director of the Department of Health and Mental Hygiene; the Honorable J. Max Millstone, Director of the Department of General Services; the Honorable James Coulter, Director of the Department of Natural Resources; and the Eastern Shore Hospital Center.

Approved:

_____

Acting Governor.

_____

President of the Senate.

_____

Speaker of the House of Delegates.

SENATE BILL No. 1154
(81r3883)

Introduced by Senators Hoyer, McGuirk, Bozick, Malkus, White, Boyer, Crawford, Mason, and Hopkins

Read and Examined by Proofreader:

_____
Proofreader.

_____
Proofreader.

Sealed with the Great Seal and presented to the Acting Governor, for his approval this_____day of_____ at_____o'clock,_____M.

_____
President.

CHAPTER 549

AN ACT concerning

Maryland Geothermal Resources Act

FOR the purpose of creating the Maryland Geothermal Resources Act; defining terms; expressing legislative findings; specifying the powers and duties of the Department of Natural Resources in this matter; making provision for certain exploratory permits and permits to appropriate or use geothermal resources; requiring certain bonds to be filed with the Department; making provision for judicial review of actions taken on applications; providing penalties; and generally dealing with geothermal resources.

BY adding to

Article - Natural Resources
Section 8-8A-01 through 8-8A-09, inclusive, to be under the new subtitle "Subtitle 8A. Maryland Geothermal Resources Act"
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article – Natural Resources

SUBTITLE 8A. MARYLAND GEOTHERMAL RESOURCES ACT

8 8A 01. DEFINITIONS.

(A) IN GENERAL – IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "CONSTRUCTION" MEANS ANY CLEARING, GRADING, EXCAVATION, BUILDING, OR THE COMMENCEMENT OF ANY OF THESE ACTIVITIES.

(C) "DEPARTMENT" MEANS THE DEPARTMENT OF NATURAL RESOURCES.

(D) "EXPLORATORY ACTIVITIES" MEANS ANY ACTIVITY INVOLVING THE DRILLING OF TEST WELLS FOR GEOTHERMAL RESOURCES.

(E) "GEOTHERMAL RESOURCES" MEANS THE NATURAL HEAT OF THE EARTH HIGHER THAN 120 DEGREES FAHRENHEIT OR 49 DEGREES CENTIGRADE, OR THE ENERGY, IN WHATEVER FORM, BELOW THE SURFACE OF THE EARTH PRESENT IN, RESULTING FROM, OR CREATED BY, OR WHICH MAY BE EXTRACTED FROM, THIS NATURAL HEAT, THE NATURAL OR ARTIFICIAL MEDIUM CONTAINING THAT HEAT, AND ALL MINERALS IN SOLUTION OR OTHER PRODUCTS OBTAINED FROM NATURALLY HEATED FLUIDS, BRINES, ASSOCIATED GASES, AND STEAM, IN WHATEVER FORM, FOUND BELOW THE SURFACE OF THE EARTH, BUT EXCLUDING OIL, HYDROCARBON GAS, AND OTHER HYDROCARBON SUBSTANCES.

(F) "PERSON" INCLUDES CORPORATIONS, COMPANIES, ASSOCIATIONS, FIRMS, PARTNERSHIPS, JOINT STOCK COMPANIES, INDIVIDUALS, AND GOVERNMENT AGENCIES.

(G) "WELL" MEANS ANY EXCAVATION OR OTHER ALTERATION OF THE EARTH'S SURFACE OR CRUST BY MEANS OF WHICH GEOTHERMAL RESOURCE MAY BE OBTAINED.

8-8A-02. LEGISLATIVE FINDINGS AND INTENT.

(A) GEOTHERMAL RESOURCES ARE A NATURAL RESOURCE IN THE STATE WHICH POSSESS GREAT POTENTIAL VALUE FOR THE STATE AND THE NATION AS A WHOLE.

(B) IN EXPLORING AND DEVELOPING GEOTHERMAL RESOURCES MAXIMUM POSSIBLE CONSIDERATION SHALL BE AFFORDED TO AVOIDING WASTE AND UNREASONABLE USE OF NATURAL RESOURCES AND TO PROTECTING THE ENVIRONMENT, AND TO OPTIMIZING THE PRODUCTIVE USE OF THE RESOURCE.

8-8A-03. POWERS AND DUTIES OF THE DEPARTMENT.

(A) THE DEPARTMENT SHALL BE RESPONSIBLE FOR THE MANAGEMENT AND REGULATION OF THE ~~STATE'S~~ GEOTHERMAL RESOURCES IN THE STATE.

(B) THE DEPARTMENT MAY CONTRACT FOR RESEARCH AND SCIENTIFIC INVESTIGATION IN ORDER TO DETERMINE THE POTENTIAL OF THE ~~STATE'S~~ GEOTHERMAL RESOURCES IN THE STATE.

(C) THE DEPARTMENT MAY CONDUCT AND PARTICIPATE IN DEVELOPMENT PROJECTS DESIGNED TO DEMONSTRATE THE FEASIBILITY OF UTILIZING THE STATE'S GEOTHERMAL RESOURCES.

(D) THE DEPARTMENT MAY USE ANY FUNDS MADE AVAILABLE FOR THE PURPOSE OF EXPLORING, ANALYZING, ~~AND~~ DEVELOPING AND USING GEOTHERMAL RESOURCES.

(E) THE DEPARTMENT MAY ESTABLISH REASONABLE FEES TO COVER THE COST OF PROCESSING PERMIT APPLICATIONS.

(F) THE DEPARTMENT MAY PROMULGATE RULES AND REGULATIONS NECESSARY TO IMPLEMENT THIS SUBTITLE.

8-8A-04. EXPLORATORY PERMITS.

(A) EVERY PERSON IS REQUIRED TO OBTAIN A PERMIT FROM THE DEPARTMENT BEFORE CONDUCTING ANY GEOTHERMAL RESOURCE EXPLORATORY ACTIVITIES. THE APPLICANT FOR THIS PERMIT MUST HAVE THE LEGAL RIGHT TO USE THE SURFACE ~~FOR EXPLORATION~~. THE PERMIT IS OBTAINED UPON WRITTEN APPLICATION TO THE DEPARTMENT.

(B) THE APPLICATION SHALL STATE THE INTENDED LOCATION OF EXPLORATION, GIVE ASSURANCE OF THE APPLICANT'S RIGHT TO USE THE SURFACE FOR EXPLORATION, PROVIDE AN EXPLORATORY WORK PROGRAM, AND PROVIDE ANY INFORMATION REQUESTED BY THE DEPARTMENT.

(C) THE DEPARTMENT MAY APPROVE AN APPLICATION IF IT DETERMINES THAT THE APPLICANT IS QUALIFIED TO CONDUCT EXPLORATORY WORK, THAT THE APPLICANT WILL COMPLY WITH ALL APPLICABLE LAWS, AND THAT THE APPLICANT'S WORK PROGRAM PROVIDES ADEQUATE PROTECTION FOR THE NATURAL RESOURCES OF THE STATE.

(D) THE PERMIT REQUIRED BY THIS SECTION SHALL BE IN LIEU OF ANY PERMIT REQUIRED BY TITLE 8, SUBTITLES 6 AND 8.

8-8A-05. PERMIT TO APPROPRIATE OR USE GEOTHERMAL RESOURCES.

(A) EVERY PERSON IS REQUIRED TO OBTAIN A PERMIT FROM THE DEPARTMENT TO APPROPRIATE OR USE, OR TO CONSTRUCT ANY WELL, PLANT, BUILDING, OR STRUCTURE WHICH MAY APPROPRIATE OR USE GEOTHERMAL RESOURCES OF THE STATE. THE PERMIT IS

OBTAINED UPON WRITTEN APPLICATION TO THE DEPARTMENT. THE APPLICANT FOR THE PERMIT MUST HAVE THE LEGAL RIGHT TO USE THE SURFACE ~~FOR EXPLORATION~~ AND GIVE ASSURANCE OF THIS RIGHT.

(B) THE APPLICATION SHALL BE ACCOMPANIED BY THE FOLLOWING INFORMATION AND ~~SUCH~~ ANY OTHER INFORMATION AS REQUIRED BY THE DEPARTMENT.

(1) A PROJECT DESCRIPTION SPECIFYING:

(I) WHAT IS PLANNED TO BE CONSTRUCTED, ITS PURPOSE, USE, LOCATION, ~~COST~~ ESTIMATED COST, AND SIZE; AND

(II) THE METHODS OF CONSTRUCTION, CONSTRUCTION SCHEDULE, AND OPERATION PROCEDURE.

(2) A LIST OF LICENSES, PERMITS, OR OTHER APPROVALS REQUIRED BY ANY GOVERNMENT UNIT.

(3) DETAILED INFORMATION AS TO THE NEED FOR THE USE AND FACTS CONCERNING ALTERNATE SITE LOCATIONS AS MAY BE REQUESTED BY THE DEPARTMENT.

(4) INFORMATION PROVIDING PROOF OF THE DISCOVERY OF A GEOTHERMAL RESOURCE AND AN EVALUATION OF THE RESOURCE.

(C) AFTER PUBLIC NOTICE AND OPPORTUNITY FOR PUBLIC HEARING, THE DEPARTMENT MAY ISSUE A PERMIT FOR THE APPROPRIATION OR USE OF GEOTHERMAL RESOURCES IF IT FINDS THAT THE APPLICANT HAS DEMONSTRATED THAT THE USE:

(1) CONFORMS WITH AND MEETS ALL APPLICABLE AIR, WATER, AND NOISE LAWS OF THE STATE.

(2) CONFORMS WITH ALL APPLICABLE STATE AND LOCAL PLANS.

(3) WOULD HAVE NO MATERIAL ADVERSE EFFECT UPON THE NATURAL ENVIRONMENT OF THE AREA, ITS SCENIC OR NATURAL BEAUTY, RARE OR IRREPLACEABLE RESOURCES, OR UNIQUE HISTORIC SITE.

(4) WOULD NOT BE SO LOCATED, CONSTRUCTED, OR OPERATED AS TO HAVE A MATERIAL ADVERSE EFFECT UPON THE PUBLIC HEALTH, SAFETY, OR WELFARE.

(5) WOULD NOT BE A POTENTIAL OR IMMEDIATE UNDUE BURDEN ON THE WATER SUPPLY OF THE SITE OR REGION.

(6) WOULD NOT CAUSE AN UNREASONABLE RATE OF RESOURCE EXHAUSTION.

(D) THE PERMIT REQUIRED BY THIS SECTION SHALL BE IN LIEU OF ANY PERMIT REQUIRED BY TITLE 8, SUBTITLES 6 AND 8.

8-8A-06. BONDS.

AFTER RECEIVING NOTIFICATION FROM THE DEPARTMENT THAT AN APPLICATION FOR AN EXPLORATORY OR APPROPRIATION PERMIT HAS BEEN APPROVED, BUT PRIOR TO COMMENCING ANY CONSTRUCTION, THE APPLICANT SHALL FILE A BOND WITH THE DEPARTMENT. THE AMOUNT OF THE BOND SHALL BE DETERMINED BY THE DEPARTMENT. THE BOND SHALL BE CONDITIONED THAT THE APPLICANT WILL FAITHFULLY PERFORM EVERY REQUIREMENT OF THIS SUBTITLE AND RULES AND REGULATIONS ISSUED PURSUANT TO THIS SUBTITLE. THE BOND SHALL BE EXECUTED BY THE APPLICANT AND A CORPORATE SURETY LICENSED TO DO BUSINESS IN THIS STATE. THE PROVISIONS OF THIS SECTION DO NOT APPLY TO THE STATE, POLITICAL SUBDIVISIONS, OR MUNICIPALITIES.

8-8A-07. JUDICIAL REVIEW OF ACTION ON APPLICATION.

A REQUEST FOR JUDICIAL REVIEW OF THE SECRETARY'S ACTION ON ANY APPLICATION SHALL BE MADE WITHIN 30 DAYS AFTER THE DECISION HAS BEEN RENDERED. PROCEEDINGS SHALL BE FILED IN THE CIRCUIT COURT OR IN THE BALTIMORE CITY COURT HAVING JURISDICTION IN WHICH THE FACILITY OR ANY PART OF IT IS TO BE SITUATED.

8-8A-08. VIOLATIONS; INJUNCTIONS; PENALTY.

(A) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE MAY BE ENJOINED BY A COURT OF COMPETENT JURISDICTION UPON APPLICATION OF THE DEPARTMENT ACTING THROUGH THE ATTORNEY GENERAL.

(B) ANY PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE OR ANY ~~REGULATION,~~ PERMIT, OR ORDER ISSUED THEREUNDER, IS LIABLE TO A PENALTY NOT EXCEEDING $10,000, AS WELL AS BEING SUBJECT TO BEING ENJOINED AS PROVIDED IN SUBSECTION (A). THE MONETARY PENALTY THUS PROVIDED MAY BE RECOVERED IN A CIVIL ACTION BY THE DEPARTMENT THROUGH THE ATTORNEY GENERAL.

8-8A-09. CONSTRUCTION OF SUBTITLE.

(A) THIS SUBTITLE SHALL BE LIBERALLY CONSTRUED TO EFFECTUATE ITS INTENTS AND PURPOSES.

(B) THIS SUBTITLE MAY NOT BE CONSTRUED TO BE IN DEROGATION OF ANY POWERS OR STATE LAWS ~~IN EXISTENCE ON JULY 1, 1978~~, BUT SHALL BE REGARDED AS SUPPLEMENTAL AND IN ADDITION TO POWERS CONFERRED BY OTHER LAWS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

THE COMMONWEALTH OF MASSACHUSETTS

Advance Copy 1978 Acts and Resolves

PAUL GUZZI, Secretary of the Commonwealth

Chap. 73. AN ACT RELATIVE TO LOANS BY SAVINGS BANKS.

Be it enacted, etc., as follows:

SECTION 1. Paragraph 6A of section 35 of chapter 168 of the General Laws is hereby amended by striking out the fifth sentence, as most recently amended by chapter 62 of the acts of 1977, and inserting in place thereof the following sentence:- No loan of this class shall be made or acquired for a sum in excess of seventy-five thousand dollars.

SECTION 2. Paragraph 6B of said section 35 of said chapter 168 is hereby amended by striking out the fifth sentence, as appearing in chapter 336 of the acts of 1972, and inserting in place thereof the following sentence:- No loan of this class shall be made or acquired for a sum in excess of sixty thousand dollars.

SECTION 3. Said section 35 of said chapter 168 of the General Laws is hereby further amended by striking out paragraph 10, as most recently amended by section 1 of chapter 28 of the acts of 1977, and inserting in place thereof the following paragraph:-

10. Improvement Loans. - A loan to the owner of improved real estate, upon which such corporation holds a mortgage, for the purpose of financing the improvement, repair, alteration or rehabilitation of such real estate or the purchase and installation of fixtures to be affixed thereto, including but not limited to the purchase and installation of a solar or wind-powered system or heat pump system. Such loan shall not exceed fifteen thousand dollars, exclusive of interest or discount from the date of the note, with respect to any one parcel of such real estate. The loan shall be payable not more than ten years from the date of the note, but the note or mortgage shall provide that in any event it shall become due and payable simultaneously with the transfer of the mortgaged premises. The terms of the note or mortgage shall require that, commencing not later than two months after the date of the note, (a) payments shall be made on account of the principal in equal monthly instalments in amounts which, at the maturity of the note, shall equal the

original amount of the loan, or (b) fixed monthly payments shall be made in approximately the same amount during the term of the loan, which payments shall first be applied to interest and the balance to principal. The aggregate balance of principal outstanding at any one time on loans of this class shall not exceed four per cent of the deposits of such corporation.

In case a mortgage and the note secured thereby shall have been sold or otherwise assigned to another banking institution, such corporation at the request of such other banking institution and of the owner of the mortgaged property may make a loan of this class within the limitations prescribed in this section; provided, that such corporation shall agree to sell and such other banking institution shall agree to buy such loan within thirty days after the loan is made.

SECTION 4. Said section 35 of said chapter 168 is hereby further amended by striking out paragraph 10A, as amended by section 1 of chapter 33 of the acts of 1975, and inserting in place thereof the following paragraph:-

10A. Any such corporation may make or acquire a loan to the owner of improved real estate located within its lending area as defined in paragraph 2 of section thirty-four, for the purpose of financing the improvement, repair, alteration or rehabilitation of such real estate or the purchase and installation of fixtures to be affixed thereto, including but not limited to the purchase and installation of a solar or wind-powered system or heat pump system; provided that (a) each such loan shall be evidenced by a note and may, in the discretion of such corporation, be secured by a mortgage which shall be a lien on the real estate so loaned upon; (b) not less than ninety per cent of the unpaid balance of such loan at any time shall be guaranteed or insured by a mortgage insurance company which has been determined to be a "qualified private insurer" by the Federal Home Loan Mortgage Corporation or has been approved by the commissioner as qualified to insure loans of this class, and which is authorized to transact business in the commonwealth; (c) the note or mortgage shall provide that in any event it shall become due and payable simultaneously with the transfer of the mortgaged premises, and (d) such loan shall be subject to all the provisions and limitations applicable to first mortgage loans authorized by paragraph 10 of this section.

Approved April 13, 1978

THE COMMONWEALTH OF MASSACHUSETTS

Advance Copy 1978 Acts and Resolves

PAUL GUZZI, Secretary of the Commonwealth

Chap. 486. AN ACT CREATING THE BAYSIDE RESOURCE RECOVERY COUNCIL.

Be it enacted, etc., as follows:

SECTION 1. There is hereby created the Bayside Resource Recovery Council as a body corporate and politic and a public instrumentality. The council shall be subject to, and have the powers and duties conferred by, the provisions of this chapter.

SECTION 2. It is hereby declared that there currently exists a need for modern resource recovery facilities throughout the commonwealth, and especially in Essex county and its environs. Present facilities, including sanitary landfills, have proved to be inadequate and communities are unable to dispose of waste in a manner such that the environment is and will be properly maintained. In addition, since energy is currently in short supply and available only at high cost in the area, there is a need for the creation of new energy sources which reduce the demand for reliance on fossil fuels, a depletable resource. Solid waste is a reliable fuel, a renewable resource and increasing in quantity. In an effort to find new ways and means to meet the needs of the commonwealth, a new resource recovery facility is proposed to be constructed in the city of Beverly. Cities and towns in the vicinity propose to enter into long-term contracts with the facility for the disposal of solid waste and the sale of energy. It is the purpose of this chapter to create a council especially empowered to oversee, administer, and, as necessary, amend and extend such contracts in order to promote the public welfare of the region by facilitating the resolution of any environmental, structural, economic, or other problems which may arise from time to time concerning operations at the facility.

SECTION 3. The following words as used in this chapter shall, unless the context otherwise requires, have the following meanings:

"Council", the Bayside Resource Recovery Council, created by this chapter to carry out the purposes expressed in section two hereof. The council shall be deemed to be an instrumentality within the meaning of chapter one hundred

and eighteen C of the General Laws but chapter thirty-one of the General Laws and rules made thereunder shall not apply to any officer, agent or employee of the council.

"Facility", the resource recovery plant to be constructed in the city of Beverly on a site adjoining Elliott Street in said city and to have a planned maximum capacity of disposing of an average of approximately five hundred tons of solid waste in a twenty-four hour period.

"Long-Term Contract", a contract between a city or town and the operator of the facility, which commits the city or town to usage of the facility for a period of twenty or more years and which is authorized by a majority vote as defined in section one of chapter forty-four of the General Laws.

"Operator", the entity which operates the facility.

SECTION 4. The city of Beverly and any other city or town may enter into a long term contract; provided, however, that no such other city or town shall enter into a long term contract if, in the judgment of the operator of the facility, after making appropriate allowance for anticipated growth in production of solid waste from such cities and towns, any tonnage commitments under such a contract, when added to the tonnage commitment under the long term contract into which the city of Beverly shall have entered, will exceed the maximum capacity of the facility.

SECTION 4A. The council shall be composed of representatives of those cities and towns which enter into long term contracts. The council shall have no power to act under this act unless and until the city of Beverly becomes a member by entering into a long term contract.

The representatives of each city which has entered into a long term contract shall be the mayor of such city or a financial officer of such city designated by the mayor. The representative of each town which has entered into a long term contract shall be the chairman of the board of selectmen of such town or another selectman or financial officer of such town designated by the board of selectmen.

The representative of the city of Beverly shall be the chairman of the council. The council shall have the power to appoint agents, subcommittees and officers, including a secretary.

Meetings of the council shall be held at times and places to be designated by the chairman, by a majority of the council, or as stated in a

written request to the chairman by the operator ten days prior to the requested date of the meeting. The provisions of sections twenty-three A to twenty-three C, inclusive, of chapter thirty-nine of the General Laws shall apply to the meetings of the council.

The council shall meet at least once annually, in February, at Beverly city hall unless the chairman or a majority of the council shall specify another place. Within ninety days after each June thirtieth, the council shall publish and mail to each member, the city or town designating each member, the operator and all other parties requesting the same, an annual report setting the activities of the council during the preceding year.

Individual members shall not be liable for their actions on the council except for gross negligence or willful misconduct.

Members shall not be entitled to compensation for their services on the council whether as members, officers or otherwise, but shall be entitled to reimbursement from the city or town appointing them to the council for all necessary out-of-pocket expenses, including travel expenses, incurred in the course of their duties as such members.

SECTION 5. The council is hereby authorized and required, within the limitations stated herein:-

(i) To cooperate with the owner of the facility and the operator in efforts to promote proper treatment of solid waste in the region and comply with pertinent environmental standards relating thereto;

(ii) To act on behalf of all cities and towns which have entered into long term contracts with the operator in administering, overseeing and, subject to the provisions of section six, amending and extending one or more of the long term contracts with the operator; such amendments may include, but are not limited to, adjustments in the rates charged by the operator for solid waste disposal;

(iii) To accept contributions of funds for any lawful purpose;

(iv) To employ attorneys, accountants, consultants and other agents or employees and to compensate them with any available funds;

(v) To do all things necessary or convenient in order to fulfill the purposes of this chapter.

All actions of the council shall be taken by a vote of a majority of the entire membership of the council. Each member shall have one vote except that

the chairman shall have a second vote on any question as to which there is a tie vote after the chairman has cast his first vote. All votes shall be taken by recorded roll call. If the operator shall conclude that an amendment to one or more of the long term contracts is necessary to permit the continued safe and efficient operation of the facility, the operator shall submit the amendment to the council. If the council shall approve such amendment, it shall submit the amendment to each city or town which is a party to the contract or contracts to be amended. Each such city or town shall, by majority vote, accept or reject the amendment within sixty days.

The council shall determine at its annual meeting but in any event not later than February twenty-eighth in each year the amount required for the performance of its duties under the first paragraph of section 5 for the twelve month period commencing the following July first and shall certify such amount to the operator and to the cities and towns designating the members of the council. A majority of such cities and towns may, by action of the city council in the case of a city or of the board of selectmen in the case of a town, amend the amount so determined by instructing their representatives to so vote not later than the March thirty-first next following such February twenty-eighth. Not later than the April fifteenth next following such March thirty-first the council shall certify the amended amount to the operator and to the cities and towns designating the members of the council. The amount or the amended amount, as the case may be, so certified shall be apportioned among the cities and towns designating the numbers of the council in the same proportions as the tonnages of solid waste to be delivered to the facility or otherwise paid for by each such city and town during such twelve month period under the long term contract to which each such city and town is respectively a party are of the aggregate tonnages of solid waste to be so delivered or otherwise paid for during such twelve-month period under all such long term contracts. Not later than the April fifteenth mentioned above the council shall certify to each such city and town the amount so apportioned to it. Amounts so payable shall be paid to the treasurer of the city of Beverly for the account of the council. The amounts so received by said treasurer shall be held by him separate and apart from other funds in his custody and shall be disbursed by him in payment of expenses incurred by the council as certified by its chairman with respect to such twelve month period in the exercise of its powers and performance of its duties hereunder.

SECTION 6. At or before the expiration of any long term contract, a member city or town may elect to extend, for a period not to exceed ten years, its participation in the council and to enter into an extension of a long term contract. Any amendment to a long term contract, except as provided in section five, shall be approved by each city and town which is a party to such contract and the operator; provided, however, that the council may without the approval of the member city or town amend a long term contract only as necessary to comply with any general or special law of the commonwealth, and any federal law or rule or regulation promulgated by the United States Environmental Protection Agency or any other agency of the United States having jurisdiction over the operation of the facility or the disposal of solid waste.

Nothing in this act, however, shall be deemed to obviate the necessity of procuring the consent to any amendment or extension of a long term contract, wherever the same is required by law or existing contracts, indentures, bonds or other legal instruments, of the city of Beverly acting by and through its Industrial Development Financing Authority, the trustee for holders of bonds issued by the city of Beverly, the operator and other parties in interest other than the cities and towns which are parties to long term contracts.

Notwithstanding the provisions of section four of chapter forty of the General Laws, a city or town is authorized to enter into a long term contract for an initial period not in excess of thirty-five years, or into an extension or extensions of a long term contract for a period or periods which together with the initial period do not exceed thirty-five years, or into an amendment of a long term contract extending the initial period thereof not in excess of thirty-five years.

SECTION 7. The chairman or secretary of the council shall keep a record of each action of the council, shall periodically notify each city and town of such actions, and shall maintain a central registry of all long term contracts and other contracts and amendments and extensions thereto which shall be available for public inspection.

SECTION 8. No member of the council shall either directly or indirectly be in any manner personally interested in any contract or agreement with the operator for any matter or cause whatsoever other than in his representative capacity.

SECTION 9. Notwithstanding any provision of chapter sixteen of the General Laws to the contrary, the council may agree that the operator should make payments to the city of Beverly out of payments received by the operator from users of the facility and the city may receive such payments from the operator in lieu of taxes and assessments, which payments from the operator may be based upon valuation of the property, gross receipts, net receipts, a combination of these factors or any other similar basis. Any in lieu of tax payments to be made by the operator pursuant to any such agreement shall be added to the price paid by users of the facility on the basis of the tonnage of solid waste which such user delivers to the facility or some other reasonable basis. The provisions of the first paragraph but not the provisions of the succeeding paragraphs of section twenty of chapter forty D of the General Laws shall apply to the facility and the operator.

SECTION 10. This act, being necessary for the welfare of the commonwealth and its inhabitants, shall be liberally construed to accomplish its purpose.

SECTION 11. This act shall take effect upon its passage.

Approved July 18, 1978

CHAPTER 728-S.F.No.1106

[Not Coded]

An act relating to solid and hazardous wastes and toxic substances; providing for technology assessments and related research directed to certain goals; requiring studies and reports by the state planning agency, the pollution control agency, and the energy agency; establishing a temporary joint legislative committee on solid and hazardous waste; appropriating money; suspending development of a hazardous waste facility; authorizing counties to designate disposal sites for solid waste generated within county boundaries.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **PURPOSES; OBJECTIVES.** It is the goal of sections 1 to 6 to assemble the information necessary to identify, evaluate, and select among alternative policies, programs, technologies, institutional arrangements, and proposals designed to further the following purposes:

(a) Reduction in the volumes of solid and hazardous wastes generated and control of toxic substances produced and used in the state;

(b) Separation and recovery or pretreatment of solid and hazardous wastes at their point of generation;

(c) Recovery of materials and energy from solid and hazardous wastes;

(d) Coordination of decisions on the production of energy from solid and hazardous wastes with decisions on the production of energy from coal and from other recoverable residual materials such as sewage sludge and agricultural and timber residues; and

(e) Reduction in needless dependence on land disposal of solid and hazardous wastes.

The research under sections 1 to 6 shall be directed to help:

(i) Identify the most important unrealized potentials for accomplishing these purposes;

(ii) Identify the most important constraints or barriers which are preventing the

fuller realization of these potentials and which are amenable to government manipulation;

(iii) Identify, evaluate, and make recommendations on the costs, benefits, and priority of alternative government actions in the state to overcome the constraints and more fully realize the potentials and thereby to further the purposes.

Sec. 2 **GENERAL PROVISIONS.** Subdivision 1. **STATE PLANNING AGENCY; ADMINISTRATION; RELATED RESEARCH.** The director of the state planning agency shall be responsible for the preparation of the research design and coordinated work program under subdivision 3 and for research studies and reports undertaken by the agency or by interagency agreement pursuant thereto. The planning agency may contract with the pollution control agency or other appropriate state agencies for the performance of parts of the studies assigned by section 4, subdivision 3, and section 5, subdivision 2, subject to the approval of the joint legislative committee as provided in subdivision 2 of this section. The planning agency shall summarize, and if and where possible evaluate, laws, programs, and practices in other states relating to solid and hazardous waste and toxic substances. The agency, in cooperation with other units and agencies of government, shall identify available federal funding for research contemplated by sections 1 to 6. The agency shall evaluate the law and government procedures, practices, and responsibilities for planning, locating, reviewing, and regulating solid and hazardous waste disposal and processing facilities and sites and for ensuring public education and involvement and assessing community attitudes in such matters. The agency shall assess local and regional solid and hazardous waste plans and the relationship and coordination of such plans with the goals expressed in section 1 and shall study and recommend means of coordinating federal, state, and local laws and regulations, programs, program administration, and funding relating to solid and hazardous waste and toxic substances.

Subd. 2. **JOINT LEGISLATIVE COMMITTEE.** A joint legislative committee on solid and hazardous waste shall be established by April 15, 1978, and shall go out of existence by June 1, 1979, unless extended by legislative action.

The committee shall be composed of seven members of the house of representatives appointed by the speaker and seven members of the senate appointed by the majority leader. The committee shall elect a chairman from among its members.

The committee shall assist and advise the director of the planning agency and the other agencies responsible for research under sections 1 to 6 in designing the research program and projects, review the research in progress and the reports, and encourage and facilitate contribution and participation by interested individuals and organizations in the state. The committee shall have authority to approve the research design and work program and any reassignment by the planning agency of parts of studies assigned by section 4, subdivision 3, and section 5, subdivision 2. The joint science and technology staff of the legislature shall serve as staff to the committee.

Subd. 3. **WORK PROGRAM.** By June 15, 1978 the planning agency shall submit a coordinated research design and work program for projects under sections 1 to 6 for review by the joint committee. The research design and work program shall be prepared after consultation with the responsible agencies, the joint science and technology staff of

the legislature, and the committee. The research design and work program shall be based upon and shall proceed from preliminary research studies by the joint science and technology staff, particularly studies relating to decision models for resource recovery facilities. The work program shall include provisions for review by the committee of work in progress and agency reports.

Sec. 3. **REPORTS; PURPOSE; GENERAL CONTENT.** The agencies responsible for research under sections 1 to 6 shall submit their research reports to the planning agency by January 1, 1979. By March 1, 1979, the planning agency shall present a report to the legislature on the results of research undertaken pursuant to sections 1 to 6. The report of the planning agency to the legislature shall include the research reports of the planning agency and the other agencies; a general assessment and evaluation of the research program; and recommendations on the continuation and extension of the planning, research, and analysis contemplated by sections 1 to 6. The reports may also recommend strategies; priorities; policies; changes in government structures, responsibilities, and procedures; program development; or other legislative actions related to the research contemplated by sections 1 to 6.

Sec. 4. **NONHAZARDOUS SOLID WASTE RESEARCH PROJECTS.** Subdivision 1. **ENERGY AGENCY.** The planning agency shall contract with the energy agency to perform research studies directed to:

(a) Produce recommendations for relating decisions in the metropolitan area on resource recovery facilities to decisions on coal conversion, co-generation, and district heating;

(b) Develop a model or method for relating decisions in the state on resource recovery facilities, the production of energy from sewage sludge and agricultural and timber residues, coal conversion, co-generation, and district heating; determine the availability of data necessary to apply the model in standard metropolitan statistical areas of the state; and, if possible, test the model.

Subd. 2. **POLLUTION CONTROL AGENCY.** The planning agency shall contract with the pollution control agency to perform research studies directed to:

(a) Develop a profile of solid waste generation and disposal in the state in sufficient detail and reliability at least to identify the boundaries of existing waste sheds of sufficient volume and density to support resource recovery facilities;

(b) Assess the feasibility and effects of alternative methods for recovering and recycling resources from solid waste, including alternative separation and collection systems, coordinated marketing, transportation cost, satellite facilities and transfer stations, refuse derived fuel, ecofuel, small resource recovery facilities, and the use of sewage sludge as a fertilizer;

(c) Identify land disposal sites of municipal solid waste which may threaten to contaminate groundwater or surface water and develop recommendations for a program to establish priorities for and estimates of the costs of the restoration of such sites or the abatement of such threats.

Subd. 3. **PLANNING AGENCY.** The planning agency shall perform research studies directed to:

(a) Develop and test a model or method for evaluating proposals for resource recovery facilities and alternatives thereto, incorporating at least the following factors: (i) identification, analysis, and control of markets for any products recovered from waste; (ii) identification and control of the waste necessary for economic operation; (iii) identification of risks, reduction of risks, and explicit assignment of risks, financial responsibility, and liability; (iv) facility location and capacity; (v) alternative technologies; (vi) environmental impact; (vii) capital and operating costs; (viii) financing alternatives and alternative allocations of costs among users and the general public; (ix) legal and institutional requirements; (x) effects on collection and disposal practices and costs;

(b) Produce recommendations on the nature and purposes of any state program of encouragement or assistance to resource recovery facilities;

(c) Produce recommendations for encouraging or requiring state and local government and regional agencies to reduce the amount of solid waste they generate and, wherever markets exist or may be developed, to separate and recover more recyclable waste at the point of generation;

(d) Produce recommendations for encouraging or requiring specific changes in the materials procurement practices and policies of state and local government and regional agencies which will serve to (i) ensure consideration of recyclability and (ii) develop and ensure government markets in the state for products made of recovered waste materials;

(e) Produce recommendations for further research on markets and the development of markets for recovered materials;

(f) Produce recommendations for encouraging or requiring methods to reduce the volumes of solid waste generated, by encouraging reuse of products, reductions in material and energy used in products, and increases in product lifetimes;

(g) Examine whether a conflict exists between the goals of source reduction and resource recovery.

Sec. 5. **HAZARDOUS WASTES RESEARCH PROJECTS.** Subdivision 1. **POLLUTION CONTROL AGENCY.** The planning agency shall contract with the pollution control agency to perform research studies directed to:

(a) Assess access to and cost of disposal and treatment processes at hazardous waste facilities located within and outside the state;

(b) Identify alternative methods and processes for reducing the generation of hazardous wastes, for separating and recovering or pretreating categories of hazardous wastes at the point of generation and for separating and recovering, treating, or disposing

of categories of hazardous wastes at facilities separated from the point of generation;

(c) Identify hazardous waste land disposal sites which may threaten to contaminate groundwater or surface water and develop recommendations for a program to establish priorities for and estimates of the costs of the restoration of such sites or the abatement of such threats;

(d) Produce recommendations for implementing and enforcing the proposed hazardous waste regulations, including: (i) guidelines for evaluating the role and performance of state, regional, and local agencies in implementing and enforcing the regulations and analyzing data; (ii) education, training, and technical assistance programs for generators of hazardous waste and for regulatory and enforcement officials; (iii) improvements in technical resources and procedures for data analysis; (iv) methods of relating information produced under the regulations to the development of programs to accomplish the purposes of section 1;

(e) Summarize available information on the generation, processing, and disposal of hazardous waste; evaluate the appropriateness and adequacy of the information to the purposes of section 1; and recommend any necessary data gathering devices supplementary to the proposed regulations.

Subd. 2. **PLANNING AGENCY.** The planning agency shall perform research studies directed to:

(a) Assess the effect of existing and proposed federal and state law and regulations affecting the treatment and disposal of hazardous wastes and toxic substances on: (i) the volume and types of hazardous waste and waste sludges generated in the state; (ii) the economic feasibility and use of practices and processes by generators to reduce the generation of hazardous waste and to separate and recover or pretreat the waste at the point of generation; and (iii) the control of toxic substances;

(b) Assess the need for and means of developing hazardous waste treatment, processing, and disposal schemes and capabilities within the state, based on goals relating at least to the following: (i) technical feasibility; (ii) alternative technologies; (iii) anticipation of future technical developments; (iv) capital and operating costs and allocation thereof; (v) availability of similar facilities outside the state; (vi) volume and properties of the waste; (vii) reclamation and reuse of materials and energy in the waste; (viii) environmental impact; (ix) siting and land use; (x) public education and participation; (xi) operation and ownership; (xii) liability and long term care; (xiii) encouragement of generators and private processors to reduce the volumes of hazardous waste generated and to separate and recover or pretreat the waste at the point of generation; and (xiv) transportation costs and safety;

(c) Produce recommendations on methods and institutional arrangements by which this state and surrounding states may develop the capacity to plan for and manage hazardous waste control problems cooperatively and share reciprocally the burdens of treatment and disposal of hazardous waste.

Sec. 6. **APPROPRIATIONS.** Subdivision 1. There is appropriated from the general fund to the state planning agency the sum of $225,000 for expenditure pursuant to sections 1 to 6. Of this amount, $25,000 shall be available to the energy agency; $65,000 shall be available to the pollution control agency; and $135,000 shall be available to the state planning agency for general administration and research or research contracts.

Subd. 2. There is appropriated from the general fund to the legislative coordinating commission the sum of $25,000 for expenditure for the joint science and technology project pursuant to section 2 for staff and consultant services for preparation of preliminary research studies and research design and to secure expertise in advanced technology in resource recovery hazardous waste, and toxic substances necessary to advise the joint legislative committee and the agencies.

Subd. 3. The appropriations in this section shall be available until June 30, 1979. The complements of the following agencies are increased by the number of positions listed below. The positions are in the unclassified service and their continuation is contingent upon the availability of money from this appropriation.

state planning - 3

pollution control - 2

energy - 1

Sec. 7. **HAZARDOUS WASTE FACILITY.** Site selection, design, acquisition, and construction for any hazardous waste facility by the metropolitan waste control commission under the authority of section 473.516 or under a federal environmental protection agency demonstration grant to the pollution control agency shall not proceed further except after completion of the reports on hazardous wastes required by sections 1 to 6 of this act, in conformance with the purposes expressed in section 1 of this act, and after reevaluation of site selection criteria and associated environmental and design studies in light of the reports required and purposes expressed by sections 1 to 6 of this act.

Sec. 8. **COUNTY DESIGNATION OF SOLID WASTE FACILITY.** Except within the metropolitan area defined in section 473.121 and except within the jurisdiction of any special district which has the authority to designate facilities for the disposal of solid waste generated in an area transcending county boundaries, any county may require that all or any portion of the solid waste generated within the boundaries of the county or any service area thereof, be disposed of at a facility designated by the board, provided that the county board has developed and approved by resolution a solid waste program which includes criteria for the selection of solid waste facilities to be used by the county and provided that the designation be limited to a period not extending beyond June 30, 1980. The authority granted by this section shall expire on June 30, 1980.

Sec. 9. **EFFECTIVE DATE.** This act is effective the day following final enactment.

Approved April 5, 1978.

Sec. 14. ENERGY AGENCY

The commissioners of agriculture and economic development and the directors of the energy and pollution control agencies shall jointly review all proposals by Minnesota organizations and individuals for pilot projects for production and marketing of industrial hydrocarbons derived from agricultural commodities and forest products pursuant to the Food and Agriculture Act of 1977, Pub. L. No. 95-113, Section 1420, 91 Stat. 998 (1977), and shall select one proposal to be recommended to the legislative commission on Minnesota resources for endorsement and promotion by the state of Minnesota when it is submitted to the secretary of agriculture for funding.

The director of the energy agency shall prepare and submit a work program and furnish progress reports every two months to the legislative commission on Minnesota resources.

LEGISLATIVE BILL 424

Approved by the Governor April 21, 1978

Introduced by Schmit, 23

AN ACT to adopt the Nebraska Gasohol and Energy Development Act; to declare intent; to define terms; to provide grants for the construction of plants or facilities related to the production or storage of grain alcohol; to create funds; to provide duties; to provide conditions for receiving a grant; to provide for hearings; to provide an appropriation; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. The Legislature finds that Nebraska should immediately develop a gasohol development program to provide for:

(1) Expanded use of Nebraska agricultural products;

(2) Efficient and less-polluting energy sources and reserves which will make Nebraska more independent energy-wise of the Arab oil cartel and which will retain Nebraska dollars in the Nebraska economy to achieve a pyramid effect thereby generating additional jobs and tax income to the state rather than the export of Nebraska dollars to our Arab neighbors which causes dollars to come back in the form of balance of payment deficits, inflation, devaluation of the dollar, and purchase of Nebraska agricultural lands by foreigners;

(3) Development of protein which will be more efficiently stored and marketed to foreign nations rather than the present method of simple export of unprocessed grain products; and

(4) Alternative local outlets for Nebraska agricultural products which can be particularly utilized in times of depressed grain prices so as to give Nebraskans greater control of their crop marketing procedures rather than have crop marketing procedures too dependent upon federal agencies, major grain exporters, and foreign purchasers.

Sec. 2. The Legislature further finds:

(1) That Nebraska is the national leader in development of gasohol as an alternative energy source and Nebraska has an obligation to continue this research, development, and leadership;

(2) That time is of the essence if the previously enumerated goals are to be accomplished and that programs which are both experimental and functional must be initiated now if gasohol development is to proceed and if more economical and efficient programs are to follow;

(3) That the free enterprise system for the development of aviation, oil, railroads, and other major industries required the cooperation of government and that in 1977 the Legislature recognized this responsibility by enacting Legislative Bill 52 and the federal government has recognized this and that the net effect of this state and federal legislation was and is to provide substantial incentives to make gasohol economically feasible now, despite the fact that additional research and development of the coming years may show additional changes or benefits that can be derived from the gasohol program and may show that government assistance may not be necessary at some designated time in the future, to have gasohol or alcohol as an alternate energy source;

-881-

(4) That the Agricultural Products Industrial Utilization Committee is the proper agency to implement this law and that the Legislature's Committee on Agriculture and Environment as the prime developer of legislation developing gasohol has the direct responsibility to act as an oversight committee to insure compliance with this law and is in a position to inform other legislators as to any additional legislation necessary to accomplish the stated goals of this act; and

(5) That any experiment or developmental program will have a host of unanswered questions at its beginning, be subject to criticism and attack, and can give no absolute guarantees as to the final degree of success, but that these are reasons for moving forward in the development so as to find the answers.

Sec. 3. This act shall be known and may be cited as the Nebraska Gasohol and Energy Development Act.

Sec. 4. As used in this act, unless the context otherwise requires:

(1) Committee shall mean the Agricultural Products Industrial Utilization Committee; and

(2) Fund shall mean the Grain Alcohol Plant Construction Fund created under section 6 of this act.

Sec. 5. To carry out this act, the Agricultural Products Industrial Utilization Committee may make available up to five matching grants to qualified applicants to construct grain alcohol plants or facilities related to the production or storage of grain alcohol.

Sec. 6. There is hereby created, for the use of the committee, a fund to be known as the Grain Alcohol Plant Construction Fund, to consist of such money as may be appropriated to the fund by the Legislature. Any money in the Grain Alcohol Plant Construction Fund available for investment shall be invested by the state investment officer pursuant to the provisions of Chapter 72, article 12, Reissue Revised Statutes of Nebraska, 1943, and any amendments thereto.

Sec. 7. The proceeds of the fund shall be expended by the committee in the form of matching grants pursuant to this act.

Sec. 8. Any city, county, or village may apply for a matching grant from the committee to construct a grain alcohol plant or a facility related to the production or storage of grain alcohol. The grant shall be given to qualified applicants on a dollar to dollar matching basis. The applicant in demonstrating financial ability to build a plant or a facility related to the production or storage of grain alcohol may provide money or property towards the construction as its share of the cost. The grant shall be in an amount up to but not more than five hundred thousand dollars and no grant shall be provided unless the initial cost of such plant or a facility related to the production or storage of grain alcohol is at least one million dollars.

Sec. 9. The committee shall establish the criteria or guidelines for the applications to be submitted for the matching grants available under section 5 of this act within thirty days after the effective date of this act. Applications for such matching grants may be submitted within sixty days after the guidelines or criteria have been publicly announced.

Sec. 10. Any application made under section 5 of this act shall be filed with the committee. The committee shall establish application review procedures which shall include the Legislative Fiscal Analyst and other agencies as may be necessary.

Sec. 11. A resource statement shall be filed with the application. The resource statement, as prescribed by the committee, shall show in summary form plans, working drawings, and specifications prepared for the construction and equipping of the grain alcohol plant or a facility related to the production or storage of grain alcohol. The resource statement shall provide the total project cost, the amount and source of any local funds, the ability to repay any debts incurred in the construction of the plant or a facility related to the production or storage of grain alcohol, and financing available from other sources. The resource statement shall also include projection of costs and profits, the manner in which the project will be accomplished, and a proposed marketing program for the finished product. In projecting profits the applicant may take into account any available subsidies.

Sec. 12. Copies of all applications, statements, and reports required by this act shall be filed with the Legislature's Committee on Agriculture and Environment.

Sec. 13. The committee shall hold joint hearings with the Legislature's Committee on Agriculture and Environment within ten days of the application deadline to determine which applicants are qualified to receive the grants provided under section 5 of this act.

Sec. 14. In determining which applicants shall receive grants, the committees shall examine the proposed plans for the plant or a facility related to the production or storage of grain alcohol. The plans shall show an ability to complete construction and be in operation within nine months from the date of approval.

Sec. 15. Within ten days of the hearings conducted pursuant to section 13 of this act the committee shall determine which city, county, or village shall receive a grant. If there are more qualified applicants than grants available, priority shall be given to the applicants first to file an application.

Sec. 16. If no applications are received during the first application period, then a second application period will go into effect whereby only two grants will be awarded of up to, but not more than, one million dollars each and no grant shall be provided unless the initial cost of a grain alcohol plant or a facility related to the production or storage of grain alcohol is at least two million dollars.

Sec. 17. The committee shall submit a summary of all approved fund applications to the Executive Board of the Legislative Council. The board shall within ten days review the summary of approved fund applications and may object to any such fund application. A report shall be prepared for each application objected to stating the reason for such objection. Such reports shall be forwarded to the committee.

Sec. 18. If the Legislature's Committee on Agriculture and Environment determines by an affirmative vote of at least five members that the intent of this act is not being implemented in an appropriate and efficient manner it shall report to the Executive Board of the Legislative Council. The board shall recommend action so as to insure the construction of such grain alcohol plants or facilities related to the production or storage of grain alcohol pursuant to this act.

Sec. 19. The committee shall adopt rules and regulations to carry out this act and shall provide necessary assistance to applicants to properly and rapidly process grants.

Sec. 20. The committee shall become a member of any national gasohol promotion group. There is hereby appropriated thirty thousand dollars to the Agricultural Products Industrial Utilization Committee Membership Fund which is hereby created for purposes of membership in any national gasohol promotion group.

Sec. 21. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.

Signed into law August 7, Chapter 725

STATE OF NEW YORK

Cal. No. 1250 9860—A

IN SENATE

April 26, 1978

Introduced by Sens. WINIKOW, CAEMMERER—read twice and ordered printed, and when printed to be committed to the Committee on Transportation—reported favorably from said committee with amendments and ordered reprinted as amended and when reprinted to be committed to the order of first report

AN ACT directing the commissioner of general services to conduct an experimental program to test the feasibility of using a mixture of gasoline and alcohol as fuel for state operated motor vehicles

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The commissioner of general services is hereby authorized and directed to conduct an experimental program to test the feasibility of using a mixture of gasoline and alcohol as fuel for state operated motor vehicles. The commissioner shall enlist the assistance of the state department of transportation in conducting such program and shall make a final report to the legislature and the governor on or before March first, nineteen hundred seventy-nine. Such report shall include findings of fact and recommendations with respect to comparison mileage, cost, performance, safety and environmental impact between motor vehicles operated on gasoline alone, and motor vehicles operated on a mixture of gasoline and alcohol.

§ 2. This act shall take effect immediately.

EXPLANATION — Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

LBD8-29-321A

(Amended Substitute Senate Bill No. 303)

AN ACT

To amend sections 343.08, 6123.04, 6123.041, and 6123.13 of the Revised Code to permit more effective cooperation among governmental agencies and persons for the purpose of providing solid waste disposal, energy, and other resource recovery services, and to require the board of county commissioners to hold public hearings on proposed rates or charges to be collected by the board for such services.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 343.08, 6123.04, 6123.041, and 6123.13 of the Revised Code be amended to read as follows:

Sec. 343.08. (A) The board of county commissioners may fix reasonable rates or charges to be paid by every person, firm, corporation, board of township trustees, or board of education which is the owner of premises to which the collection or disposal of garbage and refuse, refuse recycling, or resource recovery service is made available, and may change such rates or charges whenever it deems it advisable. Charges for collection, disposal, refuse recycling, or resource recovery service shall be made only against lots or parcels which are improved, or in the process of being improved, with at least one permanent, portable, or temporary building. When any such charges are not paid, the board shall certify them to the county auditor, who shall place them upon the real property duplicate against the property served by such collection or disposal, or both, and such charges shall be a lien on such property from the date they are placed upon the real property duplicate by the auditor, and shall be collected in the same manner as other taxes. The county need not fix a rate or charge against property if it operates no collection system.

Where a county owns a garbage and refuse disposal, refuse

recycling, or resource recovery facility, either without a county collection system, or in conjunction therewith, the board of county commissioners may fix reasonable rates or charges for the use of such facility by political subdivisions, corporations, private collectors and other users, may contract with any public authority or person for the collection of garbage and refuse in any part of any district for disposal in any garbage and refuse disposal, refuse recycling, or resource recovery facility, or may lease any such facility to any public authority or person. The cost of collection, disposal, refuse recycling, or resource recovery under such contracts may be paid by rates or charges fixed and collected under this section or by rates and charges fixed under such contracts and collected by the contractors.

All moneys collected by the county as rates or charges for garbage and refuse collection, disposal, refuse recycling, or resource recovery service in any district shall be paid to the county treasurer and kept in a separate and distinct fund to the credit of such district. Such fund shall be used for the payment of the cost of the management, maintenance, and operation of the garbage and refuse collection, disposal, refuse recycling, or resource recovery facilities of such district, and any surplus may be used for the enlargement or replacement of such facilities, and for the payment of the interest and principal on bonds and bond anticipation notes issued pursuant to section 343.07 of the Revised Code, but in no case shall money so collected be expended otherwise than for the use and benefit of such district.

The board may, in lieu of operating and maintaining garbage and refuse collection, disposal, refuse recycling, or resource recovery facilities of the district with county personnel, enter into a contract with a municipal corporation having territory within the district pursuant to which the operation and maintenance of such facilities would be performed by such municipal corporation.

The products of any garbage and refuse collection, disposal, refuse recycling, or resource recovery facility owned by a county under Chapter 343. of the Revised Code shall be sold through competitive bidding in accordance with section 307.12 of the Revised Code except when the board determines by resolution that it is in the public interest to sell such products in a commercially reasonable manner without competitive bidding.

(B) THE BOARD OF COUNTY COMMISSIONERS SHALL FIX RATES OR CHARGES, OR ENTER INTO CONTRACTS FIXING THE RATES OR CHARGES TO BE COLLECTED BY THE CONTRACTOR, FOR GARBAGE AND REFUSE DISPOSAL OR COLLECTION, REFUSE RECYCLING, OR RESOURCE RECOVERY SERVICES AT A PUBLIC MEETING HELD IN ACCORDANCE WITH SECTION 121.22 OF THE REVISED CODE. IN ADDITION TO FULFILLING THE REQUIREMENTS OF SECTION 121.22 OF THE REVISED CODE, THE BOARD SHALL, BEFORE FIXING OR CHANGING RATES OR CHARGES FOR

GARBAGE AND REFUSE DISPOSAL OR COLLECTION, REFUSE RECYCLING, OR RESOURCE RECOVERY SERVICES, OR BEFORE ENTERING INTO A CONTRACT THAT FIXES RATES OR CHARGES TO BE COLLECTED BY THE CONTRACTOR PROVIDING THE SERVICES, HOLD AT LEAST THREE PUBLIC HEARINGS ON THE PROPOSED RATES, CHARGES, OR CONTRACT. PRIOR TO THE FIRST SUCH PUBLIC HEARING, THE BOARD SHALL PUBLISH ONCE A WEEK FOR THREE CONSECUTIVE WEEKS, IN A NEWSPAPER OF GENERAL CIRCULATION IN THE DISTRICT OR PORTION THEREOF THAT WOULD BE AFFECTED BY THE PROPOSED RATES, CHARGES, OR CONTRACT, NOTICE OF THE PUBLIC HEARINGS. THE NOTICE SHALL INCLUDE A LISTING OF THE PROPOSED RATES OR CHARGES TO BE FIXED AND COLLECTED BY THE BOARD OR FIXED PURSUANT TO THE CONTRACT AND COLLECTED BY THE CONTRACTOR, AND THE DATES, TIME, AND PLACE OF EACH OF THE THREE HEARINGS THEREON. THE BOARD SHALL HEAR ANY PERSON WHO WISHES TO TESTIFY ON THE PROPOSED RATES, CHARGES, OR CONTRACT.

Sec. 6123.04. For the purposes of Chapter 6123. of the Revised Code, the Ohio water development authority may:

(A) Adopt bylaws for the regulation of its affairs and the conduct of its business under Chapter 6123. of the Revised Code;

(B) Sue and plead in its own name; be sued and impleaded in its own name with respect to its contracts or torts of its members, employees, or agents acting within the scope of their employment, or to enforce its obligations and covenants made under sections 6123.06, 6123.08, and 6123.13 of the Revised Code. Any such actions against the authority shall be brought in the court of common pleas of the county in which the principal office of the authority is located, or in the court of common pleas of the county in which the cause of action arose, provided such county is located within this state, and all summonses, exceptions, and notices of every kind shall be served on the authority by leaving a copy thereof at the principal office with the person in charge thereof or with the secretary-treasurer of the authority;

(C) Make loans and grants to governmental agencies for the acquisition or construction of solid waste projects by any such governmental agency and adopt rules ; ~~regulations~~ and procedures for making such loans and grants;

(D) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for operation by, a person or governmental agency, solid waste projects, and establish rules ~~and regulations~~ for the use of such projects;

(E) Make available the use or services of any solid waste

project to one or more persons, one or more governmental agencies, or any combination thereof;

(F) Issue solid waste revenue bonds and notes and solid waste revenue refunding bonds of the state, payable solely from revenues as provided in section 6123.06 of the Revised Code, unless the bonds be refunded by refunding bonds, for the purpose of paying any part of the cost of one or more solid waste projects or parts thereof;

(G) Acquire by gift or purchase, hold, and dispose of real and personal property in the exercise of the powers of the authority and the performance of its duties under Chapter 6123. of the Revised Code;

(H) Acquire, in the name of the state, by purchase or otherwise, on such terms and in such manner as the authority determines proper, public or private lands, or parts thereof or rights therein, rights-of-way, property, rights, easements, and interests as it finds necessary for carrying out Chapter 6123. of the Revised Code, and compensation shall be paid for public or private lands so taken;

(I) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers under Chapter 6123. of the Revised Code:

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(1) When the cost under any such contract or agreement, other than compensation for personal services, involves an expenditure of more than two thousand dollars, the authority shall make a written contract with the lowest and best bidder after advertisement for not less than two consecutive weeks in a newspaper of general circulation in Franklin county, and in such other publications as the authority determines, such notice shall state the general character of the work and materials to be furnished, the place where plans and specifications therefor may be examined, and the time and place of receiving bids. Provided, that a contract or lease for the operation of a solid waste project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a solid waste project pursuant to section 6123.13 of the Revised Code or any contract for the construction of a solid waste project that is to be leased by the authority to, and operated by, persons who are not governmental agencies and the cost of such project is to be amortized exclusively from rentals or other charges paid to the authority by persons who are not governmental agencies OR BY GOVERNMENTAL AGENCIES THAT RECEIVE THE USE OR SERVICES OF SUCH PROJECT, INCLUDING GOVERNMENTAL AGENCIES THAT ARE PARTIES TO AN AGREEMENT FOR COOPERATION IN THE ACQUISITION OR CONSTRUCTION OF SUCH SOLID WASTE PROJECT PURSUANT TO SECTION 6123.13 OF THE REVISED CODE, is not subject to the foregoing requirements

and the authority may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper in the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project.

(2) Each bid shall contain the full name of every person or company interested in it and shall be accompanied by a sufficient bond or certified check on a solvent bank that if the bid is accepted a contract will be entered into and the performance thereof secured.

(3) The authority may reject any and all bids.

(4) A bond with good and sufficient surety, approved by the authority, shall be required of all contractors in an amount equal to at least fifty per cent of the contract price, conditioned upon the faithful performance of the contract.

(J) Employ managers, superintendents, and other employees and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys, and such other consultants and independent contractors as are necessary in its judgment to carry out Chapter 6123. of the Revised Code, and fix the compensation thereof. All expenses thereof shall be payable solely from the proceeds of solid waste revenue bonds or notes issued under Chapter 6123. of the Revised Code, from revenues, or from funds appropriated for such purpose by the general assembly;

(K) Receive and accept from any federal agency, subject to the approval of the governor, grants for or in aid of the construction of any solid waste project or for research and development with respect to solid waste facilities, and receive and accept aid or contributions from any source of money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions are made;

(L) Engage in research and development with respect to solid waste facilities;

(M) Purchase fire and extended coverage and liability insurance for any solid waste project and for the principal office and sub-offices of the authority, insurance protecting the authority and its officers and employees against liability for damage to property or injury to or death of persons arising from its operations, and any other insurance the authority may agree to provide under any resolution authorizing its solid waste revenue bonds or in any trust agreement securing the same;

(N) Charge, alter, and collect rentals and other charges for the use or services of any solid waste project as provided in section 6123.13 of the Revised Code;

(O) Provide coverage for its employees under Chapters 145., 4123., and 4141. of the Revised Code;

(P) Do all acts necessary or proper to carry out the powers expressly granted in Chapter 6123. of the Revised Code.

Sec. 6123.041. (A) With respect to projects, and the financing thereof, for industry, commerce, distribution, or research, including public utility companies, under agreements whereby the person to whom the project is to be leased, sub-leased or sold or to whom a loan is to be made for the project is to make payments sufficient to pay all of the principal of, premium, if any, and interest on the solid waste revenue bonds issued for the project, the authority may, in addition to other powers under this chapter:

(1) Make loans for the acquisition or construction of the project to such person upon such terms as the authority may determine or authorize, including secured or unsecured loans, and, for and in connection therewith, enter into loan agreements, accept notes and other forms of obligation to evidence such indebtedness and mortgages, liens, pledges, assignments, or other security interests to secure such indebtedness, which may be prior or subordinate to or on a parity with other indebtedness, obligations, mortgages, pledges, assignments, other security interests, or liens or encumbrances, and take such actions as may be deemed by it appropriate to protect such security and safeguard against losses, including, without limitation thereto, foreclosure and the bidding upon and purchase of property upon foreclosure or other sale;

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(2) Sell such project under such terms as it may determine, including, without limitation thereto, sale by conditional sale or installment sale, under which title may pass prior to or after completion of the project or payment or provisions for payment of all principal of, premium, if any, and interest on such bonds, or at any other time provided in such agreement pertaining to such sale, and including sale under an option to purchase at a price which may be a nominal amount or less than true value at the time of purchase;

(3) Grant a mortgage, lien, or other encumbrance on, or pledge or assignment of, or with respect to, all or any part of the project, revenues, reserve funds or other funds established in connection with such bonds, or on, of, or with respect to any lease, sub-lease, sale, conditional sale or installment sale agreement, loan agreement, or other agreement pertaining to the lease, sub-lease, sale or other disposition of a project or pertaining to a loan made for a project, or any guaranty or insurance agreement made with respect thereto, or any interest of the authority therein, or any other interest granted, assigned, or released to secure payments of the principal of, premium, if any, or interest on the bonds or to secure any other payments to be made by the authority, which mortgage, lien, encumbrance, pledge, assignment or such other security interest may be prior or subordinate to or on a parity with any other mortgage, pledge, assignment, other security interest, or lien or encumbrance;

(4) Provide that the interest on such bonds may be at a variable rate or rates changing from time to time in accordance with a base or formula as authorized by the authority;

(5) Contract for the acquisition or construction of such project or any part thereof and for the leasing, sub-leasing, sale or other disposition of such project may be made in a manner determined by the authority in its sole discretion, without necessity for competitive bidding or performance bonds.

(B) Property comprising a project is not subject to taxes or assessments so long as the bonds or notes issued to finance the costs of such project are outstanding, and the transfer of title to or possession of such property to the person to whom a loan or installment sale or conditional sale with respect to such project is made is not subject to the taxes levied pursuant to Chapters 5739. and 5741. of the Revised Code.

The authority shall certify the property comprising a project which is exempt from taxes and assessments pursuant to this section, and shall send, by certified mail, copies of such certification to the owner of such exempt property, to the tax commissioner, and to the county auditor of the county or counties in which any such exempt property is located.

Each county auditor shall maintain a separate list of all property exempt pursuant to this section and sections 3706.041 and 6121.044 of the Revised Code, in addition to the list of exempt property required to be maintained pursuant to section 5713.07 of the Revised Code.

(C) The authority, in the lease, sale, or loan agreement with respect to a project referred to in division (A) of this section, shall make appropriate provision for adequate maintenance of the project. THE SOURCE OF THE PAYMENTS SUFFICIENT TO PAY ALL OF THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST REQUIRED BY DIVISION (A) OF THIS SECTION SHALL BE LIMITED TO REVENUE DERIVED FROM RENTALS OR OTHER CHARGES FOR THE USE OF THE SERVICES OF THE PROJECT, AND SUCH REVENUE MAY BE DERIVED FROM SUCH RENTALS OR CHARGES AND PAID TO THE PERSON OR THE AUTHORITY BY GOVERNMENTAL AGENCIES WHICH RECEIVE THE USE OR SERVICES OF THE PROJECT, INCLUDING GOVERNMENTAL AGENCIES THAT ARE PARTIES TO AN AGREEMENT FOR COOPERATION IN THE ACQUISITION OR CONSTRUCTION OF SUCH SOLID WASTE PROJECT PURSUANT TO SECTION 6123.13 OF THE REVISED CODE.

(D) With respect to the projects referred to in this section, the authority granted by this section is cumulative and supplementary to all other authority granted in this chapter. The authority granted by this section does not alter or impair any similar authority granted elsewhere in this chapter with respect to other projects.

Sec. 6123.13. The Ohio water development authority may charge, alter, and collect rentals or other charges for the use or services of any solid waste project and contract in the manner provided by this section with one or more persons, one or more governmental agencies, or any combination thereof, desiring the use or services thereof, and fix the terms, conditions, rentals, or other charges for such use or services. Such rentals or other charges shall not be subject to supervision or regulation by any other authority, commission, board, bureau, or agency of the state and such contract may provide for acquisition by such person or governmental agency of all or any part of such solid waste project for such consideration payable over the period of the contract or otherwise as the authority in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of solid waste revenue bonds or notes or solid waste revenue refunding bonds of the authority or any trust agreement securing the same. Any governmental agency which has power to construct, operate, and maintain solid waste facilities may enter into a contract or lease with the authority whereby the use or services of any solid waste project of the authority will be made available to such governmental agency and pay for such use or services such rentals or other charges as may be agreed to by the authority and such governmental agency.

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Any governmental agency or combination thereof may cooperate with the authority in the acquisition or construction of a solid waste project and shall enter into such agreements with the authority as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties including, without limitation, the authorization of the construction of the project by one of the parties acting as agent for all of the parties ~~and~~; the ownership and control of the project by the authority to the extent necessary or appropriate for purposes of the issuance of solid waste revenue bonds by the authority; CONTRACTING FOR THE OPERATION, LEASING, OR SUBLEASING FOR SUCH TERM AND WITH SUCH PERSON OR GOVERNMENTAL AGENCY AS MAY BE AGREED UPON; AND THE SALE OR OTHER DISPOSITION OF SUCH PROJECT TO SUCH GOVERNMENTAL AGENCY AS MAY BE AGREED UPON. THE AUTHORITY SHALL NOT ENTER INTO SUCH A COOPERATIVE AGREEMENT WITH ANY GOVERNMENTAL AGENCY IF THE AUTHORITY DETERMINES THAT THE PROJECT TO BE ACQUIRED OR CONSTRUCTED UNDER THE AGREEMENT WOULD UNDERMINE THE FINANCIAL FEASIBILITY OF AN EXISTING SOLID WASTE PROJECT ACQUIRED OR CONSTRUCTED UNDER A COOPERATIVE AGREEMENT BETWEEN THE AUTHORITY AND

ANOTHER GOVERNMENTAL AGENCY BECAUSE THE PROPOSED PROJECT WOULD SERVE SUBSTANTIALLY THE SAME GEOGRAPHIC AREA AS THE EXISTING PROJECT. Any governmental agency may provide the funds for the payment of such contribution as is required under such agreements by the levy of taxes, assessments, or rentals and other charges for the use of the utility system of which the solid waste project is a part or to which it is connected, if otherwise authorized by the laws governing such governmental agency in the construction of the type of solid waste project provided for in the agreements, and may pay the proceeds from the collection of such taxes, assessments, utility rentals, or other charges to the authority pursuant to such agreements; or the governmental agency may issue bonds or notes, if authorized by such laws, in anticipation of the collection of such taxes, assessments, utility rentals, or other charges and may pay the proceeds of such bonds or notes to the authority pursuant to such agreements. In addition any governmental agency may provide the funds for the payment of such contribution by the appropriation of money or, if otherwise authorized by law, by the issuance of bonds or notes and may pay such appropriated money or the proceeds of such bonds or notes to the authority pursuant to such agreements. The agreement by the governmental agency to provide such contribution, whether from appropriated money or from the proceeds of such taxes, assessments, utility rentals, or other charges, or such bonds or notes, or any combination thereof, is not subject to Chapter 133. of the Revised Code or any regulations or limitations contained therein. The proceeds from the collection of such taxes or assessments, and any interest earned thereon, shall be paid into a special fund immediately upon the collection thereof by the governmental agency for the purpose of providing such contribution at the times required under such agreements.

When the contribution of any governmental agency is to be made over a period of time from the proceeds of the collection of special assessments, the interest accrued and to accrue before the first installment of such assessments is collected, which is payable by such governmental agency on such contribution under the terms and provisions of such agreements, shall be treated as part of the cost of the improvement for which such assessments are levied, and that portion of such assessments as are collected in installments shall bear interest at the same rate as such governmental agency is obligated to pay on such contribution under the terms and provisions of such agreements and for the same period of time as the contribution is to be made under such agreements. If the assessment or any installment thereof is not paid when due, it shall bear interest until the payment thereof at the same rate as such contribution and the county auditor shall annually place on the tax list and duplicate the interest applicable to such assessment and the penalty thereon as otherwise authorized by law.

Any governmental agency, pursuant to a favorable vote of the electors in an election held before or after the effective date of this section for the purpose of issuing bonds to provide funds to acquire, construct, or equip, or provide real estate and interests in real estate for, a solid waste facility, whether or not such governmental agency, at the time of such election, had the authority to pay the proceeds from such bonds or notes issued in anticipation thereof to the authority as provided in this section, may issue such bonds or notes in anticipation of the issuance thereof and pay the proceeds thereof to the authority in accordance with its agreement with the authority; provided, that the legislative authority of the governmental agency finds and determines that the solid waste project to be acquired or constructed by the authority in cooperation with such governmental agency will serve the same public purpose and meet substantially the same public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.

SECTION 2. That existing sections 343.08, 6123.04, 6123.041, and 6123.13 of the Revised Code are hereby repealed.

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Speaker _____ *of the House of Representatives.*

President pro tem of the Senate.

Passed October 20, 1977

Approved November 15, 1977

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 15th day of November, A. D. 1977,

Secretary of State.

File No. 204. Effective Date February 14, 1978.

FILE COPY
PLEASE DO NOT REMOVE

House: Ralph K. Anderson, Jr.
Attorney: Grimball
Stenographer: Mills
Date: April 11, 1978
No.: 14

A CONCURRENT RESOLUTION

RECOGNIZING MAY 3, 1978 AS SUN DAY IN SOUTH CAROLINA.

Whereas, solar energy can supply many of the energy needs of homes, businesses, schools, industry, and agriculture in South Carolina through existing technologies; and

Whereas, South Carolina has bountiful sunshine and a mild climate that makes solar power a prime energy resource; and

Whereas, a 1976 government study has determined that using solar power is cost effective for hot water and space heating in relation to electrical systems, and by 1980 it is expected that

solar will be competitive with oil and natural gas because of the increasing costs of these energy sources; and

Whereas, citizens all across the nation and in all major cities of South Carolina will be exploring the feasibility of solar technology through solar fairs, tours of solar homes, films, and educational materials on Sun Day; and

Whereas, Sun Day is a positive statement designed to focus public attention on solar energy, its technology, and economics.

Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

That the South Carolina General Assembly recognize Wednesday, May 3, 1978 as Sun Day in South Carolina.

Be it further resolved that the South Carolina General Assembly shall support increased government research, development, and implementation in the field of solar energy.

LD2741

HOUSE JOINT RESOLUTION NO. 147

Offered February 6, 1978

Requesting the State Board of Housing to develop and implement a training program on solar energy utilization.

Patrons—McClanan and Barrow

Referred to the Committee on General Laws

WHEREAS, the Code of Virginia was amended in 1977 by adding § 58-16.4, which allows the governing body of any county, city or town, by ordinance to exempt or partially exempt certified solar energy equipment, facilities or devices from local, personal or real property tax; and

WHEREAS, § 58-16.4 of the Code of Virginia mandates the State Office of Housing to certify solar energy equipment, and the State Board of Housing to promulgate regulations setting forth criteria for certifiable solar energy equipment; and

WHEREAS, the State Board of Housing adopted regulations to certify solar energy equipment; and

WHEREAS, the State Office of Housing has developed expertise in the area of solar energy; and

WHEREAS, there is a general lack of understanding and experience with solar energy systems at the local level; and

WHEREAS, this is a new field and very few people in Virginia have enough experience with solar energy equipment to make a knowledgeable decision as to whether or not to promote the use of solar energy; and

WHEREAS, § 36-124(5) of the Code of Virginia empowers the State Board of Housing to establish public information and educational programs relating to housing; and

WHEREAS, the use of solar energy is related to housing; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the State Board of Housing is requested to develop and implement a training program for local governing bodies and all citizens of Virginia on the application and utilization of solar energy.

ENROLLMENT

March 10, 1978

The Committee of the Senate on Enrolling and Journals has examined the within and finds the same properly enrolled.

Edward H. Johnson
Chairman

Lee Miller
President of the Senate

Hamilton Jr. Whorton
Secretary of the Senate

Thomas B. Murphy
Speaker of the House

Glenn Glass
Clerk of the House

Received Nan L. Underwood
Secretary, Executive Department

This 14th day of March 1978

Approved George Busbee
Governor

This 6th day of April 1978

S. B. No. 506 Act No. 1446

General Assembly

AN ACT

To provide authorization for solar easements; to provide for a short title; to provide a method of establishing a solar easement; to provide for the contents of a solar easement; to provide for severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

IN SENATE

Read 1st time Jan. 20, 1978
Read 2nd time Feb. 16, 1978
Read 3rd time Feb. 21, 1978
And Passed

Yeas 48 Nays 0

Hamilton Jr. Whorton
Secretary of the Senate

IN HOUSE

Read 1st time Feb. 22, 1978
Read 2nd time Feb. 23, 1978
Read 3rd time Mar. 2, 1978
And Passed

Yeas 97 Nays 11

Glenn Glass
Clerk of the House

By: Senators Starr of the 44th, Howard of the 42nd and Langford of the 51st

AN ACT

To provide authorization for solar easements; to provide for a short title; to provide a method of establishing a solar easement; to provide for the contents of a solar easement; to provide for severability; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Short Title. This Act shall be known and may be cited as the "Solar Easement Act of 1978".

Section 2. Findings; Declaration of Policy. The General Assembly finds that the use of solar energy in Georgia can help reduce the nation's reliance upon imported fuels, and that solar energy development should, therefore, be encouraged. Further, that as the use of solar energy devices increases, the possibility of future shading of such devices by buildings or vegetation will also increase. Therefore, the General Assembly declares that solar easements may be established to allow the owner of a solar energy device to negotiate for assurance of continued access to sunlight.

Section 3. Establishment of Solar Easements. Any easement obtained for the purpose of exposure of a solar energy device shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

Section 4. Contents of Solar Easements. Any instrument creating a solar easement shall include, but the contents shall not be limited to:

(a) a definite and certain description of the airspace affected by such easement; and

(b) any terms or conditions or both under which the solar easement is granted or will be terminated.

Section 5. Severability. In the event any Section, subsection, sentence, clause or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect, as if the Section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

Section 6. Effective Date. This Act shall become effective upon its approval by the Governor or upon its becoming law without his approval.

Section 7. Repealer. All laws and parts of laws in conflict with this Act are hereby repealed.

CHAPTER 294

(H.B. No. 333)

AN ACT

RELATING TO THE CREATION OF SOLAR EASEMENTS; AMENDING CHAPTER 6, TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-615, IDAHO CODE, TO PROVIDE FOR THE CREATION OF A SOLAR EASEMENT, TO PROVIDE THE REQUIREMENTS FOR AN INSTRUMENT CREATING A SOLAR EASEMENT, AND TO PROVIDE FOR THE TRANSFER OF A SOLAR EASEMENT UPON THE SALE OF PROPERTY ENCUMBERED WITH THE EASEMENT; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 6, Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 55-615, Idaho Code, and to read as follows:

55-615. SOLAR EASEMENTS. (1) An easement, as defined in section 50-1301, Idaho Code, may be obtained for the purpose of exposure of a solar energy device to sunlight. Such easement shall be known as a solar easement, shall be created in writing, and shall be subject to the same conveyancing and instrument recording requirements as other easements.

(2) Any instrument creating a solar easement shall include, but the contents shall not be limited to:

(a) The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement;

(b) Any terms or conditions or both under which the solar easement is granted or will be terminated;

(c) Any provisions for compensation of the owner of the property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement or compensation of the owner of the property subject to the solar easement for maintaining the solar easement.

(3) A solar easement shall be presumed to be attached to the real property on which it was first created, and shall be deemed to pass with the property when title is transferred to another owner as prescribed in section 55-603, Idaho Code.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

Approved March 29, 1978.

ASSEMBLY, No. 561

STATE OF NEW JERSEY

INTRODUCED JANUARY 30, 1978

By Assemblyman DiFRANCESCO

Referred to Committee on Energy and Natural Resources

AN ACT providing for the creation of solar easements and determining the requirements thereof.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. This act shall be known and may be cited as the "Solar Easements Act."

2. Any easement obtained for the purpose of exposure of a solar energy device shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

3. Any instrument creating a solar easement shall include, but the contents shall not be limited to:

a. The vertical and horizontal angles, expressed in degrees, at which the solar easement extend over the real property subject to the solar easement.

b. Any terms or conditions or both under which the solar easement is granted or will be terminated.

c. Any provisions for compensation of the owner of the property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement or compensation of the owner of the property subject to the solar easement for maintaining the solar easement.

4. This act shall take effect 30 days following its enactment.

STATEMENT

This bill creates solar easements for the purpose of guaranteeing the exposure of a solar energy device to incident sunlight during the entire year and gives solar easement agreements legal standing.

The bill requires that the solar easment be subject to the same conveyance and recording requirements as other easements. The

legal instrument granting the easement must specifically include: the vertical and horizontal angles which define the extent of the solar easement; any terms or conditions under which the easement is granted or can be terminated; and any provisions for compensating the property owner benefiting from the solar easement in the event of solar interference, or for compensating the owner of the property subject to the use limitations necessary to maintain the easement.

CHAPTER 323

An Act to amend the Code of Virginia by adding in Title 55 a chapter numbered 19, consisting of sections numbered 55-336 through 55-338, creating the Virginia Solar Easements Act.

[H 311]

Approved MAR 2 3 1978

Whereas, the General Assembly recognizes that if present levels of energy consumption continue, the available energy resources now being utilized will be insufficient to meet future energy needs; and

Whereas, the sun has been determined to be a viable and unlimited resource for producing energy and that the full utilization of solar energy has not been realized; and

Whereas, the citizens of the Commonwealth approved a change to the Constitution of Virginia in nineteen hundred seventy-six allowing solar energy equipment, facilities or devices to be exempted wholly or partially from taxation; and

Whereas, the nineteen hundred seventy-seven session of the General Assembly responded by enacting § 58-16.4 of the Code of Virginia to enable local governments to wholly or partially exempt certified solar energy equipment, facilities or devices from local taxation; and

Whereas, it is the desire of the General Assembly to further encourage the use and development of solar energy by giving legal standing to solar easement agreements for the purpose of guaranteeing the exposure of solar energy equipment, facilities or devices to incident sunlight during the entire year; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 55 a chapter numbered 19, consisting of sections numbered 55-336 through 55-338, as follows:

CHAPTER 19.

VIRGINIA SOLAR EASEMENTS ACT.

§ 55-336. Short title.—This chapter may be cited as the "Virginia Solar Easements Act."

§ 55-337. Creation of solar easements.—Any easement obtained for the purpose of exposure of solar energy equipment, facilities or devices shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

§ 55-338. Contents of solar easement agreements.—Any instrument creating a solar easement shall include, but the contents shall not be limited to:

1. The vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the solar easement.

2. Any terms or conditions or both under which the solar easement is granted or will be terminated.

3. Any provisions for compensation of the owner of the property subject to the solar easement.

PRINTING CODE—The parts in **this style type** are additions to the text of the existing section of the law. The parts in ~~this style type~~ are deletions from the text of the existing section of the law. The absence of either of the above type styles in an amendatory SECTION indicates that an entirely new section or chapter is to be added to the existing law.

HOUSE ENROLLED ACT No. 1196

AN ACT to amend IC 6-2-1 and IC 6-3-2 concerning income tax deductions.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-2-1-6 is amended to read as follows: Sec. 6. **(a)** In computing the amount of **gross income** tax imposed under the provisions of this ~~act~~ **chapter** for any year, there shall be deducted from the gross income of any taxpayer an amount of one thousand dollars ($1,000). Each such taxpayer who is taxable ~~hereunder~~ **under this chapter** upon gross income for any fractional part of the tax year shall be entitled to a deduction of that part of one thousand dollars ($1,000) which bears the same proportion to that amount which the period of time during which the taxpayer is subject to tax bears to an entire year. Where quarterly returns are filed, as provided in this ~~act~~ **chapter**, a proportionate part of the deduction provided for in this ~~section~~ **subsection** may be claimed and allowed on each quarterly return.

(b) A taxpayer may deduct from his gross income in a taxable year, the amount paid by the taxpayer to a person for the return of an empty returnable container. For purposes of this subsection, a "returnable container" means a container customarily returned, by the buyer of the contents, for reuse as a container. A taxpayer may claim the deduction provided under this subsection on his quarterly returns, if he is required to file quarterly returns under this chapter.

SECTION 2. IC 6-3-2 is amended by adding a NEW section 5 to read as follows: Sec. 5. (a) For purposes of this

section, "insulation" means any material, commonly used in the building industry, which is installed for the sole purpose of retarding the passage of heat energy into or out of a building.

(b) A resident individual taxpayer is entitled to a deduction from his adjusted gross income for a particular taxable year if, during that taxable year, he installs in his residence new, but not replacement, insulation, weather stripping, double pane windows, storm doors, or storm windows. However, a taxpayer does not qualify for this deduction unless the part of his residence in which he makes the installation was constructed at least three (3) years before the taxable year for which the deduction is claimed.

(c) The amount of the deduction to which a taxpayer is entitled in a particular taxable year is the lesser of:

(1) the amount the taxpayer pays for labor and materials for the installation that is made during the taxable year; or

(2) one thousand dollars ($1,000).

(d) To obtain the deduction provided by this section, the taxpayer must file with the department proof of his costs for the installation and a list of the persons or corporations who supplied labor or materials for the installation.

SECTION 3. This act takes effect January 1, 1979, and applies to taxable years that begin after December 31, 1978.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1649

(By MR. BIRD and MR. FARLEY)

[Passed March 11, 1978; in effect from passage.]

AN ACT to amend and reenact section three, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions from the business and occupation tax; modifying exemption for gross income of coal gasification and liquification projects to require prior certification of eligibility by tax commissioner; including privately-funded projects within the exemption and providing for expiration of the exemption.

Be it enacted by the Legislature of West Virginia:

That section three, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3. Exemptions.

There shall be an exemption in every case of fifty dollars in amount of tax computed under the provisions of this article. A person exercising a privilege taxable hereunder for a fractional part of a tax year shall be entitled to an exemption of the sum bearing the proportion to fifty dollars that the period of time the privilege is exercised bears to a whole year.

Only one exemption shall be allowed to any one person, whether he exercises one or more privileges taxable hereunder.

The provisions of the article shall not apply to: (a) Insurance companies which pay the state of West Virginia a tax upon premiums: *Provided,* That said exemption shall not extend to that part of the gross income of insurance companies which is received for the use of real property, other than property in which any such company maintains its office or offices, in this state, whether such income be in the form of rentals or royalties; (b) nonprofit cemetery companies organized and operated for the exclusive benefit of their members; (c) fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit: *Provided, however,* That said exemption shall not extend to that part of the gross income arising from the sale of alcoholic liquor, food and related services, of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of article seven, chapter sixty of this code; (d) corporations, associations and societies organized and operated exclusively for religious or charitable purposes; (e) production credit association, organized under the provisions of the federal "Farm Credit Act of 1933"; (f) any credit union organized under the provisions of chapter thirty-one, or any other chapter of this code: *Provided further,* That the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code; (g) gross income derived from advertising service rendered in the business of radio and television broadcasting; and (h) the gross income or gross proceeds of sale of a gasification or liquification of coal project in the demonstration, pilot or research stages: *Provided,* That prior to the commencement of operation of any such project, the tax commissioner shall have first certified the project as eligible for such exemption: *Provided, however,* That such exemption shall expire seven years from the date the project first receives gross income or gross proceeds from sales.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the House.

Takes effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within _____ this the _____ day of _____, 1978.

Governor

C-641

State of Arizona
House of Representatives
Thirty-third Legislature
Second Regular Session
1978

CHAPTER 113

HOUSE BILL 2027

AN ACT

RELATING TO MINERALS, OIL AND GAS; PRESCRIBING THE JURISDICTION OF THE OIL AND GAS CONSERVATION COMMISSION OVER CERTAIN WELLS; DEFINING "WELL"; MAKING STATUTORY IMPROVEMENT CHANGES, AND AMENDING SECTIONS 27-501 AND 27-516, ARIZONA REVISED STATUTES.

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

Section 1. Section 27-501, Arizona Revised Statutes, is amended to read:

27-501. Definitions

In this article, unless the context otherwise requires:

1. "Certificate of clearance" means a permit approved and issued or registered by the commission for transportation or delivery of oil, gas or OIL AND GAS products. ~~thereof.~~

2. "Certificate of compliance" means a certificate issued by the commission prior to connection of an oil or gas well with a pipe line, showing compliance with the conservation laws of ~~the~~ THIS state and conservation rules, regulations and orders of the commission.

3. "Commission or commissioner" means the oil and gas conservation commission.

4. "Completed well" means a well that meets any of the following conditions:

(a) Has produced or is ready to produce new formation hydrocarbons.

(b) Has been declared a dry hole and temporarily abandoned or plugged and abandoned.

(c) Has been otherwise readied for operation as in the case of injection and service wells.

5. "Developed area" or "developed unit" means a drainage unit having a COMPLETED well ~~completed therein~~ capable of producing oil or gas in paying quantities.

6. "Drainage unit" or "drilling unit" means the maximum area in a pool which may be drained efficiently by one well to produce the reasonable maximum amount of recoverable oil or gas in the area.

7. "Field" means the general area which is or appears to be underlaid by not less than one pool, including underground reservoirs containing oil, ~~or~~ gas or both.

8. "Fund" means the oil and gas conservation fund.

9. "Gas" means natural gas, casinghead gas, ~~and~~ all other hydrocarbons not defined as oil~~,~~ and helium or other substances of a gaseous nature. Natural gas and casinghead gas are further defined as follows:

(a) "Natural gas" means any combustible gas or vapor composed chiefly of hydrocarbons occurring in gaseous or vapor phase at initial reservoir conditions.

(b) "Casinghead gas" means any gas or vapor indigenous to an oil stratum and produced from such stratum with oil.

10. "Illegal oil" and "illegal gas" means oil or gas produced within the state from any well during any time in which the well has produced in excess of the amount allowed by law or any rule, regulation or order of the commission or the production of which shall cause waste.

11. "Illegal product" means any product derived, in whole or in part, from illegal oil or gas.

12. "Net drainage" means drainage not equalized by counter-drainage.

13. "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, produced at a well in liquid form by ordinary production methods and which are not the result of condensation of gas.

14. "Owner" means the person having the right to drill into, produce~~,~~ and appropriate production of oil, ~~or~~ gas or both from a pool.

15. "Person" includes A corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, representative~~,~~ or any group acting as a unit~~,~~ and includes any department, agency or instrumentality of the state or any OF ITS governmental ~~subdivision thereof.~~ SUBDIVISIONS.

16. "Pool" means an underground reservoir containing a common accumulation of oil, ~~or~~ gas or both and includes each zone of a general structure completely separated from any other zone in the structure.

17. "Producer" means the owner of a well capable of producing oil or gas.

18. "Product" means oil, gas~~,~~ or any product, by-product, mixture or blend ~~thereof~~ OF OIL OR GAS.

19. "Royalty owner" means a person possessing an interest in the production~~,~~ but who is not an owner.

20. "Waste" means and includes:

(a) Physical waste, as that term is generally understood in the oil and gas industry.

(b) The inefficient, excessive or improper use of~~,~~ or the unnecessary dissipation of reservoir energy.

(c) The locating, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations~~,~~ or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas.

(d) The inefficient storing of oil or gas.

(e) The production of oil or gas in excess of transportation or marketing facilities.

(f) The production of oil or gas when it is unprofitable to dispose of such production.

21. "Well" means and includes any hole drilled or spudded in for the purpose, with the intention~~;~~ or under the representation, of penetrating oil or gas bearing strata~~;~~ or of penetrating any strata in search of stratigraphic data pertinent to the location of oil or gas bearing strata, whether or not in either case, oil or gas is actually discovered~~;~~ , AND ANY HOLE USED IN CONNECTION WITH THE UNDERGROUND STORAGE OF HYDROCARBON SUBSTANCES, WHETHER LIQUID OR GASEOUS, AND ANY HOLE USED IN CONNECTION WITH A PROCESS TO INJECT ANY SUBSTANCE FOR PURPOSES OF DISPOSAL OR TO INCREASE RECOVERY, INCLUDING ANY HOLE USED FOR THE PURPOSE OF SECONDARY OR TERTIARY RECOVERY, AND ANY HOLE USED FOR THE PURPOSE OF PRESSURE MAINTENANCE. The commission may, as it shall deem to be to the best interests of the state, determine that any hole drilled or spudded in shall be included within ~~the above~~ THIS definition to the extent necessary for the administration and enforcement of the rules required by section 27-516. The determination of the commission shall be final in any circumstance involving the question of purpose, intent or representation provided such determination shall be subject to appeal as provided by section 27-520.

Sec. 2. Section 27-516, Arizona Revised Statutes, is amended to read:

27-516. Rules and regulations

A. The commission shall make rules and amend them ~~from time to time~~ as deemed necessary for the proper administration and enforcement of this article, including the following rules, regulations and orders:

1. Requiring the drilling, casing and plugging of wells in a manner to prevent:

(a) Escape of oil and gas from one stratum to another.

(b) Intrusion of water into an oil or gas stratum from a separate stratum.

(c) Pollution of fresh water supplies by oil, gas or salt water.

(d) Waste.

2. Requiring reports showing the location of oil and gas wells~~;~~ and requiring filing of logs and drilling record within thirty days from the completion of a well drilled for oil or gas.

3. Requiring a reasonable bond with good and sufficient surety conditioned on the performance of the duties prescribed in ~~subdivisions~~ PARAGRAPHS 1 and 2 of this subsection including the obligation to plug each dry or abandoned well.

4. Preventing drowning by water of any stratum or part ~~thereof~~ capable of producing oil or gas in paying quantities~~;~~ and preventing the premature and irregular encroachment of water which reduces or tends to reduce the total ultimate recovery of oil or gas from any pool.

5. Requiring the operation of wells with efficient gas-oil ratio and fixing the limits of such ratios.

6. Preventing blow-outs, caving and seepage.

7. Preventing creation of unnecessary fire hazards.

8. Requiring identification of ownership of oil and gas wells, producing leases, refineries, tanks, plants, structures,~~-~~ and storage and transportation equipment and facilities.

9. Regulating shooting, perforating and chemical treatment of wells.

10. Regulating gas cycling operations.

11. Regulating secondary recovery methods, including introduction of gas, air, water or other substance into producing formations.

12. Regulating spacing of wells and establishing drilling units.

13. Limiting, allocating and apportioning production of oil and gas from a pool or field for prevention of waste, and allocating production between tracts of land under separate ownership in a pool on a fair and equitable basis so that each tract will be permitted to produce not more than its just and equitable share from such pool.

14. Preventing, so far as practicable, reasonably avoidable drainage from each developed unit, not equalized by counterdrainage.

15. Requiring a producer of oil or gas to submit for each oil or gas well operated, on a form prescribed by the commission, a monthly report of actual production from each oil or gas well. Such report shall be submitted on or before the twenty-fifth day of the next succeeding month.

16. Requiring persons making settlement with the owner of oil or gas interests to render statements to the owner showing the quantity and gravity purchased and the price per barrel of oil or the price per one thousand cubic feet of gas.

17. Requiring, either generally or in a particular area, a certificate of clearance for transportation or delivery of oil, gas or any product. ~~thereof.~~

18. Requiring the applicant for a drilling permit, ~~in cases where~~ IF the surface of the land is owned by another not in a contractual relationship with the applicant, to post bond in a reasonable sum with good and sufficient surety conditioned on payment of just compensation to the landowner for actual damages to the surface of OR IMPROVEMENTS ON the land ~~or improvements thereon~~ caused by the drilling permittee's operations.

19. Requiring all forms and reports requested by the commission to be submitted to the commission on or before the twentieth day of the next succeeding month for monthly reports or within twenty days following the completion of the action requiring the report, except as otherwise provided by the commission.

20. REQUIRING THE PERMITTING OF ALL WELLS AND THE APPROVAL OF ALL EQUIPMENT AND METHODS:

(a) TO CREATE OR USE EXISTING STORAGE SPACE FOR THE UNDERGROUND STORAGE OF HYDROCARBON SUBSTANCES, WHETHER LIQUID OR GASEOUS.

(b) USED FOR THE INJECTION OF ANY SUBSTANCE INTO GEOLOGICAL STRATA FOR THE PURPOSE OF PRESSURE MAINTENANCE OR FOR THE PURPOSE OF INCREASING ULTIMATE RECOVERY.

(c) USED FOR THE PURPOSE OF SECONDARY AND TERTIARY RECOVERY.

(d) USED FOR THE DISPOSAL OF ANY SUBSTANCE.

B. No rule, regulation or order, or change, renewal or extension ~~thereof~~, except as otherwise provided by this article, shall, in the absence of an emergency, be made by the commission under the provisions of this article except after a public hearing of which not less than ten days' notice has been given. The public hearing shall be held at such time and place as may be prescribed by the commission, and any interested person shall be entitled to be heard. Notice shall be given by personal service, by publication~~,~~ or by United States mail, addressed, postage prepaid, to the last known mailing address of the person or persons affected. The date of service shall be the date on which service was made in the case of personal service, the date of first publication in the case of notice by publication~~,~~ and the date of mailing in the case of notice by mailing. The notice shall issue in the name of the state, and shall be signed by a member of the commission or its deputy, shall specify the style and number of the proceeding, the time and place of the hearing~~,~~ and shall briefly state the purpose of the proceeding. Should the commission elect to give notice by personal service, such service may be made by an officer authorized to serve process~~,~~ or by the commission~~,~~ in the same manner as is provided by law for the service of process in civil actions in the courts of this state. Proof of service by the commission shall be by the affidavit of the commission or its authorized representative making personal service. ~~Where~~ IF service is made by the sheriff, the proof of service shall be as required by law for service of process in civil actions. ~~Whenever~~ IF the matter to be heard concerns the adoption, amendment or repeal of a regulation of general applicability, notice shall be by publication.

C. ~~In event~~ IF an emergency is found by the commission to exist, which in its judgment requires making, changing, renewing or extending a rule, regulation or order without first having a hearing, the emergency rule, regulation or order shall have the same validity as if a hearing had been held after due notice. The emergency rule, regulation~~,~~ or order shall remain in force not to exceed thirty days from its effective date~~,~~ but ~~in any event~~ shall expire when a rule, regulation or order with respect to the subject matter of the emergency rule, regulation or order becomes effective after due notice and hearing.

Approved by the Governor - June 1, 1978

Filed in the Office of the Secretary of State - June 1, 1978

State of Arizona
Senate
Thirty-third Legislature
Second Regular Session
1978

CHAPTER 177

SENATE BILL 1237

AN ACT

RELATING TO MINERALS, OIL AND GAS; PRESCRIBING METHODS OF LOCATION OF MINING CLAIMS; AMENDING SECTIONS 27-202, 27-203, 27-204, 27-206 AND 27-208, ARIZONA REVISED STATUTES; REPEALING SECTION 27-207, ARIZONA REVISED STATUTES, AND AMENDING TITLE 27, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 27-210.

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

Section 1. Purpose

The legislature recognizes that the performance of work consisting of digging pits or drilling shallow holes does not, under most circumstances, provide any meaningful geological information to a mineral claimant and may result in needless activity and sometimes creates hazards in the form of open pits left in the ground. The legislature also recognizes that previous laws did not provide an adequate means of identifying the locality of unpatented mining claims. It is therefore the purpose of this act to provide for a means of location of mining claims more consistent with modern exploration techniques and provide a method of recordation of maps or plats of mining claims to enable the public to ascertain the locality of mining claims.

Sec. 2. Section 27-202, Arizona Revised Statutes, is amended to read:

27-202. Method of locating lode, placer or millsite claim; monument; location notice; amendments

A. Location of a ~~mining~~ LODE, PLACER OR MILLSITE claim shall be made by erecting ~~at-or-contiguous-to-the-point-of-discovery~~ ON THE SURFACE AT ONE CORNER WITHIN THE BOUNDARIES OF THE CLAIM a conspicuous monument of stones not less than three feet in height, or an upright post securely fixed and projecting at least four feet above the ground, in or on which there shall be posted a location notice, signed by the name of the locator. The location notice shall contain:

1. The name of the claim located.
2. The name AND ADDRESS of the locator.

3. The date of the location.

4. The length and width of the claim in feet, and the distance in feet from the ~~point of discovery~~ LOCATION MONUMENT to each end of the claim.

5. The general course of the claim.

6. The locality of the claim with reference to some natural object or permanent monument whereby the claim can be identified and if known to the locator, the identification of the section, township~~,~~ and range in which the notice of location of the claim is posted.

B. Until the requirements of subsection A are complied with, no right of location is acquired.

C. The notice may be amended at any time and the monument changed to correspond with the amended location, but no change shall be made which will interfere with the rights of others. IF SUCH AMENDMENT CHANGES THE EXTERIOR BOUNDARIES OF THE CLAIM, A NEW OR AMENDED MAP, PLAT OR SKETCH SHALL BE RECORDED PURSUANT TO SECTION 27-203 SHOWING SUCH CHANGE.

Sec. 3. Section 27-203, Arizona Revised Statutes, is amended to read:

27-203. Completing lode locations; recording location notice; monumenting; plat requirements; abandonment of claims; recorder duties and fees

A. The locator of a lode, PLACER OR MILLSITE claim shall:

1. Cause to be recorded in the office of the county recorder a~~-~~ OF THE COUNTY IN WHICH THE CLAIM IS LOCATED AN EXECUTED copy of the location notice TO WHICH NOTICE SHALL BE ATTACHED A MAP, PLAT OR SKETCH OF THE CLAIM, within ninety days from the time of the location. IF THE POSTED NOTICE OF LOCATION DOES NOT CONTAIN THE SECTION, TOWNSHIP AND RANGE IN WHICH THE NOTICE IS POSTED SUCH INFORMATION SHALL BE ADDED TO THE NOTICE PRIOR TO RECORDING PURSUANT TO THIS SECTION IF THE LAND HAS BEEN SURVEYED. IF THE LAND HAS NOT BEEN SURVEYED, THE LOCATOR SHALL IDENTIFY TO THE BEST OF HIS ABILITY THE PROJECTED, PROTRACTED OR EXTENDED SECTION, TOWNSHIP AND RANGE IN WHICH THE NOTICE OF LOCATION OF THE CLAIM IS POSTED.

2. Monument the claim on the ground within ninety days from the time of the location so that its boundaries can be readily traced.

~~B.--The locator of a lode claim shall within one hundred twenty days from the time of the location sink a location shaft on the claim to a depth of at least eight feet from the lowest part of the rim of the shaft at the surface or deeper, if necessary, to a depth where mineral in place is disclosed in the shaft.--Any open cut, adit or tunnel, made as part of the location of a lode mining claim, equal in amount of work to a shaft eight feet deep and four feet wide by six feet long, is equivalent as location work, to a shaft sunk from the surface.~~

B. THE MAP, PLAT OR SKETCH REQUIRED BY SUBSECTION A SHALL BE:

1. IN LEGIBLE FORM AND NOT MORE THAN EIGHT AND ONE-HALF INCHES BY FOURTEEN INCHES.

2. ON A SCALE OF ONE INCH EQUALS NOT MORE THAN TWO THOUSAND FEET.

3. BASED UPON THE PERFORMANCE OF A SURVEY PERFORMED COMMENSURATE WITH THE ABILITIES OF THE LOCATOR. IT SHALL SET FORTH THE BOUNDARIES AND POSITION OF THE CLAIM WITH SUCH ACCURACY AS WOULD PERMIT A REASONABLY KNOWLEDGEABLE PERSON TO FIND AND IDENTIFY THE CLAIM ON THE GROUND. THE LOCATOR MAY SHOW CONTIGUOUS CLAIMS ON THE MAP, PLAT OR SKETCH IF THE CLAIM BEING LOCATED IS CLEARLY IDENTIFIED. NOTHING CONTAINED IN THIS SECTION SHALL REQUIRE A LOCATOR TO EMPLOY A PROFESSIONAL SURVEYOR OR ENGINEER FOR THE PREPARATION OF THE MAP, PLAT OR SKETCH REQUIRED BY THIS SECTION.

~~6.--In-lieu-of-the-requirements-of-subdivision-B-hereof,-the locator-of-a-lode-claim,-within-one-hundred-twenty-days-from-the-time of-location-may:~~

~~1.--Do-location-work-consisting-of-drilling-not-less-than-ten feet-in-depth-in-any-one-hole,-costing-at-least-one-hundred-dollars for-the-actual-doing-of-such-drilling-at-the-point-where-done.--Work performed-by-the-locator-himself-or-equipment-furnished-by-him-shall be-credited-to-such-cost-at-the-prevailing-rate-in-the-district-for the-type-of-work-or-equipment-so-done-or-furnished-by-the-locator. Such-drilling-may-be-done-at-one-or-more-points-within-a-claim-or-a group-of-contiguous-claims-not-exceeding-ten,-providing-all-of-such claims-are-so-located-that-the-entire-area-of-the-group-can-be-contained-within-the-exterior-limits-of-a-square-three-thousand-feet long-by-three-thousand-feet-wide,-located-by-the-same-locator,-if-the drilling-so-done-for-the-group-aggregates-not-less-than-ten-feet-in depth-for-each-claim-or-fractional-claim-in-the-group,-and-if-the-cost of-the-work-so-done-for-the-group-aggregates-at-least-one-hundred-dollars-for-each-claim-or-fractional-claim-in-the-group.~~

~~2.--Cap-each-drill-hole-intended-as-location-work-and-mark-it with-a-wooden-or-metal-post-at-least-four-inches-in-diameter-placed within-five-feet-of-the-hole,-which-marker-shall-be-at-least-forty-eight-inches-in-height-above-the-ground,-shall-be-firmly-imbedded-in the-ground,-and-shall-have-securely-fixed-to-it-a-notice-containing the-name-of-the-claim-on-which-located,-the-names-of-the-contiguous claims,-if-any,-for-which-it-is-claimed-as-location-work,-the-locator, the-depth-of-the-hole-and-the-date-or-dates-the-hole-was-drilled.~~

~~3.--Make-and-record-in-the-office-of-the-county-recorder-of-the county-in-which-the-claim-or-claims-are-located,-an-affidavit-by-the person-on-whose-behalf-such-drilling-was-done-or-by-some-person-for him-knowing-the-facts,-setting-forth-the-position-and-depth-of-the drill-hole-or-holes,-and-if-done-for-more-than-one-claim,-the-contiguous claims-for-which-it-was-done,-to-which-affidavit-shall-be-attached-a plat-to-scale-showing-the-names-and-the-boundaries-of-the-claims-and location-of-the-drill-hole-or-holes.~~

~~4.--The-drilling-of-location-holes,-as-required-by-this-subsection, shall-be-done-either-by-diamond,-rotary-or-churn-drills-or-by-any-other drilling-equipment-capable-of-collecting-a-continuous-core-of-bedrock at-least-seven-eighths-inches-in-diameter-or-a-representative-sample-of bedrock-cuttings-from-a-hole-at-least-two-inches-in-diameter.~~

C. THE PLAT OR MAP OF ANY CLAIM SHALL CONTAIN THE FOLLOWING INFORMATION:

1. THE NAME OF THE CLAIM.

2. WHETHER THE CLAIM IS A LODE, PLACER OR MILLSITE CLAIM.

3. THE LOCALITY OF THE CLAIM WITH REFERENCE TO THE SECTION, TOWNSHIP AND RANGE IN WHICH THE CLAIM IS LOCATED WITH A COURSE AND DISTANCE TIE FROM A CORNER OF THE CLAIM OR CONTIGUOUS GROUP OF CLAIMS TO A MONUMENT OF THE PUBLIC LAND SURVEY IF THE LAND HAS BEEN SURVEYED. IF THE LAND HAS NOT BEEN SURVEYED, A CORNER OF THE CLAIM OR CLAIM GROUP SHALL BE TIED BY COURSE AND DISTANCE TO AN ESTABLISHED SURVEY MONUMENT OF A UNITED STATES GOVERNMENT AGENCY OR UNITED STATES MINERAL MONUMENT. IF NO SUCH MONUMENT CAN BE FOUND THROUGH THE EXERCISE OF REASONABLE DILIGENCE, THE MAP SHALL SHOW THE COURSE AND DISTANCE FROM ONE CORNER OF THE CLAIM OR CLAIM GROUP TO SOME PROMINENT NATURAL OBJECTS OR OTHER PERMANENT MONUMENTS DESCRIBED ON SUCH MAP.

4. THE SCALE OF THE MAP.

5. THE COUNTY IN WHICH THE CLAIM IS SITUATED.

6. A NORTH ARROW.

7. THE TYPE OF CORNER AND LOCATION MONUMENTS USED.

8. BEARING AND DISTANCE BETWEEN CORNERS.

9. IF THE CLAIM IS A PLACER OR MILLSITE CLAIM WITH EXTERIOR LIMITS CONFORMING TO LEGAL SUBDIVISIONS OF THE PUBLIC SURVEY, THE MAP, PLAT OR SKETCH SHALL GIVE THE LEGAL DESCRIPTION OF THE CLAIM INSTEAD OF THE REQUIREMENTS OF PARAGRAPHS 3 AND 8 OF THIS SUBSECTION.

D. Failure to do all the things within the times and at the places specified in subsections A, ~~and~~ B ~~or~~ AND C shall be an abandonment of the claim, and all right and claim of the ~~discoverer and~~ locator shall be forfeited.

E. THE COUNTY RECORDER SHALL KEEP PROPER INDICES OF MINE LOCATION NOTICES AND MAPS BY THE CADASTRAL SUBDIVISIONS OF THE UNITED STATES BUREAU OF LAND MANAGEMENT OR GENERAL LAND OFFICE. THE COUNTY RECORDER SHALL RECEIVE AS FEES THREE DOLLARS FOR RECORDING A MINE LOCATION NOTICE AND MAP, PLAT OR SKETCH APPENDED TO SUCH NOTICE.

Sec. 4. Section 27-204, Arizona Revised Statutes, is amended to read:

27-204. Monumenting lode, placer or millsite claims

The boundaries of a lode, PLACER OR MILLSITE claim shall be monumented by six substantial posts projecting at least four feet above the surface of the ground, or by substantial stone monuments at least three feet high, one at each corner of the claim and one at the center of each end line OF A LODE CLAIM. SUBSTANTIAL POSTS MAY BE OF ANY MATERIAL AS MAY BE READILY DISTINGUISHED AS MONUMENTS AND SHALL BE NOT LESS THAN ONE AND ONE-HALF INCHES IN CROSS SECTION. When the point of a monument is at the same point and coincides with a monument of the survey of the United States, the monument of the government survey shall be deemed a mining claim monument. EACH MONUMENT ERECTED BY THE LOCATOR SHALL BE MARKED TO IDENTIFY THE CORNER OR END CENTER OF THE CLAIM OR CLAIMS FOR WHICH IT WAS ERECTED.

Sec. 5. Section 27-206, Arizona Revised Statutes, is amended to read:

27-206. Relocation

The ~~location~~ RELOCATION of an ~~abandoned or forfeited~~ A claim shall be made in the same manner as other locations. ~~except that the relocator may, if the original location work consisted of a shaft pursuant to section 27-203, subsection B, perform the location work by sinking the original location shaft eight feet deeper than it was originally, or if the original location work consisted of a tunnel or open cut, the locator may perform the location work by extending the tunnel or open cut by removing therefrom two hundred and forty cubic feet of rock or vein material. If under a prior location an abandoned or forfeited claim or claims has had drilling done thereon, the relocation work may be done by drilling deeper an existing hole or holes in the manner and to the extent prescribed by section 27-203, subsection C.~~ IF THE ORIGINAL LOCATION WORK OF THE CLAIM BEING RELOCATED INCLUDED THE RECORDING OF A MAP OR PLAT PURSUANT TO SECTION 27-203, THE LOCATOR MAY PERFORM RELOCATION WORK BY RESURVEYING OR BY VERIFYING THE ACCURACY OF THE BOUNDARIES AND POSITIONS OF THE CLAIM AS SHOWN ON THE MAP, PLAT OR SKETCH OF THE CLAIMS AND BY RECORDING A MAP, PLAT OR SKETCH IN THE MANNER PRESCRIBED BY SECTION 27-203.

Sec. 6. Repeal

Section 27-207, Arizona Revised Statutes, is repealed.

Sec. 7. Section 27-208, Arizona Revised Statutes, is amended to read:

27-208. Affidavit of performance of annual work

A. ~~Within three months after expiration of the time provided for~~ BEFORE DECEMBER 31 OF ANY YEAR IN WHICH THE performance of annual labor or making improvements upon a mining claim IS REQUIRED, the person on whose behalf such work or improvement was made, or some person for him, knowing the facts, may make and record in the office of the county recorder of the county in which the claim is located an affidavit in substance as follows:

State of Arizona, county of _____ ss:
_____, being duly sworn, deposes and says that he is a citizen of the United States and more than eighteen years of age, resides at _____, in _____ county, Arizona, is personally acquainted with the mining claim known as _____ mining claim, situated in _____ _____ mining district, _____ COUNTY, Arizona, the location notice of which is recorded in the office of the county recorder of said county, in book _____ of records of mines, at page _____. That between the _____ day of _____, A.D. _____, and the _____ _____ day of _____, A.D. _____, at least _____ dollars worth of work and improvements were done and performed upon said claim, not including the location work of said claim. Such work and improvements were made by and at the expense of _____, owners of said claim, for the

purpose of complying with the laws of the United States pertaining to assessment or annual work, and _____ (here name the miners or persons who worked upon the claim in doing the work) were the persons employed by said owner and who labored upon said claim, did said work and improvements, the same being as follows, to wit: (Here describe the work done~~,~~ and add signature and verification.)

B. The affidavit when recorded shall be prima facie evidence of the performance of the labor or improvements. Any affidavit shall include, if known to the locator, the identification of the section, township~~,~~ and range in which the notice of location of the claim is posted. ~~,-unless-that information-is-already-in-the-location-notice-for-the-claim.~~

C. When ~~two-or-more-contiguous-claims-are-owned-by-the-same-person, and-constitute-a-group,-and-the~~ annual work is done upon ~~each-of-the claims-or-upon~~ one or more of ~~them~~ A CONTIGUOUS GROUP OF CLAIMS for the benefit of all, or wholly or partly outside of ~~the~~ A CONTIGUOUS GROUP OF claims for the benefit of all, all ~~the~~ claims may be included in a single affidavit.

Sec. 8. Title 27, chapter 2, article 1, Arizona Revised Statutes, is amended by adding section 27-210, to read:

27-210. Existing claims

A. THE OWNER OF AN UNPATENTED LODE, PLACER OR MILLSITE CLAIM EXISTING ON THE EFFECTIVE DATE OF THIS SECTION MAY ON OR BEFORE OCTOBER 21, 1980, FILE A MAP, PLAT OR SKETCH OF SUCH CLAIM CONFORMING TO THE REQUIREMENTS OF SECTION 27-203, SUBSECTIONS B AND C WHICH SHALL ALSO RECITE THE BOOK AND PAGE OF RECORDING OF THE LOCATION NOTICE AND ANY AMENDMENTS TO THE LOCATION NOTICE. THE OWNER OF A GROUP OF CLAIMS MAY FILE A SINGLE PLAT OR MAP FOR ANY CLAIMS HAVING THE POINT OF POSTING OF THE LOCATION NOTICE WITHIN THE SAME SECTION OF THE PUBLIC LAND SURVEY SYSTEM.

B. THE COUNTY RECORDER SHALL RECEIVE AS FEES FIFTY CENTS PER CLAIM FOR RECORDING SUCH A MAP, PLAT OR SKETCH UNDER THIS SECTION AND SHALL INDEX SUCH CLAIMS BY THE NAME OF THE CLAIM IN THE INDEX OF CLAIMS BY CADASTRAL SUBDIVISIONS OF THE UNITED STATES BUREAU OF LAND MANAGEMENT OR GENERAL LAND OFFICE.

C. THE RECORDING OF A CLAIM IN COMPLIANCE WITH THIS SECTION SHALL CONSTITUTE CONSTRUCTIVE NOTICE TO THE PUBLIC OF THE POSITION OF SUCH CLAIM AFTER THE DATE OF RECORDING AND SHALL CONSTITUTE A REBUTTABLE PRESUMPTION THAT THE CLAIM WAS MONUMENTED ON THE GROUND SO THAT ITS BOUNDARIES COULD BE READILY TRACED.

Approved ~~by~~ the Governor - June 7, 1978

Filed in the Office of the Secretary of State - June 8, 1978

State of Arizona
House of Representatives
Thirty-third Legislature
Second Regular Session
1978

CHAPTER 137

HOUSE BILL 2019

AN ACT

RELATING TO TAXATION; SUSPENDING THE IMPOSITION OF A PORTION OF CERTAIN TRANSACTION PRIVILEGE TAXES ON THE BUSINESSES OF COPPER MINING, COPPER SMELTING OR PRODUCING COPPER FOR SALE, PROFIT OR COMMERCIAL USE FOR A CERTAIN PERIOD OF TIME.

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

Section 1. Suspension of imposition of taxes

A. Effective June 1, 1978, fifty per cent of the taxes imposed by title 42, chapter 8, article 1.2, Arizona Revised Statutes, on the businesses of copper mining, copper smelting or producing copper for sale, profit or commercial use, are suspended. This suspension shall include the by-products recovered by the copper mining activity of such businesses.

B. Such suspension shall not be construed to forgive liability for taxes incurred prior to June 1, 1978.

Sec. 2. Expiration

The provisions of this act shall expire on June 30, 1980.

Sec. 3. Emergency

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor - June 2, 1978

Filed in the Office of the Secretary of State - June 2, 1978

(To be made one and ten copies)

HOUSE OF REPRESENTATIVES

.....LEGISLATURE, 19.....

STATE OF HAWAII

H.B. NO. 3033-78 H.D. 1 S.D. 1

Act 135-78

A BILL FOR AN ACT

RELATING TO THE RESERVATION AND DISPOSITION OF GOVERNMENT MINERAL RIGHTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 182-1, Hawaii Revised Statutes, is amended by amending the definition of "occupier" to read:

""Occupier" means <u>any person who owns in fee the surface of the land or</u> any person entitled to the possession of land under a certificate of occupation, a nine hundred and ninety-nine year homestead lease, a right of purchase lease, a cash freehold agreement, [or under a deed, grant, or patent,] and any person entitled to possession under a general lease <u>from the State</u>, and also means and includes the assignee of any one of the above."

SECTION 2. Section 182-3, Hawaii Revised Statutes, is amended to read:

"Sec. 182-3 <u>Bond; compensation to occupiers.</u>

(a) Every lessee of a mining lease granted under this

chapter and every assignee thereof shall file with the board of land and natural resources a bond, in a form and in an amount approved by the board, made payable to the State and which shall be conditioned upon the faithful performance by the lessee of all the requirements of this chapter and of the mining lease, and also conditioned upon the full payment by the lessee of all damages suffered by the occupiers hereinunder mentioned. If the State sells or leases its mineral rights on land which it or its predecessors in interest have granted or leased, or which it may hereafter sell or lease, and the [occupier] land thereof including any crops or improvements is damaged [due to injury to his crops or improvements or to the surface or condition of his land caused] by any mining or other incidental operations, including exploratory work, or by the failure of the lessee of the mining lease to properly restore the land after termination of the operations, the occupier shall be reimbursed the full extent of the damages caused by the mining operations of the lessee [so long as the occupier was not granted a mining lease without public auction under section 182-5.]

to be allocated between the lessee and the fee owner in accordance with the lease terms, if any.

(b) Nothing herein shall be construed to prevent the occupier from demanding and receiving rentals from the lessee of the mining lease or to forbid and prevent the occupier and the lessee from agreeing upon the amount of damages to be paid [the occupier] and the terms and conditions of payment. The occupier may in writing before or within thirty days after the public auction notify the board that he elects to have the amount of damages and the amount of rentals to be paid as a result of the mining lease determined by arbitration with the successful bidder. In such event, the occupier shall notify the successful bidder of his election to arbitrate, and the arbitration shall proceed in accordance with chapter 658. The arbitrators in fixing the amount of damages to be paid to the occupier shall award him the amount which in their judgment shall fairly compensate the occupier for the damages he may suffer to his crops or improvements or to the surface or condition of his land caused by the

mining or other incidental operations, including exploratory work, and a reasonable rental for the use of the surface."

SECTION 3. Section 182-4, Hawaii Revised Statutes, is amended to read:

"Sec. 182-4 Mining leases on state lands. If any mineral is discovered or known to exist on state lands, any interested person may notify the board of land and natural resources of his desire to apply for a mining lease. The notice shall be accompanied by a fee of $100 together with a description of the land desired to be leased and the minerals involved and such information and maps as the board by regulation may prescribe. As soon as practicable thereafter, the board shall cause a notice to be published in a newspaper of general circulation in the county where the lands are located, at least once in each of three successive weeks, setting forth the description of the land, and the minerals desired to be leased. The board may hold the public

auction of the mining lease within six months from the date of the first publication of notice or such further time as may be reasonably necessary. Whether or not the state land sought to be auctioned is then being utilized or put to some productive use, the board, after due notice of public hearing to all parties in interest, within six weeks from the date of the first publication of notice or such further time as may be reasonably necessary, shall determine whether the proposed mining operation or the existing or reasonably foreseeable future use of the land would be of greater benefit to the State. If the board determines that the existing or reasonably foreseeable future use would be of greater benefit to the State than the proposed mining use of the land, it shall disapprove the application for a mining lease of the land without putting the land to auction. The board shall determine the area to be offered for lease and, after due notice of public hearing to all parties in interest, may modify the boundaries of the land areas. At least thirty days prior to the holding of any public auction, the board shall cause a notice to be published in a newspaper of general circulation in the State at least

once in each of three successive weeks, setting forth the description of the land, the minerals to be leased, and the time and place of the auction. Bidders at the public auction [shall] may be required to bid on the amount of annual rental to be paid for the term of the mining lease based on an upset price fixed by the board[.], a royalty based on the gross proceeds or net profit, cash bonus, or any combination or other basis and under such terms and conditions as may be set by the board."

SECTION 4. Section 182-5, Hawaii Revised Statutes, is amended to read:

"Sec. 182-5 Mining leases on reserved lands. If any mineral is discovered or known to exist on reserved lands, any interested person may notify the board of land and natural resources of his desire to apply for a mining lease. The notice shall be accompanied by a fee of $100 together with a description of the land desired to be leased and the minerals involved and such information and maps as the board may by regulation prescribe. The board may grant a mining lease on

reserved lands in accordance with section 182-4, or the board may, by the vote of two-thirds of its [voting] members[,] to which the board is entitled, without public auction, grant a mining lease on reserved lands to the occupier thereof. Such a mining lease may be granted to a person other than the occupier if the occupier has assigned his rights to apply for a mining lease to another person, in which case only such an assignee may be granted a mining lease. If the occupier or his assignee of the right to obtain a mining lease should fail to apply for a mining lease within six months from the date of notice from the board of a finding by the board that it is in the public interest that the minerals on the reserved lands be mined, a mining lease shall be granted under section 182-4; provided that bidders at the public auction shall bid on an amount to be paid to the State for a mining lease granting to the lessee the right to exploit minerals reserved to the State."

SECTION 5. Section 182-7, Hawaii Revised Statutes, is amended to read:

"Sec. 182-7 Lease. Prior to the public auction contemplated in section 182-4 or 182-5, or the granting of mining lease without public auction contemplated in

section 182-5, the board of land and natural resources shall cause a mining lease for the land in question to be drawn. The lease shall describe the land and shall contain, in addition to such other provisions which the board may deem appropriate, provisions to the following effect:

(1) The term of the lease shall be sixty-five years or for a lesser period at the discretion of the board.

(2) The [payment] payments [of royalties] to the State [shall be] as fixed by the board; provided, that in the case of bauxite, bauxitic clay, gibbsite, diaspore, boehmite, and all ores of aluminum, the amount of royalties for each long dry ton of ore as beneficiated shall not be less than twenty-five cents or the equivalent of the price of one pound of virgin pig aluminum, whichever is higher, nor shall it exceed the equivalent of the price of three pounds of virgin pig aluminum; provided further, that the rate of royalty for ore processed into

aluminous oxide in the State shall be set at eighty per cent of the rate of royalty for ore not processed to aluminous oxide in the State; and provided further, that the royalty shall be fixed at a rate which will tend to encourage the establishment and continuation of the mining industry in the State. The prices of virgin pig aluminum for the purpose of determining the royalties hereunder shall be the basic price on the mainland United States market for virgin pig, not refined, f.o.b. factory. The royalties shall be in lieu of any severance or other similar tax on the extracting, producing, winning, beneficiating, handling, storing, treating, or transporting of the mineral or any product into which it may be processed in the State, and shall not be subject to reopening or renegotiating for and during the first twenty years of the lease term.

In the event the lessee desires to mine other minerals, the lessee shall, before mining the minerals, so notify the board in

writing, and the board and the lessee shall negotiate and fix the royalties for such minerals.

(3) The lessee shall covenant and agree that the lessee shall commence mining operations upon the leased lands within three years from the date of execution of the lease; provided, that so long as the lessee is actively and on a substantial scale engaged in mining operations on at least one such lease on the same minerals, the covenant shall be suspended as to all other leases held by the lessee.

Any interested party may, however, request that a mining lease contain a research period under which the lessees shall be required to expend money in research and development to establish a method to make economical the mining and processing of the mineral deposits contained in the lease. If the board determines that the research period would be beneficial it shall fix the period of research and shall also fix a minimum.

expenditure for labor performed or money spent by the lessee in research and development and the method by which the lessee shall establish that such expenditure in fact be made. In such leases, the obligation to commence mining operations within three years shall not commence until the expiration of the research period.

(4) For the period of the lease the lessee shall have the exclusive right of possession of the minerals leased and the exclusive rights to mine and remove the minerals by means which shall be reasonable and satisfactory to the board and to occupy and use so much of the surface of the land as may reasonably be required, subject to the provisions of section 182-3. The right to use the surface shall include the right to erect transportation facilities thereon, construct plants for beneficiating, drying, and processing the minerals <u>for electric power generation and transmission</u> and such other uses as may be necessary or convenient to the winning and processing of the minerals;

provided, that the lessee shall comply with all water and air pollution control laws, rules and regulations of the State or its political subdivisions.

(5) The lessee may retain all minerals separated from the land as a part of the process of mining the minerals specified in the mining lease; provided, that the lease may prescribe the accounting and testing procedures by which the amount and quality of such additional materials shall be determined for the purpose of computing the [severance or] excise [taxes] tax thereon."

SECTION 6. Section 182-8, Hawaii Revised Statutes, is amended to read:

"Sec. 182-8 Number of leases; acreage limitations; area covered by lease. [There shall be no limit upon the number of mining leases that may be granted to any person undertaking any mining operations.] The board is authorized to impose a limitation on the number of leases or acres which a mining lessee or his transferee may hold under such terms and conditions as the board determines to be in the best interest of the State. No lease shall grant

and include an area of land exceeding four square miles of contiguous land, in which the longest dimension of the area demised shall exceed its narrowest dimension by more than six times[.] unless otherwise approved by the board."

SECTION 7. Section 182-10, Hawaii Revised Statutes, is amended to read:

"Sec. 182-10 Revocation of mining leases. A mining lease may be revoked if the lessee fails to pay rentals when due or if any of the terms of the lease or of law are not complied with, or if the lessee wholly ceases all mining operations for other than reasons of force majeure or the uneconomic operation of the mining lease for a period of one year without the written consent of the board of land and natural resources; provided, that the board shall give the lessee notice of any default and the lessee shall have six months or such other time limit as provided by the rules and regulations from the date of the notice to remedy the default."

SECTION 8. Chapter 182, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 182- Unitization. Upon motion by the board or petition filed by any mining lessee, the board, in its discretion, may order such lessees or owners of mineral rights on adjoining properties to collectively adopt, and operate under, a cooperative or unit plan of development, if the board finds that such a plan will prevent the waste of any mineral, increase the ultimate recovery, avoid the drilling, digging, or excavating of any unnecessary well or for such other reason that would encourage and promote the development of any mineral resource."

SECTION 9. Chapter 182, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 182- Penalty for violation. Any person who violates any provision of this chapter, or any regulation adopted pursuant hereto, shall be fined not more than $500 for each offense. If any person after receiving written notice for a violation fails to cure such violation within such time and under such conditions as determined by the rules and regulations, such person shall be subject to a citation for a new and separate violation. There shall be a fine not more than $500 for each additional violation."

SECTION 10. Chapter 182, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 182- Levy and assessment of general excise tax. Notwithstanding any provision to the contrary, the levy and assessment of the general excise tax on the gross proceeds from any manner of sale of (i) geothermal resources or (ii) electrical energy produced by the geothermal resources producer from such geothermal resources, shall be made only as a tax on the business of a producer, at the rate assessed producers, under section 237-13(2)(A)."

SECTION 11. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.

SECTION 12. This Act shall take effect upon its approval.

PRINTING CODE—The parts in **this style type** are additions to the text of the existing section of the law. The parts in ~~this style type~~ are deletions from the text of the existing section of the law. The absence of either of the above type styles in an amendatory SECTION indicates that an entirely new section or chapter is to be added to the existing law.

HOUSE ENROLLED ACT No. 1044

AN ACT concerning the enforcement of certain provisions of the Surface Mining Control and Reclamation Act of 1977.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. Beginning May 4, 1978, the department of natural resources shall enforce section 502 of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87), and shall promulgate such rules and regulations as are necessary for such enforcement. The department of natural resources is further authorized to promulgate rules and regulations as may be necessary to enforce the provisions of sections 510(d) and 522(e) of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87).

SECTION 2. The department of natural resources shall make every effort to obtain full reimbursement from the Director of the Office of Surface Mining Reclamation and Enforcement for the costs of performing its duties under SECTION 1 of this act.

SECTION 3. If any part of this act or the application of it to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end this act is severable.

SECTION 4. If P.L. 95-87 or the federal laws it amends are adjudged unconstitutional or invalid in their application, or stayed pending litigation in any court in

the state of Indiana, the department of natural resources shall suspend the enforcement of this act to the extent of the adjudged unconstitutionality, inapplicability or stay.

SECTION 5. The State of Indiana by any provision, part or all of this act does not waive any rights and powers reserved to it by the Tenth Amendment to the Constitution of the United States and this act shall not be interpreted so as to prevent the State of Indiana from protecting any and all of its rights and governmental powers through any legal action as might be determined by duly constituted officials of the State of Indiana.

SECTION 6. This act expires on June 4, 1979.

SECTION 7. Because an emergency exists, this act is effective upon passage.

SENATE BILL No. S97

AN ACT relating to the mined-land conservation and reclamation act; concerning the mined-land conservation and reclamation board; amending K.S.A. 49-402, 49-403, 49-404, 49-405, 49-406, 49-407, 49-408, 49-409, 49-410, 49-411, 49-415 and 49-422 and repealing the existing sections and also repealing K.S.A. 49-424.

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

Section 1. K.S.A. 49-402 is hereby amended to read as follows: 49-402. Where surface mining operations are conducted, it is declared to be the policy of this state to provide for the reclamation of affected lands to encourage productive use including but not limited to: The planting of forests; the seeding of grasses and legumes for grazing purposes; the planting of crops for harvest; the enhancement of wildlife and aquatic resources; the establishment of recreational, home and industrial sites; and for the conservation, development, management and appropriate use of all the natural resources of such areas for compatible multiple purposes, and protecting the health, safety and general welfare of the people, as well as the natural beauty and aesthetic values, in the affected areas of this state. *It is also declared to be the policy of this state to authorize the board to take such action as may be necessary to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87).*

Sec. 2. K.S.A. 49-403 is hereby amended to read as follows: 49-403. (a) "Surface mining" relates to the mining of coal by removing the overburden lying above the natural deposit thereof, and mining directly from the natural deposit thereby exposed.

(b) "Minerals" means coal.

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

(d) "Area of land affected" means the area of land from which minerals and/or overburden is to be or has been removed and upon which the overburden is to be or has been deposited and shall include all lands affected by the construction of new roads or the improvement or use of existing roads other than public roads to gain access and to haul minerals.

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

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

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

(h) "Person" means persons, firm, partnership or corporation.

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

(j) "Board" means the mined-land conservation and reclamation board as created by this act.

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

(l) "Commissioner" means the chairman of the state corporation commission.

Sec. 3. K.S.A. 49-404 is hereby amended to read as follows: 49-404. The mined-land conservation and reclamation board *shall be within and a part of* ~~is hereby transferred from the state labor department to~~ the state corporation commission. The chairman of the state corporation commission shall be a member of the board and serve as its ~~chairman~~ *chairperson*. Other board members, appointed by the governor, shall be one representative of the state geological survey, two landowners who are cooperators of a local soil conservation district, one representative of the *department of* economic development ~~commission~~, one representative of the state conservation commission, one representative of the state board of agriculture, one member of the employees of mine operators, one representative of the forestry, fish and game commission, one operator of surface type mines, one representative of the water resources board in the state of Kansas or representatives thereof and two representatives of the general public.

~~The board shall meet upon call of the chairman who shall give ten (10) days' notice to the members. Special meetings may be called upon petition of three (3) or more members of the board who shall give the remaining members ten (10) days notice of the meeting. All meetings shall be held in Topeka, Kansas, unless otherwise approved by the board. Seven (7) members of such board shall constitute a quorum to do business.~~ Members of the mined-land conservation and reclamation board attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. ~~1976 Supp.~~ 75-3223.

The board shall employ an executive director who shall serve at the pleasure of the board. The executive director shall receive an annual salary fixed by the board with the approval of the governor. The executive director shall assist the board in the administration of the mined-land conservation and reclamation act and shall perform such duties and functions as the board may direct. Within the limits of appropriations therefor, the board may employ inspectors, clerical help and other personnel as may be necessary for the purpose of administering and enforcing the provisions of the mined-land conservation and reclamation act. Within the limits of appropriations therefor, the board may enter into contracts with consultants for services of a technical nature which may be required in the administration of the mined-land conservation and reclamation act. Employees of the board, other than the executive director and consultants working under contract with the board, shall be in the classified service of the Kansas civil service act.

Sec. 4. K.S.A. 49-405 is hereby amended to read as follows: 49-405. The board shall have and exercise the following authority and powers which shall be enforced and administered by the ~~commissioner~~ *board*: (a) To adopt ~~and promulgate~~ rules and regulations respecting the administration of this act and in conformity therewith *and to adopt rules and regulations which may be necessary for the board to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto and may adopt and enforce all standards established by such federal rules and regulations.*

(b) To encourage and conduct investigations, research, experiments and demonstrations, and to collect and disseminate information relating to surface types of mining and reclamation and conservation of lands and waters affected by surface types of mining.

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

(d) To make investigations and inspections which may be deemed necessary to insure compliance with the provisions and intent of this act.

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

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

(g) To conduct hearings under provision of this act and for the purpose of any investigation or hearing, the board or any member thereof may administer oaths or affirmation, subpoena witnesses relevant to the inquiry.

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

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

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

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

(l) To perform such other duties and functions as may be required by the provisions of the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto in order to qualify to administer the initial regulatory program adopted by the United States department of interior, office of surface mining reclamation and enforcement, pursuant to such act.

~~(j)~~ The attorney general or ~~county~~ *district* attorney, at the request of the board, may secure enforcement of the orders of the board in the district court of Shawnee county, through mandamus or injunction, or by action to compel specific performance of the order. Such proceedings shall be initiated by the filing of a petition in said court, together with a transcript of the record upon the hearing before the ~~commission~~ *board*, and issuance and service of a copy of said petition as in civil actions. The court shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony and proceedings an order or decree, enforcing, modifying and enforcing, as so modified, or setting aside in whole or in part the order of the board.

Sec. 5. K.S.A. ~~49-406~~ is hereby amended to read as follows: ~~49-406~~ (a) ~~After January 1, 1969,~~ No person shall engage in surface types of mining unless such person possesses a valid permit issued by the board designating the area of land affected by the operation. The permit shall authorize the operator to engage in surface types of mining upon the area of land described in such permit and shall be valid for a period of one (1) year from the date of its issuance unless sooner revoked or suspended as herein provided. *All surface types of mining conducted under such permit shall comply with the requirements of the surface mining control and reclamation act of 1977 (public law 95-87) and the initial program regulations issued by the department of the interior, office of surface mining, on December 13, 1977, or as subsequently amended.* It shall be the duty of each producer holding a permit within the state of Kansas to file an annual statement setting forth the full amount of coal mined or taken from each source or deposit and to identify the specific source or deposit from which taken. Such statement shall be filed with the board upon forms provided by the board not later than thirty (30) days after the end of each calendar year.

(b) The application for said permit shall include: (1) Two copies of a United States geological survey topographic map on which the operator has indicated the location of the area of land

affected, the course which would be taken by drainage from the area of land affected to the nearest stream or streams to which such drainage would normally flow, the name of the applicant and the date.

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

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

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

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

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

(7) The written consent of the applicant and such other persons, if any, necessary to grant such access to the commissioner and board members or representatives thereof to the area of land affected under application from the date of application until the expiration of any permit granted under such application and thereafter for such time as is necessary to assure compliance with all provisions of this act or any rule or regulation promulgated hereunder.

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

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

(2) The boundaries of surface properties and names of owners on the area of land affected, and, if known to the operator, adjacent deep mines, and the name of the owner or owners of the surface area within five hundred (500) feet of any part of the area of land affected.

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

(4) Show the names and locations of all streams, creeks or other bodies of public water, roads, buildings, cemeteries, oil and gas wells and utility lines on the area to be mined and within five hundred (500) feet of such area.

(5) Show by appropriate markings the boundaries of the area of land affected, the cropline of the seam or deposit to be mined, and the total number of acres involved in the area of land affected.

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

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

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

(9) The certification of the maps by the professional engineer shall read as follows: "I, the undersigned, hereby certify that this map is correct and shows to the best of my knowledge and belief all the information required by the surface mining laws of this

state." The certification shall be signed and the engineer's seal affixed.

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

(d) The application for a permit shall be accompanied by a plan of reclamation that meets the requirements of this act, and the rules and regulations promulgated hereunder *and the requirements necessary for the board to qualify to administer the regulatory programs adopted by the United States department of the interior, office of surface mining reclamation and enforcement, pursuant to the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto.*

(e) The board shall not approve the application for a permit to mine where such mining would constitute a hazard to a residence, public building, school, church, cemetery, commercial or residential building, public road, stream, lake or other property. Surface mining operations which remove and do not replace the lateral support shall not, unless approved by the board, approach within fifty (50) feet of property lines, public roads, streams, lakes or other property.

(f) A basic fee of fifty dollars ($50) plus a fee in an amount to be fixed by the board ~~of~~ *as may be required to administer and enforce the provisions of the mined-land conservation and reclamation act but* not to exceed ~~twenty-five~~ *seventy-five* dollars ~~($25)~~ *($75)* for every acre and fraction of an acre of land to be affected shall be paid before the permit required herein shall be issued.

(g) Contemporaneously with and as condition precedent to the issuance of the permit, there shall be filed by the operator with the board a bond payable to the state treasurer, conditioned that the operator shall faithfully perform all requirements of the board in accordance with the provisions of this act and any rules or regulations *cdopted* pursuant thereto. Such a bond shall be signed by the operator as principal, and by a corporate or individual surety approved by the board. The penal sum of such bond shall be determined by the board as not ~~less than three hundred dollars ($300)~~ ~~nor~~ more than one thousand dollars ($1,000) for each acre, or fraction thereof, of the area of land affected, ~~with a~~ *except that the* minimum bond ~~of three thousand dollars ($3,000)~~ *shall be not less than ten thousand dollars ($10,000).*

In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of reclamation to be required. In a particular instance where the circumstances are such to warrant an exception, the board, in its discretion, may reduce the amount of the bond for a particular operation to less than the required minimum.

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

Sec. 6. K.S.A. 49-407 is hereby amended to read as follows: 49-407. Within twenty (20) working days after the applicant has filed an application for a permit, the board shall either grant the permit and so advise applicant by registered mail or deny the permit and so advise applicant by registered mail, setting forth wherein the application does not meet the requirements of this

act, or the rules and regulations promulgated hereunder and the changes or actions that are necessary before such a permit will be granted. Should the applicant object to the determination of the board, the applicant may, by written notice, request a hearing by the board. The board shall hold such a hearing within twenty (20) days and shall notify applicant by registered mail within twenty (20) days after the hearing of its decision. Any person aggrieved by final order of the board may appeal to the district court of Shawnee county, Kansas, by filing with the clerk of said court within thirty (30) days from the date of receipt of the final order. The appeal shall certify that notice in writing of the appeal, with a copy of the appeal has been given to the board at its office in Topeka. The ~~commission~~ *board* shall certify the evidence and its findings to said district court, as its return.

Sec. 7 K.S.A. 49-408 is hereby amended to read as follows: 49-408. All land affected by surface mining, except as otherwise provided in this act, shall be graded ~~to a rolling topography traversable by machines necessary for maintenance in accordance with planned use, with slopes having no more than twenty five percent (25%) grade.~~ *in accordance with the requirements and specifications of the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto.*

Impoundment is encouraged and water impoundments may be constructed providing measures are taken to prevent undesirable seepage.

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

When an abandoned underground mine or acid mine drainage is encountered in the operation, sealing or impoundment or both shall be used to reduce acid pollution.

In addition to the grading requirements of this section, the operator shall perform the following: (a) Cover the face of the coal or other minerals with compacted non-acid bearing and non-toxic materials to a distance of at least ~~two (2)~~ *four (4)* feet above the seam being mined or by a permanent water impoundment.

(b) Seal off, as directed in this section, any breakthrough of acid water creating a hazard.

(c) Impound, drain or control the flow of all runoff water so as to reduce soil erosion, damage to agricultural lands and pollution of streams and other waters.

(d) Grade the overburden as required by this section covering the surface of mined lands with soil materials adequate to support plant growth comparable to that originally on the site and provide suitable vegetative cover.

(e) Remove or bury all metal, lumber and other refuse resulting from the operation.

(f) Such other requirements as may be specified in the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto and adopted as requirements by the board including, but not limited to, requirements relating to the following: Restoring the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses; removing and preserving the topsoil, segregating the surface soil material and root zone material and redistributing and grading it in a uniform manner for all prime farm lands; minimizing disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems during and after mining operations; managing coal mine waste piles and using explosives.

~~(f)~~ *(g)* No operator shall throw, dump, pile or permit the dumping, piling or throwing, or otherwise placing any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs or any other materials or substances of any kind or nature upon or into any public roads, ways or any other public property, public streams, ponds, lakes or any other public surface or subterranean waters of the state, or any adjacent property owners whose surface area is not included in the application for a permit, or place such materials herein described in such a way that normal erosion or slides brought about by natural physical causes will permit such materials to go upon or into any public roads, ways or any other public property, public streams, ponds, lakes or any other public surface or subterranean waters of the state, or any adjacent property owners whose surface area is not included in the area of land affected as described in the application for a permit.

In order to be considered current, grading shall meet the following time limits: (1) Grading of spoil ridges shall be completed not more than one hundred eighty (180) days after the final placing of the spoil ridges. When more than one seam is to be mined, said information shall be included in the application, and the board may defer reclamation until all seams have been mined. Grading of a spoil ridge that will have an adjacent spoil ridge placed against it shall be completed one hundred eighty (180) days after the placing of such adjacent spoil ridge. When heavy rains or other conditions make grading impracticable, the one hundred eighty (180) day period shall be extended by the length of time such grading is impracticable.

(2) If the surface operation includes auger or punch mining, the grading shall follow the final mining by not more than one hundred eighty (180) days.

~~When special conditions warrant,~~ The board may provide exceptions to this section *for good cause shown or if necessary to comply with the requirements and specifications of the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto* ~~upon request~~.

Sec. 8. K.S.A. 49-409 is hereby amended to read as follows: 49-409. After the area of land affected, except access roads, has been graded and found by the board to meet the requirements of K.S.A. 49-408, *as amended*, and regulations promulgated hereunder, the operator shall revegetate the affected area described in the application with seeds, plants or cutting of trees, shrubs or grasses, as shall be recommended or approved in writing by the board. Such revegetation shall conform to the approved land-use objectives as stated in the approved plan of reclamation. Such seeding or planting, as required above, shall be carried out in accordance with the revegetation plan which shall be filed with the board before November 30 of the year preceding planting. Such revegetation plan shall include information on the approximate number or kinds of plants or seeds to be used together with such seed or plant recommendations as set forth by the board. *The board may establish additional requirements relating to revegetation and the revegetation plan as may be necessary in order to comply with the provisions of the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto.*

Sec. 9. K.S.A. 49-410 is hereby amended to read as follows: 49-410. The board may increase or reduce the area of land affected by an operation under a permit on application by an operator. An operator may, at any time within one (1) year from the date of issuance of the permit, apply to the board for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same information as required for an original application under this chapter and shall pay a fee of fifty dollars ($50), and shall file with the board a supplemental bond in the amount to be determined for each acre or fraction of an acre of

the increase approved. If the operator sets forth in an application for an increase that such increase is sought because of unexpected or emergency conditions making it necessary or desirable to begin surface mining immediately on the land covered by such application, and such conditions are set forth in such application, the board shall immediately upon the filing of such application and receipt of sufficient bond as herein provided issue to the operator a temporary permit on the acreage covered by such application, which temporary permit shall expire when the board notifies the operator of its acceptance or rejection. If the board approved a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced; ~~but in no case shall the bond be reduced below two thousand dollars ($2,000) or one-half (½) of the original amount, whichever is less~~.

Sec. 10. K.S.A. 49-411 is hereby amended to read as follows: 49-411. It shall be the duty of an operator to commence the reclamation of the area of land affected by its operation as soon as possible after the beginning of surface mining of that area in accordance with a plan of reclamation required by article 4 of chapter 49 of the Kansas Statutes Annotated or acts amendatory thereof or supplemental thereto and to complete such reclamation within twelve (12) months after the permit has expired, except that grading shall be kept current with the operation as required herein, and no permit or supplement to a permit shall be issued if these practices are not current.

If an investigation indicates that planting so as to provide vegetative cover of an area of land affected by surface mining may not be successful, the board may authorize the operator to defer such planting until the soil has become suitable for such purposes and a yearly report shall be filed with the board indicating the soil conditions until a successful planting or seeding has been completed. In lieu of planting to provide vegetative cover for the area of land covered by the operator's permit, the board may authorize the operator to do planting to provide vegetative cover for a different area of land. Such different area of land must be land affected by surface mining in the past which has soil that has become suitable for planting, and not less acreage than the land covered by the permit. An application by the operator for authority to plant a different area of land shall identify the different area and shall be accompanied by a map showing its location, area and boundaries. The application shall be accompanied by the written consent of the owner of the land covered by the permit to release the operator from the obligation to provide a vegetative cover for the land covered by the permit. If the board grants the application for the planting of a different area of land and the planting is carried out in accordance with its orders, the operator shall be relieved of its obligation to provide a vegetative cover for the area of land affected by its operation for which a different area of land has been substituted.

The board may provide exceptions to the provisions of this section for good cause shown or if necessary to comply with the requirements and specifications of the national surface mining control and reclamation act of 1977 (public law 95-87) and federal rules and regulations adopted pursuant thereto.

Sec. 11. K.S.A. 49-415 is hereby amended to read as follows: 49-415. Within sixty (60) days after the date of expiration of a permit, the operator shall file with the board a report stating the exact number of acres of land affected by the operation, the extent of the reclamation already accomplished by it, and such other information as may be required by the board. The report shall be accompanied by a copy of the map filed with the original application which shall show any revisions made necessary by result of the operation. If the report shows that the operator has complied with the requirements of this act and has carried out a plan of reclamation, the board shall approve the report and the bond filed by it as surety shall be released by the board. If the board does not approve the report, the bond shall not be released until

the operator complies with the orders of the board to meet requirements of this chapter. ~~The operator may, in lieu of providing a suitable vegetative cover as provided and if all other parts of the plan of reclamation are carried out to the satisfaction of the board, pay to the board a sum agreed upon by the board and the board shall approve the report and the bond filed by it as surety shall be released by the board.~~

Sec. 12. K.S.A. 49-422 is hereby amended to read as follows: 49-422. Any person aggrieved by any order of the board ~~or commissioner~~ may have judicial review thereof as provided in K.S.A. 49-407, *as amended.*

Sec. 13. K.S.A. 49-402, 49-403, 49-404, 49-405, 49-406, 49-407, 49-408, 49-409, 49-410, 49-411, 49-415, 49-422 and 49-424 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the official state paper.

I hereby certify that the above BILL originated in the SENATE, and passed that body.

_____

SENATE concurred in HOUSE amendments _____

_____
President of the Senate.

_____
Secretary of the Senate.

Passed the HOUSE as amended _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

APPROVED _____

_____
Governor.

CHAPTER 105

(H.B. 114)

AN ACT relating to surface mining.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 350.110 is amended to read as follows:

If the department authorizes an operator to defer planting to provide vegetative cover for an area of land, it shall set the time within which such planting shall be carried out. If the operator has carried out on that area of land the method of operation, backfilling, grading and reclamation plans approved by the department other than the planting, the department shall issue to the operator and to his surety a release of his surety bond or other securities held on deposit for each acre of land for which such method of operation, backfilling, grading, and reclamation have been carried out, and the soil ph level required by department regulations has been satisfied less the sum of three hundred dollars ($300) for each acre, but in no case shall the bond be reduced below two thousand dollars ($2,000) except as provided in KRS 350.060. The remaining amount of the bond of three hundred dollars ($300) for each acre of land affected shall remain in the possession of the department until a satisfactory planting plan has been carried out, or until it has been forfeited by the operator. If the remainder is forfeited, it shall be expended by the department in a planting program for the area of land for which it has been posted; *unless the surface rights have been severed from the mineral rights, in which case the remainder of the forfeited bond shall be paid to the surface owner for expenditure in a planting program for the area of land for which the bond has been posted; provided, that no payment shall be made until the planting has been accomplished in the manner required by the department, to the extent of available forfeited funds, and no payment shall be made beyond the actual cost of planting. Provided further, that this section shall not apply in cases where the owner does not desire or is unable to accomplish the work in the manner required by the department.* If the operator does not meet the planting requirements but does not want his bond forfeited, he may pay to the department a sufficient sum to cover the remaining reclamation costs and the bond filed by him as surety may then be released by the department.

Section 2. KRS 350.130 is amended to read as follows:

(1) If any of the requirements of this chapter or rules or regulations adopted pursuant thereto or the orders of the department have not been complied with within the time limits set by the department or by this chapter, the department shall cause a notice of noncompliance to be served upon the operator, or where found necessary, the secretary shall order the suspension of a permit. Such notice or order shall be handed to the operator in person or served by certified mail, return receipt requested or by registered mail addressed to the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this chapter or the regulations or orders of the department. If the operator has not reached an agreement with the department or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked by order of the department and the performance bond shall then be forfeited to the department; *except as provided in subsection (2) of this Section and in KRS 350.110.*

(2) When a bond is forfeited pursuant to the provisions of this chapter, the secretary shall give notice to the attorney general, who shall collect the forfeiture. *Bond forfeitures collected in cases where the surface rights have been severed from the mineral rights shall be paid to the surface owner for the purpose of reclaiming in accordance with the provisions of this chapter the same area of land included under the bond; provided, that no payment shall be made until the reclamation has been accomplished in the manner required by the department, to the extent of available forfeited funds, and no payment shall be made beyond the actual cost of reclamation. Provided further, that this section shall not apply in cases where the owner does not desire or is unable to accomplish the work in the manner required by the department.*

(3) An operator whose mining permit has been revoked or suspended shall not be eligible to receive another permit or to have suspended permits reinstated until he shall have complied with all the requirements of this chapter in respect to all permits issued him, provided, further, that no operator shall be eligible to receive another permit who has forfeited any bond unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator has paid such sum as the department finds is adequate to reclaim such lands. The department shall not issue any additional permits to any operator who has repeatedly been in noncompliance or violation of this chapter, or who has had permits revoked on more than three (3) occasions. The department shall issue regulations concerning repeated noncompliance by any operator.

Approved March 28, 1978

CHAPTER 330

(S.B. 273)

AN ACT relating to mining.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

(1) Except as herein provided, all strip mining operations which commence operations pursuant to a permit issued on or after February 3, 1978, shall comply, and such permits shall contain terms requiring compliance, with the provisions of Sections 2, 3, 4, 5, 6, 7, 8, and 10 of this Act, except in those strip mining operations which affect two (2) acres or less and except with regard to the mining of clay, limestone, sand, gravel, fluorspar, stone and rock asphalt.

(2) On and after May 3, 1978, all strip mining operations shall comply with the provisions of Sections 2, 3, 4, 5, 6, 7, 8, and 10 of this Act, except in those strip mining operations which affect two (2) acres or less, except with regard to the mining of clay, limestone, sand, gravel, fluorspar, stone and rock asphalt.

SECTION 2. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

The operator shall restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as such use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicant's declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state, or local law.

SECTION 3. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

Except as provided in Section 11(2)(a) through 11(2)(e) of this Act, the operator shall with respect to all strip mining operations backfill, compact, (where advisable to insure stability or to prevent leaching of toxic materials), and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this chapter); provided, however, that in strip mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact, (where advisable), using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region; and, provided further, that in strip mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall after restoring the approximate contour, backfill, grade, and compact, (where advisable), the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and that such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this chapter.

SECTION 4. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

The operator shall remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner such other strata which is best able to support vegetation. Or where topsoil is of insufficient quantity or of poor quality for sustaining vegetation, the operator may, with the approval of the department, employ the technology required to utilize alternative soil materials approved by the department or soil amendments necessary to sustain vegetation in accordance with the requirements of this Act.

SECTION 5. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

The operator shall minimize disturbances to the prevailing hydrologic balance at the mine-site and in associated offsite areas and to the quality and quantity of water in surface and ground water systems both during and after strip mining operations and during reclamation by:

(1) Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(a) Preventing or removing water from contact with toxic producing deposits;

(b) Treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and

(c) Casing, sealing, or otherwise managing boreholes, shafts, and wells and keep acid or other toxic drainage from entering ground and surface waters;

(2) Conducting strip mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law;

(3) Constructing any siltation structures pursuant to Section 5(2) of this Act prior to commencement of strip mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(4) Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the department;

(5) Restoring recharge capacity of the mined area to approximate premining conditions;

(6) Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines; and

(7) Such other actions as the department may prescribe.

SECTION 6. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

The operator shall design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to subsection (f) of Section 515 of Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977," all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments.

SECTION 7. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

The operator shall:

(1) Provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site and by providing daily notice to resident/occupiers in such areas prior to any blasting;

(2) Maintain for a period of at least three (3) years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(3) Limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface water outside the permit area;

(4) Require that all blasting operations be conducted by trained and competent persons as certified by the department of mines and minerals; and

(5) Provide that upon the request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permitted area the applicant or permittee shall conduct a pre-blasting survey of such structures and submit the survey to the department and a copy to the resident or owner making the request. The area of the survey shall be decided by the department and shall include such provisions as the department shall promulgate. The department and the department of mines and minerals are authorized to enter into agreements whereby the department or the department of mines and minerals administers part or all of this section.

(6) Penalties for violations of this section are those set forth in KRS 350.990.

SECTION 8. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

The operator shall establish on the regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan.

SECTION 9. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

The operator shall place all excess spoil material resulting from strip mining and reclamation activities pursuant to Section 10(2) of this Act in the following manner:

(1) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in such a way to assure mass stability and to prevent mass movement;

(2) The areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

(3) Appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

(4) The disposal area does not contain springs, natural water courses, or wet-weather seeps unless lateral drains are constructed from the wet area to the main underdrains in such a manner that filtration of the water into the spoil pile will be prevented;

(5) If placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the department, the spoil could be placed in compliance with all the requirements of this Act and shall be placed, where possible, upon, or above, a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement;

(6) Where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement is constructed;

(7) The final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(8) Design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and

(9) All other provisions of this chapter are met.

SECTION 10. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

The following performance standards shall be applicable to steep-slope strip mining and shall be in addition to those general performance standards required by Sections 2, 3, 4, 5, 6, 7, and 8 of this Act; provided, however, that the provisions of this section shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area, or where an operator is in compliance with the provisions of Section 11(2) of this Act:

(1) The operator shall insure that when performing strip mining on steep slopes, debris, abandoned or disabled equipment, spoil material, or waste mineral matter not be placed on the downslope below the bench or mining cut; provided, that spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of Section 3 or Section 10(2) of this Act shall be permanently stored pursuant to Section 9 of this Act.

(2) The operator shall complete backfilling with spoil material and shall be required to cover completely the highwall and return the site to the approximate original contour, which material will maintain stability following mining and reclamation.

(3) The operator may not disturb land above the top of the highwall unless the department finds that the disturbance will facilitate compliance with the environmental protection standards of this subsection; provided, however, that the land disturbed above the highwall shall be limited to that amount necessary to facilitate compliance.

(4) For the purposes of this section, the term "steep slope" is any slope above twenty (20) degrees or such lesser slope as may be defined by the department, by regulation, after consideration of soil, climate, and other characteristics of the region.

SECTION 11. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

(1) If the area proposed to be mined contains prime farmland as defined in Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977," then no permit shall be issued unless it complies with Section 510(d)(1) therein. Nothing in this subsection shall apply to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing strip mining operations for which a permit was issued prior to August 3, 1977. Nothing herein shall be construed as authorizing the department to promulgate regulations more stringent than those promulgated pursuant to PL 95-87 relating to prime farmland.

(2) Where a strip mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, the operation shall comply with the requirements of Section 11(2)(c) and Section 11(2)(d) of this Act without regard to the requirements of Section 3 of this Act or Section 10(2) and Section 10(3) of this Act with respect to lands from which overburden and the coal seam being mined have not been removed; provided, however, the department shall establish internal procedures pursuant to which it shall permit strip mining operations for the purposes set forth in Section 11(2)(b) of this Act.

(a) Where an applicant meets the requirements of Section 11(2)(b) and Section 11(2)(c) of this Act a permit without regard to the requirements to restore to approximate original contour set forth in Section 3 or Section 10(2) and Section 10(3) of this Act may be granted for the strip mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided in Section 11(3)(d) of this Act, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining and capable of supporting postmining uses in accord with the requirements of this subsection.

(b) In cases where an industrial, commercial, agricultural, residential, or public facility, including recreational facilities, use is proposed for the postmining use of the affected land, the department may grant a permit for a strip mining operation of the nature described in Section 11(2)(a) of this Act where:

1. After consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is deemed by the department to constitute an equal or better economic or public use of the affected land as compared with premining use;

2. The applicant presents specific plans for the proposed postmining land use and appropriate assurances that the land use will be:

a. Compatible with adjacent land uses;

b. Obtainable according to data regarding expected need and market;

c. Assured of investment in necessary public facilities;

d. Supported by commitments from public agencies where appropriate;

e. Practicable with respect to private financial capability for completion of the proposed use;

f. Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

g. Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

3. The proposed use would be consistent with adjacent land uses and existing state and local land use plans; and

4. The department provides the governing body of the unit of general-purpose government in which the land is located, and any state or federal agency which the department in its discretion determines to have an interest in the proposed use, an opportunity of not more than thirty (30) days to review and comment on the proposed use; and

5. All other requirements of this chapter will be met.

(c) In granting any permit pursuant to this subsection the following requirements apply:

1. The toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

2. The reclaimed area is stable;

3. The resulting plateau or rolling contour drains inward from the outslopes except at specified points;

4. No damage will be done to natural watercourses;

5. Spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use; provided, that all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of Section 9 of this Act; and

6. Insure stability of the spoil retained on the mountaintop and meet the other requirements of this chapter.

(d) The requirements of all regulations promulgated under this subsection are met.

(e) All permits granted under the provisions of this subsection shall be reviewed not more than three (3) years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(3)(a) The department shall adopt procedures pursuant to which it may permit variances for the purposes set forth in Section 11(3)(c) of this Act, provided that the watershed control of the area is improved; and further provided complete backfilling with spoil material shall be required to cover completely the highwall, which material will maintain stability following mining and reclamation.

(b) Where an applicant meets the requirements of Section 11(3)(c) of this Act, a variance from the requirement to restore the approximate original contour set forth in Section 10(2) of this Act may be granted for the strip mining of coal where the owner of the surface knowingly requests in writing, as a part of the permit application, that such a variance be granted so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use, including recreational facilities, in accord with the further provisions of Section 11(3)(c) and Section 11(3)(d) of this Act.

(c) After consultation with the appropriate land use planning agencies, if any, the potential use of the affected land shall:

1. Be deemed by the department to constitute an equal or better economic or public use;

2. Be designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and

3. The watershed of the affected land be deemed by the department to be improved.

(d) In granting a variance pursuant to Section 11(3) of this Act, the department shall require that only such amount of spoil will be placed off the mine bench as is necessary to achieve the planned postmining land use, insure stability of the spoil retained on the bench, meet all other requirements of this chapter, and require all spoil placement off the mine bench to comply with Section 9 of this Act.

(e) The department shall promulgate specific regulations as it deems necessary, if any, to govern the granting of variances in accord with the provisions of this subsection and may impose such additional requirements as it deems to be necessary.

(f) All exceptions granted under the provisions of this subsection shall be reviewed not more than three (3) years from the date of issuance of the permit, unless the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

(4) Strip and underground coal mining operations in operation pursuant to a permit issued before August 4, 1977, issued to a person as defined in KRS 350.010(7) in existence prior to May 2, 1977, and operated by a person whose total annual production of coal from surface and underground coal mining operations does not exceed one hundred thousand (100,000) tons shall not be subject to the provisions set forth in Section 1 and Section 11(2) of this Act, except with reference to the provision of Section 10(1) of this Act, until January 1, 1979. The department shall certify qualified applicants pursuant to this subsection.

SECTION 12. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

If authorized in the approved strip mining and reclamation plan and permit, the operator may create permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:

(1) The size of the impoundment is adequate for its intended purposes;

(2) The impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006);

(3) The quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream;

(4) The level of water will be reasonably stable;

(5) Final grading will provide adequate safety and access for proposed water users; and

(6) Such water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

SECTION 13. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

No employe of the state performing any function or duty under this chapter shall have a direct or indirect financial interest in any underground or strip coal mining operation. Whoever knowingly violates the provisions of this section is guilty of a Class A misdemeanor, and shall, upon conviction, be punished by a fine of not more than two thousand and five hundred dollars ($2,500), or by imprisonment of not more than one (1) year, or both.

Section 14. KRS 350.010 is amended to read as follows:

As used in this chapter unless the context requires otherwise:

(1) "Strip mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include *the extraction of coal by a land owner for his own noncommercial use from land owned or leased by him; the extraction of coal as an incidental part of federal, state or local government financed highway or other construction under regulations established by the department nor shall it include the surface effects or surface impacts of underground coal mining* [those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction];

(2) "Overburden" means all of the earth and other materials which lie above a natural deposit of coal and also means such earth and other material after removal from their natural state in the process of strip mining;

(3) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and shall include all lands affected by the construction of new roads or the improvement or use of existing roads other than public roads, to gain access and to haul coal;

(4) "*Operations* [Operation]" means all of the premises, facilities, roads and equipment used in the process of producing coal from a designated strip mine area or removing overburden for the purpose of determining the location, quality or quantity of a natural coal deposit *or the activity to facilitate or accomplish the extraction or the removal of coal*;

(5) "Method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled and other acts are performed by the operator in the process of uncovering and removing the coal;

(6) "Operator" means any person, partnership or corporation engaged in strip mining who removes or intends to remove more than *two hundred fifty (250)* [one hundred (100)] tons of coal from the earth by strip mining within twelve (12) successive calendar months or who removes overburden for the purpose of determining the location, quality or quantity of a natural coal deposit;

(7) "Person" means any persons, partnership, [or] corporation, *association, society, joint stock company, firm, company or other business organization*;

(8) "Department" means the department for natural resources and environmental protection;

(9) "Secretary" means the secretary of the department for natural resources and environmental protection;

(10) "Reclamation" means the reconditioning of the area [of land] affected by strip mining under a plan approved by the *department* [division];

(11) "Degree" when used in this chapter shall mean from the horizontal, and in each case shall be subject to a tolerance of five percent (5%) of error;

(12) "Bench" means the ledge, shelf or terrace formed in the contour method of strip mining;

(13) "Fill bench" means that portion of the bench which is formed by depositing overburden beyond the cut section.

(14) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads (when not necessary to support its approved postmining use), closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the department determines that they are in compliance with Section 12 of this Act.

Section 15. KRS 350.028 is amended to read as follows:

The department for natural resources and environmental protection shall have and exercise the following authority and powers:

(1) To adopt [in the manner prescribed in subsection (16) of KRS 224.033 and subsections (5) and (6) of KRS 224.045] rules and regulations pertaining to strip mining to accomplish the purposes of this chapter;

(2) To conduct investigations and hearings under provisions of this chapter and KRS chapter 224 or regulations adopted pursuant thereto.

(3) To issue after hearing, *suspension orders or* orders requiring an operator to adopt such remedial measures as are necessary to comply with this chapter and regulations adopted pursuant thereto;

(4) To issue after a hearing, a final order directing the *Kentucky bureau of surface mining reclamation and enforcement* [department] to revoke a permit, when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the department requiring remedial measures have not been complied with according to the terms therein; *and*

(5) To adopt rules and regulations to allow the state to administer and enforce the initial regulation procedure of Section 502 of Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977" provided that such rules and regulations shall be no more stringent than required by such law.

Section 16. KRS 350.085 is amended to read as follows:

(1) No application for a permit *and no operation* shall be approved *or allowed* by the department if there is found on the basis of the information set forth in the application that the requirements of this chapter or regulations will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading or reclamation of the affected area can be carried out consistent with the purpose of this chapter;

(2) If the department finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the commonwealth with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in stream beds, landslides or acid water pollution cannot feasibly be prevented, the department may delete such part of the land described in the application upon which such overburden exists;

(3) *Subject to valid existing rights no strip mining operation except those which existed on or before August 4, 1977 shall be permitted to be within three hundred (300) feet from any occupied dwelling unless waived by the owner thereof, nor within three hundred (300) feet of any public building, school, church, community, or institutional building, public park, or within one hundred (100) feet of a cemetery. Nor shall the department issue a permit if it* [If the department] finds that the operation will constitute a hazard to *or do physical damage to* a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake or other public property. [,] The department shall delete such areas from the permit application *or operation* [before it can be approved];

(4) The department shall not give approval to strip mine any area which is within one hundred (100) feet of *the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the department may permit such roads to be relocated or the area affected to lie within one hundred (100) feet of such road, if after public notice and opportunity for public hearing in the locality a written finding is made that the interest of the public and the land owner affected thereby will be protected,* [any public road, stream, lake or other public property] and shall not approve the application for a permit where the strip mining operation will adversely affect a wild river established pursuant to KRS chapter 146, or a state, national or interstate park unless adequate screening and other measures as approved by the department are incorporated into the permit application.

Section 17. KRS 350.090 is amended to read as follows:

(1) Under the provisions of this chapter and regulations adopted by the department, an operator shall prepare and carry out a method of operation, plan of grading and backfilling and a reclamation plan for the area of land affected by his operation. In developing a method of operation, and the plans of backfilling, grading and reclamation, all measures shall be taken to eliminate damages to members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, rolling stones and overburden, water pollution and hazards dangerous to life and property. The plan shall be submitted to the department and the department shall notify the applicant by certified mail, return receipt requested or by registered mail within thirty (30) working days after receipt of the plan and complete application if it is or is not acceptable. If the plan is not acceptable, the department shall set forth the reasons for which the plan is not acceptable and it may propose modifications, delete areas or reject the entire plan. Should the applicant disagree with the decision of the department, he may, by written notice, request a hearing conducted by the department in the manner provided by KRS 224.083. The department shall notify the applicant by certified mail, return receipt requested or by registered mail within twenty (20) days after the hearing of its decision. Any person aggrieved by a final order of the department may appeal through the courts as set forth in KRS 224.085.

(2) [In addition to the method of operation, grading, backfilling and reclamation requirements of this chapter and regulations adopted pursuant thereto, the operator, consistent with the directives of subsection (1) above, shall be required to perform the following:

(a) Cover the face of the coal with compacted nonacid-bearing and nontoxic materials to a distance of at least four (4) feet above the seam being strip mined or by a permanent water impoundment;

(b) Bury under adequate fill all toxic materials, roof coal, pyritic coal or shale determined by the department to be acid producing, toxic, or creating a fire hazard;

(c) Seal off, as directed by regulations, any break through of acid water creating a fire hazard;

(d) Impound, drain or treat all runoff water so as to reduce soil erosion, damage to agricultural lands and pollution of streams and other waters;

(e) Remove or bury all metal, lumber, and other refuse resulting from the operation.

(3)] No operator shall throw, dump, pile or permit the dumping, piling or throwing or otherwise placing any overburden, stones, rocks, coal, particles of coal, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which bond has been posted under KRS 350.060 or place such materials herein described in such a way that normal erosion or slides brought about by natural physical causes will permit such materials to go beyond or outside of the area of land which is under permit and for which bond has been posted under KRS 350.060.

Section 18. KRS 350.093 is amended to read as follows:

(1) [On lands where the method of operation does not produce a bench (area strip mining), complete backfilling shall be required, beginning at or beyond the top of the highwall and sloped to the toe of the spoil bank at a maximum angle not to exceed the approximate original contour of the land with no depressions to accumulate water. Such backfilling shall eliminate all highwalls and spoil peaks. Whenever directed by the department, the operator shall construct in the final grading, such diversion ditches or terraces as will control the water runoff on long uninterrupted slopes. Additional restoration work may be required by the department according to regulations adopted by the department.

(2) On lands where the method of operation produces a bench (contour strip mining), terrace backfilling shall be required and performed as follows:

(a) All highwalls must be reduced or backfilled. The steepest slope of the reduced or backfilled highwall and of the outer slope of the fill bench shall be no greater than forty-five (45) degrees from the horizontal; provided, however, if the highwall is composed of solid rock and sufficient soil is not available to backfill or cover the solid rock suitable to establish vegetative cover, the department, by regulation, may make modifications to the requirements of this section;

(b) The table portion of the restored area shall be a terrace;

(c) Whenever excess spoil is placed in the head-of-the-hollow fills, it shall be compacted under regulations promulgated by the department;

(d) Ridge fills shall not exceed a depth of ten (10) feet;

(e) The restored area shall have a minimum depth of four (4) feet of fill over the floor of the pit from which the coal has been removed;

(f) There shall be no depressions to accumulate water but lateral drainage ditches connecting to natural or constructed waterways shall be constructed whenever directed by the department;

(g)] Additional restoration work may be required by the *department* [division] according to regulations adopted by the department;

[(h) In addition to the backfilling and grading requirements above, the operator's method of operation on steep slopes shall be regulated and controlled according to regulations adopted by the department. Such regulations shall limit bench widths, shall limit the amount of overburden to be placed beyond the solid bench to forty percent (40%) or less of the material disturbed except where the mineral is recovered by the auger method of mining only and without blasting, may prohibit any overburden from being placed beyond the solid bench on precipitous slopes as defined by the department, or may require any measure whatsoever to accomplish the purpose of this chapter.

(3) An operator may propose alternative plans other than backfilling where a water impoundment is desired, if such restoration will be consistent with the purpose of this chapter. Such plans are to be submitted to the department, and if such plans are approved by the department and complied with within the time limits as may be determined by the department as being reasonable for carrying out such plans, the backfilling requirements of this chapter may be modified by the department.]

(2) [(4)] As determined by regulations of the department, time limits shall be established requiring backfilling, grading and planting to be kept current. All backfilling and grading shall be completed before necessary equipment is moved from the operation.

(3) [(5)] If the operator or other person desires to conduct drift mining upon the premises or use the openings for haulageways or other lawful purposes, the operator may designate locations to be used for such purposes at which places it will not be necessary to backfill as herein provided for until such drift mining or other use is completed, during which time the bond on file for that portion of the operation shall not be released. That portion of such locations shall be described and designated on the map attached thereto.

(4) [(6)] When the backfilling and grading have been completed and approved by the department and the soil ph level required by department regulations has been satisfied, the secretary sall release the bond which was filed for that portion of such operation in its full amount less three hundred dollars ($300) per acre, which shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the secretary shall release the bond in the remaining amount of three hundred dollars ($300) per acre.

Section 19. KRS 350.095 is amended to read as follows:

After the operation has been backfilled, graded and approved by the department, the operator shall prepare the soil and plant *vegetation* [trees, shrubs, grasses and legumes] upon the area of the land affected in order to provide a suitable vegetative cover. The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, and any other measures necessary to provide a suitable vegetative cover shall be defined by regulations of the department.

Section 20. KRS 350.130 is amended to read as follows:

(1) If any of the requirements of this chapter or rules or regulations adopted pursuant thereto or the orders of the department have not been complied with within the time limits set by the department or by this chapter, the department shall cause a notice of noncompliance to be served upon the operator, or where found

necessary, the secretary shall *after hearing (except as provided in KRS 224.071)* order the suspension of a permit *or operation.* Such notice or order shall be handed to the *person in charge of the operation, and the* operator in person or served by certified mail, return receipt requested or by registered mail addressed to the permanent address shown on the application for a permit *or if no address is shown on the application, then to the address known to the department.* The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this chapter or the regulations or orders of the department. If the operator has not reached an agreement with the department or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within time limits set therein, the permit may be revoked *or the operation terminated, after hearing,* by order of the department and the performance bond, *if any,* shall then be forfeited to the department.

(2) When a bond is forfeited pursuant to the provisions of this chapter, the secretary shall give notice to the attorney general, who shall collect the forfeiture.

(3) An operator *or person* whose mining permit *or operation* has been revoked, [or] suspended, *or terminated* shall not be eligible to receive another permit *or begin another operation* or to have suspended permits *or operations* reinstated until he shall have complied with all the requirements of this chapter in respect to all permits issued him, provided, further, that no operator *or person* shall be eligible to receive another permit *or begin another operation* who has forfeited any bond unless the land for which the bond was forfeited has been reclaimed without cost to the state or the operator *or person* has paid such sum as the department finds is adequate to reclaim such lands. The department shall not issue any additional permits to *or allow future operations by* any operator *or person* who has repeatedly been in noncompliance or violation of this chapter, or who has had permits revoked *or operations terminated* on more than three (3) occasions. [The department shall issue regulations concerning repeated noncompliance by any operator.]

Section 21. KRS 350.133 is amended to read as follows:

Nothing in this chapter shall prohibit *the mountaintop* [or change present regulations regarding mountain-top] removal method of strip mining coal *under the conditions set forth in this chapter or regulations promulgated pursuant thereto* [or the mining of multiple seams of coal, where a lower bench has been created]

Section 22. KRS 350.151 is amended to read as follows:

(1) The department for natural resources and environmental protection shall promulgate rules and regulations for the reclamation of land disturbed or removed by operations [activities] resulting from or incident to a mine as defined in KRS 352.010(1)(s). *Such regulations shall recognize the distinct differences between the surface effects of underground mining and strip mining, and shall be promulgated pursuant to this section only, and shall be enforced as provided in KRS 350.130 and 350.990.* Those activities *may* [shall] include, but not be limited to, the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and all lands affected by haulage, excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface *but said regulations shall not be more stringent than those applied to strip mining.*

(2) The operator shall file with the department a bond payable to the Commonwealth of Kentucky with surety satisfactory to the department in the penal sum to be determined by the department on the recommendation of the secretary of not less than five hundred dollars ($500) nor more than three thousand dollars ($3,000) for each acre or fraction thereof of the area of land affected, with a minimum bond of five thousand dollars ($5,000) conditioned upon the faithful performance of the requirements set forth in this section and of the rules and regulations of the department. The department shall accept, in lieu of the surety provided herein, the deposit by the operator of United States government securities, cash, or its equivalent in a sum equal to the principal amount of the required bond.

Section 23. KRS 350.060 is amended to read as follows:

(1) No operator shall engage in strip mining without having first obtained from the department a permit designating the area of land affected by the operation. *Permits* [The permit] shall authorize the opera-

tor to engage in strip mining upon the area of land described in his application for a period of *not less than two (2) years notwithstanding* [one (1) year from] the date of [its] issuance. *No mining shall be permitted beyond the time period obligations of the initial or extended bond coverage*;

(2) An operator desiring a permit shall file an application which shall state:

(a) The location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area within five hundred (500) feet of any part of the affected area;

(c) The owner or owners of the coal to be mined;

(d) The source of the applicant's legal right to mine the coal on the land affected by the permit;

(e) The permanent and temporary post-office addresses of the applicant;

(f) Whether the applicant or any person, partnership or corporation associated with the applicant holds or has held any other permits under this chapter, and an identification of such permits;

(g) Whether or not the applicant is in compliance with subsection (3) of KRS 350.130 and whether or not every officer, partner, director or any individual owning of record or beneficially (alone or with associates) if known, ten percent (10%) or more of any class of stock of the applicant, is subject to any of the provisions of subsection (3) of KRS 350.130 and he shall so certify;

(3) The application for a permit shall be accompanied by *five (5)* [two (2)] copies of a United States geological survey topographic map *or such other map acceptable to the department* on which the operator has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which such drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map;

(4) The application for a permit shall be accompanied by *five (5)* [two (2)] copies of an enlarged United States geological survey topographic map *or such other map acceptable to the department* meeting the requirements of the subsections below. The map shall:

(a) Be prepared and certified by a professional engineer, registered under the provisions of KRS chapter 322. The certification shall be in the form as provided in subsection (5) below;

(b) Identify the area to correspond with the application;

(c) Show adjacent deep mining and the boundaries of surface properties and names of owners on the affected area and within five hundred (500) feet of any part of the affected area;

(d) Be of a scale of not less than four hundred (400) feet to the inch and not to exceed six hundred and sixty (660) feet to the inch;

(e) Show the names and locations of all streams, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within five hundred (500) feet of such area;

(f) Show by appropriate markings the boundaries of the area of land affected, the cropline of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land affected;

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

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

(5) The certification of the maps by the professional engineer shall read as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the infor- -958-

mation required by the strip mining laws of this state." The certification shall be signed and notarized. The department may reject any map as incomplete if its accuracy is not so attested;

(6) The application for a permit shall be accompanied by a transportation plan which shall set forth the portions of the state primary road system, if any, over which the applicant proposes to transport minerals extracted in the mining operation. The transportation plan shall specify the legal weight limits for each portion of any such highway or bridge over which the applicant proposes to transport minerals. The transportation plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any highway or bridge. The transportation plan shall contain a certification by a duly authorized official of the department of transportation attesting the accuracy of the transportation plan in regard to the locations and identities of highways and bridges on the state primary road system and the accuracy of the specifications of weight limits on such highways and bridges.

(7) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time and distance for backfilling, grading work and a reclamation plan for the affected area, which proposals shall meet the requirements of this chapter and rules and regulations adopted pursuant thereto.

(8) Each application shall also be accompanied by a statement of consent to have strip mining conducted upon the area of land described in the application for a permit. The statement of consent shall be signed by each holder of a freehold interest in such land. Each signature shall be notarized. No permit shall be issued if the application therefor is not accompanied by the statement of consent. This statement of consent shall not be required for coal mined under the provisions of KRS chapters 351 and 352.

(9) A basic fee of one hundred and fifty dollars ($150) plus thirty-five dollars ($35.00) for each acre or fraction thereof of the area of land to be affected by the operation shall be paid before the permit required herein shall be issued. The operator shall file with the department a bond payable to the Commonwealth of Kentucky with surety satisfactory to the department in the penal sum to be determined by the department on the recommendation of the secretary of not less than five hundred dollars ($500) nor more than three thousand dollars ($3,000) for each acre or fraction thereof of the area of land affected, with a minimum bond of five thousand dollars ($5,000), conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations of the department. In determining the amount of the bond within the above limits, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of backfilling, grading and reclamation to be required. In a particular instance where the circumstances are such as to warrant an exception, the department, in its discretion, may reduce the amount of the bond for a particular operation to less than the required minimum.

(10) The department shall promulgate rules and regulations setting forth operation requirements for the extraction of coal for commercial purposes where the strip mining operation affects two (2) acres or less. Such regulations shall not be more stringent than those imposed on strip mining operations affecting more than two (2) acres. All performance, procedural, and notice requirements for strip mining operations which affect two (2) acres or less shall be promulgated by regulation pursuant to this subsection, except the enforcement provisions of KRS 350.130, the penalty provisions of KRS 350.990, the permitting requirements in subsection (1) of this section, and the bonding requirements set forth in subsection (9) of this section.

(11)(a) Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal and such renewal shall be issued (provided that on application for renewal the burden shall be on the opponents of renewal), and the public notice requirements of this chapter shall not apply unless it is established that and written findings by the department are made that:

1. The terms and conditions of the existing permit are not being satisfactorily met;

2. The present strip coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter;

3. The renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas;

4. The operator has not provided evidence that the performance bond in effect for any renewal requested in such application as well as any additional bond the department might require; or

5. Any additional revised or updated information required by the department has not been provided. Prior to the approval of any renewal of permit the department shall provide notice to the appropriate public authorities.

(b) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new applications under this chapter;

(c) Any permit renewal shall be for a term not to exceed the period of the original permit. Application for permit renewal shall be made not later than thirty (30) working days prior to the expiration of the valid permit.

Section 24. KRS 350.070 is amended to read as follows:

The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase shall not extend the period for which an original permit was issued. An operator may, at any time *during the term* [within one (1) year from the date of issuance] of the permit, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this chapter and shall pay a basic fee of one hundred and fifty dollars ($150), plus a fee of thirty-five dollars ($35.00) for each acre or fraction of acre for the increase requested, and shall file with the department a supplemental bond in the amount to be determined under the provisions of KRS 350.060 for each acre or fraction of an acre of the increase approved. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below five thousand dollars ($5,000), except as provided in subsection (7) of KRS 350.060. If the department approves a reduction in acreage covered by the original or supplemental permit, it shall transfer the acreage fee for each acre reduced to acreage fees in subsequent permit applications by the operator.

Section 25. KRS 224.037 is amended to read as follows:

The department is hereby designated as the water pollution agency for this state and for any city, county, or district, or authority within this state for all purposes of the Water Pollution Control Act (Public Law 80-845 approved June 30, 1948), as amended; as air pollution agency for this state for all purposes of the Federal Air Quality Act (Public Law 90-148, approved November 21, 1948), as amended, and as solid waste agency for this state for all purposes of the Federal Solid Waste Disposal Act (Public Law 89-272, approved October 20, 1965), as amended, *and as the surface mining agency for this state for all purposes of the federal surface mining control and reclamation act (Public Law 95-87, approved August 3, 1977), as amended.* The department may take all action necessary or appropriate to secure to this state and all cities, counties, districts, and authorities within this state the benefits of such federal acts.

SECTION 26. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

Where the issuance of an injunction by any court of competent jurisdiction enjoins the enforcement of the provisions contained in this Act, which are the same as the Initial Regulatory Procedures of Section 502 of Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977," or where this Act is held to be invalid, the remaining provisions of this chapter shall not be affected thereby.

Section 27. KRS 350.135 is amended to read as follows:

(1) Where one operator succeeds another at any uncompleted operation, either by sale, assignment, lease or otherwise, the department may release the first operator from all liability under this chapter as to that particular operation: Provided, however, That *the successor operator has* [both operators have] been issued a permit and *has* [have] otherwise complied with the requirements of this chapter, and the successor operator assumes as part of his obligation under this chapter, all liability for the reclamation of the area of land affected by the former operator.

(2) A successor in interest to a permittee who applies for a new permit within thirty (30) days of succeeding to such interest and who is able to obtain the bond coverage of the original permittee may continue strip mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

SECTION 28. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

(1) The provisions of this section and regulations promulgated pursuant thereto (except with regard to the mining of clay, limestone, sand, gravel, fluorspar, stone, and rock asphalt) shall apply to the regulation of all surface coal mining and reclamation operations in the Commonwealth in the event that the Commonwealth receives from the United States department of interior and pursuant to the surface mining control and reclamation act of 1977 (PL 95-87) approval of a permanent state regulatory program, and the Commonwealth has promulgated regulations pursuant to this section.

(2) The department for natural resources and environmental protection is hereby authorized and directed to prepare, develop and promulgate a comprehensive permanent regulatory program for the implementation of the surface mining control and reclamation act of 1977 (PL 95-87) for the purpose of accepting and administering primary enforcement responsibilities pursuant to that Act. The implementation of this section shall contain procedures similar to the surface mining control and reclamation act of 1977 (PL 95-87) and shall require surface coal mining operation performance standards no more stringent than provided for in that Act. Nothing herein shall be construed to empower the department to adopt a regulatory program in conflict with the policy and purposes of the surface mining control and reclamation act of 1977 (PL 95-87). To that end, the department for natural resources and environmental protection shall include in its permanent regulatory program:

(a) Environmental protection performance standards to prevent or minimize the adverse environmental effects of surface coal mining and reclamation operations on the land and water resources of the Commonwealth.

(b) A procedure for designating as being unsuitable for mining certain lands because of their topographical, geological, hydrological, climatological, biological, or chemical characteristics or historical, cultural, scientific or aesthetic values.

(c) Procedures for the allowance of those persons having a valid legal interest which is or may be adversely affected to have the opportunity to be heard at every significant or critical part of the administrative and judicial process.

(d) Procedures for the administrative and judicial review of all actions of the department to administer and enforce the provisions of this Act.

(e) Plans and procedures for the reclamation and restoration of land and water resources affected by mining which have been abandoned or inadequately reclaimed to the standards imposed by this section and for which no bond is held or legal obligation to reclaim continues. Such plan shall include provisions for the imposition of liens for necessary reclamation expenditures made on private property.

(f) Procedures for the assumption of the small operator assistance program pursuant to the surface mining control and reclamation act of 1977 (PL 95-87). The department shall assume and implement that program and apply for and administer funds as may be provided pursuant to that Act.

(3) In addition to any other authority, power and duty vested in it by law, the department shall have and exercise broad authority, power and duty to:

(a) Require those persons who wish to engage in surface coal mining and reclamation operations to submit application for a permit from the department to conduct such operations, and to include in that application all information required by the department pertaining to that operation.

(b) Issue, deny, modify or suspend under such conditions as the department may prescribe, permits to conduct surface coal mining and reclamation operations within the Commonwealth.

(c) Enter and inspect any permitted surface coal mining and reclamation operation or any known or suspected unpermitted mining operation for the purpose of ascertaining compliance with any provision of this section or of the permit.

(d) Order the cessation of mining activities, and if necessary impose affirmative abatement obligations, upon the operator when, upon inspection, the department determines that this section or any permit condition is being or has been violated so as to constitute an imminent and inordinate peril to the welfare of the Commonwealth.

(e) Order an operator to comply with the requirements of this section or his permit if inspection reveals a violation of the conditions of his permit or of any provision of this section.

(f) Order an operator to appear and show cause why his permit should not be revoked and his bond forfeited if the department determines that the operator or the permitted operation has a pattern of violations of this section or permit conditions, and has wilfully violated this section or permit conditions or a pattern of violations exists and that such violations are caused by the permittees' unwarranted failure to comply with this section or permit conditions.

(g) Require, increase, release or decrease, under such conditions as the department may prescribe reclamation performance bonds and cause the forfeiture and collection of those bonds where the permittee has abandoned the operation or for which the permit under which the bond was given has been revoked or has expired without the required reclamation.

(h) To administratively impose, in lieu of those civil penalties provided for in KRS 350.990, civil penalties of up to $5,000 per day for violations of permit conditions, this section, or any orders of the department and enforce the administrative assessment of such penalties by initiating civil action in the Franklin circuit court or in any court having jurisdiction of the defendant.

(i) Conduct hearings and make investigations of any matter relating to the regulation of surface coal mining and reclamation operations.

(j) Provide for variances or exceptions from or in addition to mining performance standards, recognizing the specific characteristics inherent in:

(a) steep slope mining

(b) mountaintop removal

(c) relatively low acreage disturbance or annual coal production

(d) prime farmland mining as defined by the United States department of agriculture, and to provide for other variances where land uses and watersheds will be improved

(e) post mining uses different from and as beneficial as the pre-mining uses

(k) Receive and expend funds or aid from whatever source to accomplish the purposes of this Act.

(l) Propose and promulgate regulations to accomplish the purposes of this section.

(4) The department shall not promulgate regulations which are inconsistent with the surface mining control and reclamation act of 1977 (PL 95-87).

(5) Any person who violates a provision of this section or the regulations promulgated pursuant thereto shall be subject to those penalties and remedies set forth in KRS 350.990 except as provided for in (h) herein.

Section 29. For the purposes of regulations promulgated under the provisions of Section 28 of this Act, the interim joint committee on agriculture and natural resources shall have the same authority and responsibility as the administrative regulations review subcommittee has under KRS Chapter 13. Following the regulations review by the interim committee the same shall be reviewed by the administrative regulations review subcommittee for the purposes of KRS Chapter 13.

Section 30. Section 28 and 29 of this Act shall become effective June 1, 1979.

Section 31. KRS 350.220, Regulation of use of explosives, is repealed.

Section 32. Whereas, the U.S. government requires certain performance standards for strip mining and reclamation in the states to be complied with by February 3, 1978 and by May 3, 1978, an emergency is declared to exist and this Act shall become effective on May 3, 1978.

Approved March 30, 1978

CHAPTER 332

(S.B. 281)

AN ACT relating to mining and conservation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 350.020 is amended to read as follows:

The general assembly finds *that the Commonwealth is the leading producer of coal and that the production of coal in Kentucky contributes significantly to the nation's energy needs. The general assembly further finds* that the unregulated strip mining of coal causes soil erosion, damage from rolling stones and overburden, landslides, stream pollution, the accumulation of stagnant water and the seepage of contaminated water, increases the likelihood of floods, destroys the value of land for agricultural purposes, destroys aesthetic values, counteracts efforts for the conservation of soil, water and other natural resources, destroys or impairs the property rights of citizens, creates fire hazards, and in general creates hazards dangerous to life and property, so as to constitute an imminent and inordinate peril to the welfare of the Commonwealth. The general assembly further finds that lands that have been subjected to strip mining and have not been reclaimed and rehabili-

tated in accordance with modern standards constitute the aforementioned perils to the welfare of the Commonwealth. The general assembly further finds that there are wide variations in the circumstances and conditions surrounding and arising out of the strip mining of coal due primarily to difference in topographical and geological conditions, and by reason thereof it is necessary, in order to provide the most effective, beneficial and equitable solution to the problem, that a broad discretion be vested in the authority designated to administer and enforce the regulatory provisions enacted by the general assembly. Therefore, it is the purpose of this chapter to provide such regulation and control of the strip mining of coal as to minimize or prevent its injurious effects on the people and resources of the Commonwealth. To that end, the [division and the] department *is* [are] directed to rigidly enforce this chapter and to adopt whatever regulations are found necessary to accomplish the purpose of this chapter.

Section 2. KRS 350.035 is amended to read as follows:

There is established within the department a bureau of surface mining reclamation and enforcement which shall be headed by a commissioner appointed by the secretary with the approval of the governor as required by KRS 12.050. The secretary shall divide the bureau into a division of permits, division of standards and specifications, division of operations and enforcement, division of orphan land reclamation, and any other offices or divisions as the secretary may deem necessary to perform the functions, powers and duties of the bureau, subject to the provisions of KRS Chapter 12. [The director of the division of reclamation shall be appointed by the commissioner of environmental protection in accordance with KRS 12.050.]

Section 3. KRS 350.050 is amended to read as follows:

The department for natural resources and environmental protection under the supervision of the secretary of the department for natural resources and environmental protection shall have and exercise the following authority and powers:

(1) To exercise general supervision and administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder;

(2) To encourage and conduct investigations, research, experiments and demonstrations, and to collect and disseminate information relating to strip mining and reclamation of lands and waters affected by strip mining;

(3) To adopt, without hearing, *internal procedures* [rules and regulations] with respect to the filing of reports, the issuance of permits and other matters of procedure and administration;

(4) To examine and pass upon all plans and specifications submitted by the operator for the method of operation, backfilling, grading and for the reclamation of the area of land affected by his operation;

(5) To make investigations or inspections which may be deemed necessary to insure compliance with any provision of this chapter;

(6) To order, through personnel of the department, the suspension of any permit for failure to comply with any of the provisions of this chapter or any regulations adopted pursuant thereto;

(7) To order, through personnel of the department, the stopping of any operation that is started without first having secured a permit as required by this chapter.

Section 4. KRS 350.060 is amended to read as follows:

(1) No operator shall engage in strip mining without having first obtained from the department a permit designating the area of land affected by the operation. The permit shall authorize the operator to engage in strip mining upon the area of land described in his application for a period of one (1) year from the date of its issuance;

(2) An operator desiring a permit shall file an application which shall state:

(a) The location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area within five hundred (500) feet of any part of the affected area;

(c) The owner or owners of the coal to be mined;

(d) The source of the applicant's legal right to mine the coal on the land affected by the permit;

(e) The permanent and temporary post-office addresses of the applicant;

(f) Whether the applicant or any person, partnership or corporation associated with the applicant holds or has held any other permits under this chapter, and an identification of such permits;

(g) Whether or not the applicant is in compliance with subsection (3) of KRS 350.130 and whether or not every officer, partner, director or any individual owning of record or beneficially (alone or with associates) if known, ten percent (10%) or more of any class of stock of the applicant, is subject to any of the provisions of subsection (3) of KRS 350.130 and he shall so certify:

(3) The application for a permit shall be accompanied by two (2) copies of a United States geological survey topographic map on which the operator has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which such drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map;

(4) The application for a permit shall be accompanied by two (2) copies of an enlarged United States geological survey topographic map meeting the requirements of the subsections below. The map shall:

(a) Be prepared and certified by a professional engineer, registered under the provisions of KRS chapter 322. The certification shall be in the form as provided in subsection (5) below;

(b) Identify the area to correspond with the application;

(c) Show adjacent deep mining and the boundaries of surface properties and names of owners on the affected area and within five hundred (500) feet of any part of the affected area;

(d) Be of a scale of not less than four hundred (400) feet to the inch and not to exceed six hundred and sixty (660) feet to the inch;

(e) Show the names and locations of all streams, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within five hundred (500) feet of such area;

(f) Show by appropriate markings the boundaries of the area of land affected, the cropline of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land affected;

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

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

(5) The certification of the maps by the professional engineer shall read as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the strip mining laws of this state." The certification shall be signed and notarized. The department may reject any map as incomplete if its accuracy is not so attested;

(6) The application for a permit shall be accompanied by a transportation plan which shall set forth the portions of the state primary road system, if any, over which the applicant proposes to transport minerals extracted in the mining operation. The transportation plan shall specify the legal weight limits for each portion of any such highway or bridge over which the applicant proposes to transport minerals. The transportation

plan shall include any proposal by the applicant to obtain a special permit pursuant to the provisions of KRS 189.271 to exceed the weight limits on any highway or bridge. The transportation plan shall contain a certification by a duly authorized official of the department of transportation attesting the accuracy of the transportation plan in regard to the locations and identities of highways and bridges on the state primary road system and the accuracy of the specifications of weight limits on such highways and bridges.

(7) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time and distance for backfilling, grading work and a reclamation plan for the affected area, which proposals shall meet the requirements of this chapter and rules and regulations adopted pursuant thereto.

(8) Each application shall also be accompanied by a statement of consent to have strip mining conducted upon the area of land described in the application for a permit. The statement of consent shall be signed by each holder of a freehold interest in such land. Each signature shall be notarized. No permit shall be issued if the application therefor is not accompanied by the statement of consent. This statement of consent shall not be required for coal mined under the provisions of KRS chapters 351 and 352.

(9) A basic fee *set by regulation, and bearing a reasonable relationship to the cost of processing the permit application but not to exceed two hundred and fifty dollars ($250)* [of one hundred and fifty dollars ($150)] plus *a fee set by regulation but not to exceed fifty dollars ($50.00)* [thirty-five dollars ($35.00)] for each acre or fraction thereof of the area of land to be affected by the operation shall be paid before the permit required herein shall be issued. The operator shall file with the department a bond payable to the Commonwealth of Kentucky with surety satisfactory to the department in the penal sum to be determined by the department on the recommendation of the secretary of not less than five hundred dollars ($500) nor more than three thousand dollars ($3,000) for each acre or fraction thereof of the area of land affected, with a minimum bond of five thousand dollars ($5,000), conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations of the department. In determining the amount of the bond within the above limits, the department shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of backfilling, grading and reclamation to be required. In a particular instance where the circumstances are such as to warrant an exception, the department, in its discretion, may reduce the amount of the bond for a particular operation to less than the required minimum.

Section 5. KRS 350.070 is amended to read as follows:

The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase shall not extend the period for which an original permit was issued. An operator may, at any time within one (1) year from the date of issuance of the permit, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this chapter and shall pay a basic fee *set by regulation and bearing a reasonable relationship to the cost of processing the permit application but not to exceed two hundred and fifty dollars ($250)* [of one hundred and fifty dollars ($150)], plus a fee *set by regulation but not to exceed fifty dollars ($50.00)* [of thirty-five dollars ($35.00)] for each acre or fraction of acre for the increase requested, and shall file with the department a supplemental bond in the amount to be determined under the provisions of KRS 350.060 for each acre or fraction of an acre of the increase approved. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below five thousand dollars ($5,000), except as provided in subsection (7) of KRS 350.060. If the department approves a reduction in acreage covered by the original or supplemental permit, it shall transfer the acreage fee for each acre reduced to acreage fees in subsequent permit applications by the operator. by the operator.

Section 6. KRS 350.113 is amended to read as follows:

(1) When the planting of a permit area is completed, the operator shall file a planting report with the department on a form to be prescribed and furnished by the department, giving the following information:

(a) Identification of the operation;

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

(c) The date of planting or seeding;

(d) The area of land planted;

(e) Such other relevant information as the *department* [director] may require;

(2) All planting reports shall be certified by the operator;

(3) Inspection and evaluation for vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. In no instance shall this vegetative cover check be made until just prior to or after the completion of the first growing season. If the department determines that a satisfactory vegetative cover has been established, it shall then release the remaining bond held on the area reclaimed.

Section 7. KRS 350.150 is amended to read as follows:

(1) In the reclamation of land affected by strip mining for which it has funds available, the department may avail itself of any services which may be provided by other state agencies or by agencies of the federal government, and may compensate them for such services. The department may also receive any federal funds, state funds or any other funds for the reclamation of land affected by strip mining. The department may cause the reclamation work to be done by its own employes or by employes of other governmental agencies, soil conservation districts, or through contracts with qualified persons. Such contracts shall be awarded to the lowest responsible bidder upon competitive bids after reasonable advertisement. The department and any other agency and any contractor under a contract with the department shall have the right of access to the land affected to carry out such reclamation.

(2) Any funds available to the *department* [commission] and any public works program (both funds and services) may be used and expended to reclaim and rehabilitate any lands that have been subjected to strip mining that have not been reclaimed and rehabilitated in accordance with standards set by this chapter or regulations thereunder and which are not covered by bond to guarantee such reclamation.

(3) A person or organization, having qualifications acceptable to the department, may post bond or a cash deposit, in a sum determined by the department, and assume the liability for carrying out the reclamation plan approved by the department in areas where the mining operation and any necessary grading and backfilling have been completed. The department shall then release the bond posted by the operator for such area.

Section 8. KRS 350.154 is amended to read as follows:

The *department* [division of reclamation] shall have the power to backfill, grade, plant and perform other acts of restoration and reclamation, or contract for the performance of such restoration work, on any lands acquired under KRS 350.152 to 350.163 and 350.240, to the extent and subject to such conditions as state or federal funds are appropriated and available therefor.

Section 9. KRS 350.163 is amended to read as follows:

(1) The department is authorized and empowered to receive and accept from the Commonwealth or any of its agencies and from federal agencies appropriations or grants to accomplish the purposes of *this chapter* [KRS 350.152 to 350.163 and 350.240], and to receive and accept aid or contributions from any source of either money, property, labor or any other things of value, to accomplish the purposes of *this chapter* [KRS 350.152 to 350.163 and 350.240].

(2) All funds available or paid to the department under *this chapter* [KRS 350.152 to 350.163 and 350.240], shall be placed in the state treasury and credited pursuant to the terms of the appropriation, grant, aid or contribution.

Section 10. KRS 350.250 is amended to read as follows:

Any citizen of this Commonwealth having knowledge that any of the provisions of this chapter or regulations adopted thereunder are wilfully and deliberately not being enforced by any public officer or employe, whose duty it is to enforce such provisions of this chapter and regulations thereunder, may bring such failure to enforce the law to the attention of such public officer or employe. To provide against unreasonable and irresponsible demands being made, all such demands to enforce the law must be in writing, under oath, with facts set forth specifically stating the nature of the failure to enforce the law. *Any person who wilfully and knowingly states* [The stating of] false facts and charges in such affidavit shall *be* [constitute perjury and shall] subject [the affiant] to penalties provided under the law *for* [of] perjury. If such public officer or employe neglects or refuses for any unreasonable time after demand to enforce such provision, any such citizen shall have the right to bring an action of mandamus in the circuit court of the county in which the operation which relates to the alleged lack of enforcement is being conducted. The court, if satisfied that any provision of this chapter or regulation thereunder is not being enforced, *shall* [may] make an appropriate order compelling the public officer or employe, whose duty it is to enforce such provision, to perform his duties, and upon failure to do so such public officer or employe shall be held in contempt of court and shall be subject to the penalties provided by the laws of the Commonwealth in such cases.

Section 11. KRS 350.990 is amended to read as follows:

(1) Any person or operator who violates any of the provisions of this chapter or regulations adopted pursuant thereto or who fails to perform the duties imposed by these provisions, *except the refusal or failure to obtain a permit or other authorization* [or fails or refuses to obtain a permit] as provided herein, or who violates any determination or order promulgated pursuant to the provisions of this chapter, shall be liable to a civil penalty of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000) for said violation, and an additional civil penalty of not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each day during which such violation continues, and in addition, may be enjoined from continuing such violations as hereinafter provided in this section. Such penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the department's office of general counsel, or upon the secretary's request, by the attorney general. *The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the department or by the attorney general on its behalf for the enforcement of the provisions of this chapter or the orders, rules, and regulations of the department promulgated pursuant thereto.* [in the Franklin Circuit Court or in the circuit court having jurisdiction of the defendant, and] All sums recovered shall be placed in the state treasury.

(2) *Any person who engages in strip mining without first securing a permit, as provided in KRS 350.060, or any person who engages in operations without proper authorization, which shall not be construed to mean permits, as required by the department pursuant to KRS 350.151 shall be liable to a civil penalty for damages to the Commonwealth of not less than five thousand dollars ($5,000) nor more than twenty-five thousand dollars ($25,000) and in addition, may be enjoined from continuing such violations as hereinafter provided. Each day shall constitute a separate violation. However, the penalties provided for in subsection (1) of this section shall apply in lieu of the penalties provided for in this subsection where an operator through inadvertence has exceeded the boundaries of the permit in effect at that time.*

(3) It shall be the duty of the department's office of general counsel, or upon the secretary's request, of the attorney general to bring an action for the recovery of the penalties herein provided for and to bring an action for a restraining order, temporary or permanent injunction, against any operator or other person violating or threatening to violate any of the provisions of this chapter or violating or threatening to violate any order or determination promulgated pursuant to the provisions of this chapter. *The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the department or by the attorney general on its behalf for the enforcement of the provisions of this chapter or the orders, rules, and regulations of the department promulgated pursuant thereto.*

(4) [(3)] Any person who shall willfully violate any of the provisions of this chapter, *except as provided in subsection (5)* or any determination or order promulgated pursuant to the sections of this chapter which have become final shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars ($500) and not more than five thousand dollars ($5,000). Each day on which such violation occurs shall constitute a separate offense.

(5) Any person who, in violation of KRS 350.060, wilfully and knowingly engages in strip mining without first obtaining a permit from the department or any person who wilfully and knowingly engages in op-

erations without proper authorization, which shall not be construed to mean permits, as required by the department pursuant to KRS 350.151 with the intent to violate such laws shall be guilty of a Class A misdemeanor and upon conviction thereof shall be imprisoned for a term of up to one (1) year.

Section 12. KRS 262.760 is amended to read as follows:

Within the first quarter of each calendar year, the board of directors shall prepare an itemized budget of the funds needed for administration, construction, operation and maintenance of works of improvement. After approval of such budget by the board of supervisors, the board of directors shall, by order or resolution, levy a tax sufficient to meet such budget, not to exceed five mills per dollar of the fair cash value, as equalized by the department of revenue, of all real property within the district, except any levy necessary to provide a sinking fund for retirement of bonds authorized by KRS 262.750 *and except any levy necessary to provide for the improvement, continuing operation, or maintenance of works of improvement within the district authorized by Section 2 of this Act.* A copy of such budget and order or resolution shall be certified to the county clerk of the county or counties involved.

SECTION 13. A NEW SECTION OF KRS 262.745 TO 262.750 IS CREATED TO READ AS FOLLOWS:

(1) Upon determination by the board of directors of a watershed conservancy district that the improvement, continuing operation, or maintenance of a watershed project is necessary, the board of directors may adopt a resolution which shall set out: (a) a list of the benefited lands located in the flood plain, as determined by the board of directors, giving the acreage of such lands and the names of the owners thereof as defined by KRS 262.010(6) with a classification of such lands or parts thereof into classes in order that assessments may be made according to direct benefits, and (b) the annual assessments to be levied upon the lands set out in the resolution on the basis of a certain amount per acre according to benefits received, not to exceed in any one year a sum per acre specified in the resolution.

(2) The board of directors shall cause due notice of the resolution to be given to all the owners of benefited lands, as determined by the board. Said notice shall set out the time and place of a meeting of the board of directors of the watershed conservancy district at which owners of benefited lands who may be liable for the annual assessments may be heard.

(3) At the hearing upon the resolution, owners of benefited lands may voice their views concerning the proposal as to whether it should be undertaken, and the scope thereof, or the degree of benefit received by their lands. The board shall prepare a record summarizing the proceedings. If the board of directors determines as a result of the hearing that the proposal should be carried out as planned, it may make such changes or revisions in the resolution as it deems proper and shall give due notice of an election to be held at which benefited landowners may vote on the question of annual special assessments to defray the cost. The notice of the election shall include the text of the resolution of the board in its final form. The board of directors may give due notice as provided in KRS 262.010(4).

(4) The board of directors shall prepare official ballots to be used in the electon which shall state the question: "Should the assessment for improvement, continuing operation, or maintenance proposed by resolution of the ----- watershed conservancy district be adopted?" Squares indicating a yes or no answer should follow the question with a direction to insert an "X" mark in the square favored. Only owners of benefited land as set out in the resolution shall be eligible to vote. The board of directors may provide for a meeting of the landowners at which the vote may be cast, in which case qualified voters may vote by absentee ballot. The board shall appoint a polling superintendent and other necessary election officers, giving representation to the opponents of the question as well as to proponents.

(5) If a majority of those voting upon the proposition favor the assessment the board shall give due notice of the vote. Any owner of property to be benefited by the project may, within forty days after publication of such notice, file an action in the circuit court of the county in which his lands are located seeking relief of declaratory judgment or injunction. If a suit is filed, the county attorney shall represent the board of directors in upholding the validity of the proposed assessment. After the lapse of time specified herein all actions by owners of properties to be benefited shall be forever barred.

(6) If no suit is filed and no injunction issued within the time allowed in subsection (5) of this section, the board of directors shall levy annual assessments effective only upon the benefited properties and based on the acreage thereof. The annual assessment shall be made by the board of directors at the same time

and in the same manner as provided in KRS 262.765 for taxes generally and shall be collected as provided in KRS 262.770. The assessments shall constitute liens against the land benefited and shall attach to the land, taking precedence over all other liens except state, county and municipal taxes and prior improvement assessments.

Section 14. KRS 262.750 is amended to read as follows:

(1) Bonds authorized by KRS 262.745 shall not be issued until proposed by order or resolution of the board of directors, specifying the purpose for which the funds are to be used and the proposed undertaking, the amount of bonds to be issued, the rate of interest they are to bear and the amount of any necessary tax levy [in excess of the maximum] authorized in KRS 262.760 to establish a sinking fund for the liquidation of bonds as provided in KRS 262.760. Copy of the order or resolution shall be certified to the board of supervisors.

(2) The board of supervisors shall conduct a hearing on such proposal after notice given pursuant to KRS 262.010 (4). If it appears that the proposal is within the scope and purpose of KRS 262.700 to 262.795 and meets all other requirements of the law, the proposal shall be submitted to the landowners of the district by referendum under supervision of the board of supervisors.

(3) Provisions of KRS 262.725, 262.730 and 262.740 as to notice, qualifications of voters, absentee voting and manner of holding referendum election in organizing a watershed conservancy district shall apply to the referendum held under this section.

(4) If two-thirds (2/3) of the landowners voting favor the proposal, subject to the provisions of KRS 66.210, such bonds may be issued.

Section 15. KRS 262.777 is amended to read as follows:

[In the event the income derived by a watershed conservancy district by taxation as provided by KRS 262.745(1) and 262.760 shall prove inadequate to carry out the approved program of the district, or constitutional limitations on indebtedness do not permit the borrowing of funds by the district as authorized by KRS 262.745(4) and 262.750,] A special assessment may be voted and bonds issued which shall be payable solely from the collection of such assessments, as provided in KRS 262.778 and 262.779.

Section 16. If any provision of this Act or the applicability thereof to any person or circumstances is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Approved March 30, 1978

S E N A T E O F M A R Y L A N D

81r3566 No. 924

By: Senator Simpson
Introduced and read first time: February 16, 1978
Assigned to: Economic Affairs

Committee report: Favorable with amendments
Senate action: Adopted
Read second time: March 9, 1978

CHAPTER VETOED

AN ACT concerning

Surface Mining - Gravel

FOR the purpose of altering the amount of gravel permitted to be extracted from small farms without ~~a permit~~ submitting certain information.

BY repealing and reenacting, with amendments,

Article - Natural Resources
Section 7-6A19(b)
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article - Natural Resources

7-6A19.

(b) The operator shall furnish with the mining and reclamation plan, in a reasonable manner satisfactory to the Department, an accurately surveyed topographic map, in duplicate, on a scale of not smaller than one inch equals 200 feet and with a contour interval of spacing appropriate for the area, showing the location of the tract of land to be affected by mining, and representative cross-sections. The surveyed topographic map and cross-sections shall be prepared and certified by a registered professional engineer or registered surveyor and show the boundaries of the proposed affected land, together with the drainage area above and below the area, the location and names of all

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
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streams, roads, railroads, and utility lines on or immediately adjacent to the area, the outcrop line of any mineral deposit to be mined, the location of all buildings within 200 feet of the outer perimeter of the area affected, the names and addresses of the owners and present occupants, the purpose for which each building is used, the name of the owner of the tract where the proposed mining is to occur, and the names of the adjacent landowners, the municipality or district and county and nearest municipality. The topographic map also shall show the locations of test borings or sampling which the operator has conducted or will conduct at the site of the proposed operation. The cross-sections shall include the location of the test borings or sample sites, the nature and depth of the various strata, the thickness of any mineral seam or deposit, an analysis of any mineral deposit or ore, the thickness of the overburden, and an analysis of the overburden. Aerial photographs of the tract of land to be affected by the mining also shall be provided if they are required by the Department. The information resulting from the test borings is confidential information and not a matter of public record. The Department may waive any of the requirements of this subsection if the operator extracts less than ~~10,000~~ 30,000 TONS PER YEAR OR 20,000 CUBIC [tons] YARDS per year of minerals and the affected land is less than five acres in size.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
President of the Senate.

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Speaker of the House of Delegates.

S E N A T E O F M A R Y L A N D

81r2051 No. 414

By: Senator McGuirk
Introduced and read first time: January 12, 1978
Assigned to: Economic Affairs

Committee report: Favorable with amendments
Senate action: Adopted
Read second time: February 21, 1978

CHAPTER 228

AN ACT concerning

Strip Mining

FOR the purpose of prohibiting certain owners from interfering with strip mine operators in their discharge of certain duties imposed by law.

BY adding to

Article - Natural Resources
Section 7-508(h)
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article - Natural Resources

7-508.

(H) ~~A~~ AN OWNER OF EITHER SURFACE RIGHTS OR MINERAL RIGHTS MAY NOT INTERFERE WITH AN OPERATOR IN THE DISCHARGE OF ANY DUTIES IMPOSED BY THIS ~~SECTION~~ SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

H O U S E O F D E L E G A T E S

81r4233 No. 1928

By: Delegates J. Long, C. Hickman, Burgess, R. Hickman, R. Long, Horne, Mitchell, Hargreaves, and Thomas
Introduced and read first time: February 24, 1978
Assigned to: Environmental Matters

Committee report: Favorable with amendments
House action: Adopted
Read second time: March 15, 1978

CHAPTER 765

AN ACT concerning

Surface Mining Act

FOR the purpose of increasing the amount of minerals which may qualify for a Departmental waiver; clarifying bonding requirements; providing for irrevocable letters of credit as a means of financial security for the faithful performance of surface mining and reclamation; and revision of map requirements for final completion and reclamation reports.

BY repealing and reenacting, with amendments,

Article - Natural Resources
Section 7-6A19(b), 7-6A20(b) and (d) and 7-6A27(b)(7)
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article - Natural Resources

7-6A19.

(b) The operator shall furnish with the mining and reclamation plan, in a reasonable manner satifactory to the Department, an accurately surveyed topographic ~~may~~ map, in duplicate, on a scale of not smaller than one inch equals 200 feet and with a contour interval of spacing appropriate for the area, showing the location of the tract of land to be affected by mining, and representative cross-sections.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

The surveyed topographic map and cross-sections shall be prepared and certified by a registered professional engineer or registered surveyor and show the boundaries of the proposed affected land, together with the drainage area above and below the area, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, the outcrop line of any mineral deposit to be mined, the location of all buildings within 200 feet of the outer perimeter of the area affected, the names and addresses of the owners and present occupants, the purpose for which each building is used, the name of the owner of the tract where the proposed mining is to occur, and the names of the adjacent landowners, the municipality or district and county and nearest municipality. The topographic map also shall show the locations of test borings or sampling which the operator has conducted or will conduct at the site of the proposed operation. The cross-sections shall include the location of the test borings or sample sites, the nature and depth of the various strata, the thickness of any mineral seam or deposit, and analysis of any mineral deposit or ore, the thickness of the overburden, and an analysis of the overburden. Aerial photographs of the tract of land to be affected by the mining also shall be provided if they are required by the Department. The information resulting from the test borings is confidential information and not a matter of public record. The Department may waive any of the requirements of this subsection if the operator extracts less than [10,000] 30,000 tons per year OR 20,000 CUBIC YARDS PER YEAR of minerals and the affected area is less than five acres in size.

7-6A20.

(b) The amount of the bond required shall be for a maximum of $750 per acre based on the number of acres of affected land [and] covered by the permit, but no bond may be filed for less than $7,500, [unless] PROVIDED, HOWEVER, THAT the [operator can demonstrate to the reasonable satisfaction of the] Department SHALL DETERMINE [that] WHETHER the total bond fee is unreasonable and excessive for [that] A particular tract of land and [that] WHETHER a lesser total amount for the bond is sufficient to cover [the] reclamation. IN MAKING THIS DETERMINATION, THE DEPARTMENT SHALL CONSIDER THE SIZE OF THE OPERATION, THE AMOUNT OF LAND TO BE MINED, THE ACREAGE THAT IS UNRECLAIMED AT ANY ONE TIME, THE PROPOSED METHOD OF REGRADING AND REVEGETATION OF THE SITE, THE PROPOSED USE OF THE LAND FOLLOWING RECLAMATION AND ANY OTHER RELEVANT FACTORS.

(d) The bond shall be executed by the operator and corporate surety licensed to do business in the State. In lieu of a corporate surety, [either] ONE of the following shall be acceptable:

(1) Deposits of cash or negotiable bonds of the United States government. The cash deposit or market value of the securities shall be equal at least to the required sum of the bond. The Department, on receipt of any deposit of cash or securities, immediately shall forward it to the State Treasurer, who shall receive and hold the bond in the name of the State, in trust, for the purposes for which the deposit is made. The State Treasurer at all times is responsible for the custody and safekeeping of these deposits. The operator making the deposit may demand and receive from the State Treasurer the whole or any portion of any securities so deposited, on depositing with the State Treasurer other negotiable securities of the classes specified in this section having a market value at least equal to the sum of the bond; [or]

(2) A certificate of deposit if it is equivalent to the required bond, issued by a bank within the State, and accompanied by written agreement of the bank to pay on demand to the State in event of forfeit[.]; OR

(3) AN IRREVOCABLE LETTER OF CREDIT IF IT IS EQUIVALENT TO THE REQUIRED BOND, ISSUED BY A BANK WITHIN THE STATE, AND EXPRESSLY STATES THAT THE TOTAL SUM IS GUARANTEED TO BE AVAILABLE, AND PAYABLE DIRECTLY TO THE STATE ON DEMAND FOR THE SURFACE MINING AND RECLAMATION.

7-6A27.

(b) Within six months following the completion of final reclamation work the operator shall furnish a final reclamation report which includes the following:

(7) [A final surveyed topographic map prepared and certified by a registered professional engineer or surveyor, drawn at the same scale and contour interval as the original map submitted with the mining and reclamation plan.] A FINAL MAP THAT IS CONSISTENT WITH THE ORIGINAL MINING AND RECLAMATION MAP REQUIRED BY SECTION 7-6A19(8).

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

H O U S E O F D E L E G A T E S

81r3193 No. 1287

By: Delegate Bolden
Introduced and read first time: February 8, 1978
Assigned to: Environmental Matters

Committee report: Favorable
House action: Adopted
Read second time: March 22, 1978

CHAPTER 372

AN ACT concerning

Strip Mining - Equipment Removal

FOR the purpose of providing for the moving of backfilling equipment from the work site prior to the completion of the job upon written approval of the Bureau of Mines.

BY repealing and reenacting, with amendments,

Article - Natural Resources
Section 7-508(g)
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article - Natural Resources

7-508.

(g) [All] UNLESS THE OPERATOR OBTAINS THE PRIOR WRITTEN APPROVAL OF THE BUREAU, ALL backfilling described in the approved reclamation plan shall be completed before backfilling equipment is moved from the operation.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
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H O U S E O F D E L E G A T E S

81r2053 No. 917

By: Delegates C. Hickman and Mitchell
Introduced and read first time: January 20, 1978
Assigned to: Environmental Matters

Committee report: Favorable with amendments
House action: Adopted
Read second time: March 9, 1978

CHAPTER 361

AN ACT concerning

Surface Mining - Exemption for ~~Landfills~~ Public Facilities

FOR the purpose of exempting cover material for public ~~disposal areas or landfills~~ facilities under certain circumstances from certain requirements relating to surface mining.

BY repealing and reenacting, with amendments,

Article - Natural Resources
~~Section 7-6A31~~ Section 7-6A01(u)(2)(viii) and 7-6A31
Annotated Code of Maryland
(1974 Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article - Natural Resources

7-6A01.

(u) (2) (viii) The extraction of sand, gravel, rock, stone, earth, or fill from borrow pits for highway construction purposes OR OTHER PUBLIC FACILITIES, if the work is performed under a bond, contract, and specifications of the Department which provide for and require reclamation of the area affected in the manner provided by this subtitle; or

7-6A31.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

(a) (1) The provisions of this subtitle do not apply to activities of the State Highway Administration, any county roads department in the State, any legally-constituted public governing entities such as municipal corporations, or to activities of any person acting under contract with any of these public agencies or entities, on highway rights-of-way or borrow pits maintained solely in connection with the construction, repair, and maintenance of the public roads systems of the State OR ~~FOR COVER MATERIAL FOR PUBLIC DISPOSAL AREAS OR LANDFILLS.~~ OTHER PUBLIC FACILITIES.

(2) This exemption does not become effective until the public agencies or entities have adopted reclamation standards applying to the activities and the standards are approved by the Department.

(B) The provisions of this subtitle do not apply to mining on federal lands when performed under a valid permit from the appropriate federal agency having jurisdiction over the land.

[(b)] (C) Any or all of the provisions of this subtitle do not apply in any county if the Secretary determines that the county laws are as restrictive as the provisions of this subtitle with respect to regulating surface mining, reclamation and revegetation procedures, abandoned areas, and bonding requirements.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1978.

Approved:

_____
Acting Governor.

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Speaker of the House of Delegates.

_____
President of the Senate.

CHAPTER 71

AN ACT

RELATING TO OIL AND GAS; ENUMERATING POWERS OF THE OIL CONSERVATION DIVISION, ENERGY AND MINERALS DEPARTMENT; REPEALING SECTION 65-3-11 NMSA 1953 (BEING LAWS 1935, CHAPTER 72, SECTION 10, AS AMENDED BY LAWS 1977, CHAPTER 237, SECTION 2 AND CHAPTER 255, SECTION 47); ENACTING A NEW SECTION 65-3-11 NMSA 1953; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 65-3-11 NMSA 1953 (being Laws 1935, Chapter 72, Section 10, as amended by Laws 1977, Chapter 237, Section 2 and Chapter 255, Section 47) is repealed and a new Section 65-3-11 NMSA 1953 is enacted to read:

"65-3-11. ENUMERATION OF POWERS.--

A. Included in the power given to the division is the authority to collect data; to make investigations and inspections; to examine properties, leases, papers, books and records; to examine, check, test and gauge oil and gas wells, and tanks, plants, refineries, and all means and modes of transportation and equipment; to hold hearings; to provide for the keeping of records and the making of reports and for the checking of the accuracy thereof; to limit and prorate production of crude petroleum oil or natural gas, or both, as in this act provided; to require either generally or in particular areas certificates of clearance or tenders in connection with the transportation of crude petroleum oil or natural gas or any products thereof, or both such oil and products, or both such natural gas and products.

B. Apart from any authority, express or implied, elsewhere given to or existing in the division by virtue of this act or the statutes of this state, the division is hereby authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated herein, viz.:

(1) to require dry or abandoned wells to be plugged in such a way as to confine the crude petroleum oil, natural gas, or water in the strata in which they are found, and to prevent them from escaping into other strata; the division shall require a corporate surety bond in a sum not to exceed fifty thousand dollars ($50,000) conditioned for the performance of such regulations;

(2) to prevent crude petroleum oil, natural gas, or water from escaping from strata in which they are found into another stratum or other strata;

(3) to require reports showing locations of all oil or gas wells, and for the filing of logs and drilling records or reports;

(4) to prevent the drowning by water of any stratum or part thereof capable of producing oil or gas, or both oil and gas, in paying quantities, and to prevent the premature and irregular encroachment of water, or any other kind of water encroachment, which reduces or tends to reduce the total ultimate recovery of crude petroleum oil or gas, or both such oil and gas, from any pool;

(5) to prevent fires;

(6) to prevent "blow-outs" and "caving" in the sense

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Approved: February 24, 1978

that the conditions indicated by such terms are generally understood in the oil and gas business;

(7) to require wells to be drilled, operated and produced in such manner as to prevent injury to neighboring leases or properties;

(8) to identify the ownership of oil or gas producing leases, properties, wells, tanks, refineries, pipelines, plants, structures, and all transportation equipment and facilities;

(9) to require the operation of wells with efficient gas-oil ratios and to fix such ratios;

(10) to fix the spacing of wells;

(11) to determine whether a particular well or pool is a gas or oil well, or a gas or oil pool, as the case may be, and from time to time to classify and reclassify wells and pools accordingly;

(12) to determine the limits of any pool or pools producing crude petroleum oil or natural gas or both, and from time to time redetermine such limits;

(13) to regulate the methods and devices employed for storage in this state of oil or natural gas or of any product thereof including subsurface storage;

(14) to permit the injection of natural gas or of any other substance into any pool in this state for the purpose of repressuring, cycling, pressure maintenance, secondary or any other enhanced recovery operation;

(15) to regulate the disposition of water produced or

used in connection with the drilling for or producing of oil or gas, or both, and to direct surface or subsurface disposal of such water in a manner that will afford reasonable protection against contamination of fresh water supplies designated by the state engineer;

(16) to determine the limits of any area containing commercial potash deposits and from time to time redetermine such limits;

(17) to regulate and where necessary prohibit drilling or producing operations for oil or gas within any area containing commercial deposits of potash where such operations would have the effect unduly to reduce the total quantity of such commercial deposits of potash which may reasonably be recovered in commercial quantities or where such operations would interfere unduly with the orderly commercial development of such potash deposits; or

(18) to spend the oil and gas reclamation fund and do all acts necessary and proper to plug dry and abandoned oil and gas wells in accordance with the provisions of the Oil and Gas Act and the Public Purchases Act including disposing of salvageable equipment and material removed from oil and gas wells being plugged by the state."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is March 31, 1978.

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

CHAPTER 117

AN ACT

RELATING TO THE ENERGY AND MINERALS DEPARTMENT; AMENDING CERTAIN SECTIONS OF THE NMSA 1953; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 65-3-11.2 NMSA 1953 (being Laws 1977, Chapter 237, Section 3) is amended to read:

"65-3-11.2. BONDING REQUIREMENT.--

A. Each person, firm, corporation or association who operates any oil, gas or service well within the state shall, as a condition precedent to drilling or producing the well, furnish a surety bond to the oil conservation division running to the benefit of the state of New Mexico, conditioned that the well be plugged and abandoned in compliance with the rules and regulations of the oil conservation division. The oil conservation division shall establish categories of surety bonds after notice and hearing. Such categories shall include a blanket plugging bond in an amount not to exceed fifty thousand dollars ($50,000) and one-well plugging bonds in amounts determined sufficient to reasonably pay the cost of plugging the wells covered by each bond. In establishing categories of bonds, the oil conservation division shall consider the depth of the well involved, the length of time since the well was produced, the cost of plugging similar wells and such other factors as the oil conservation division deems relevant. In addition to the blanket plugging bond, the oil conservation division may require a one-well bond on any well

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Approved: March 6, 1978

that has been held in a temporarily abandoned status for more than two years. All bonds shall remain in force and effect until released by the oil conservation division. The oil conservation division shall release a bond when it is satisfied the conditions thereof have been fully performed.

B. If any of the requirements of the Oil and Gas Act or the rules and regulations promulgated pursuant thereto have not been complied with, the division, after notice and hearing, may order any well plugged and abandoned by the operator or surety, or both, in accordance with division rules and regulations. If the order is not complied with, in the time period set out in the order, the surety bond shall be forfeited.

C. When any bond is forfeited pursuant to the provisions of the Oil and Gas Act or rules and regulations promulgated pursuant thereto, the director shall give notice to the attorney general who shall collect the forfeiture without delay.

D. All forfeitures shall be deposited in the state treasury in the oil and gas reclamation fund.

E. When the surety bond proves insufficient to cover the cost of plugging oil and gas wells on land other than federal land and funds must be expended from the oil and gas reclamation fund to meet the additional expenses, the oil conservation division is authorized to bring suit against the operator in the district court of the county in which the well is located for indemnification for all costs incurred by the oil conservation division in plugging the well. All

funds collected pursuant to a judgment in a suit for indemnification brought under the provisions of this section shall be deposited in the oil and gas reclamation fund."

Section 2. Section 65-3-37 NMSA 1953 (being Laws 1977, Chapter 237, Section 4) is amended to read:

"65-3-37. OIL AND GAS RECLAMATION FUND CREATED--DISPOSITION OF FUND.--There is hereby created the "oil and gas reclamation fund". All funds in the oil and gas reclamation fund and the earnings therefrom are appropriated to the energy and minerals department for use by the oil conservation division in carrying out the provisions of the Oil and Gas Act."

Section 3. Section 65-3-38 NMSA 1953 (being Laws 1977, Chapter 237, Section 5) is amended to read:

"65-3-38. OIL AND GAS RECLAMATION FUND ADMINISTERED--PLUGGING WELLS ON FEDERAL LAND--RIGHT OF INDEMNIFICATION--ANNUAL REPORT--CONTRACTORS SELLING EQUIPMENT FOR SALVAGE.--

A. The oil and gas reclamation fund shall be administered by the oil conservation division. The director of the division shall cause to be prepared plans for the plugging of abandoned wells which have not been plugged or which have been improperly plugged. The director, as funds become available in the oil and gas reclamation fund, shall reclaim, and properly plug, all abandoned wells in accordance with the provisions of the Oil and Gas Act, and the rules and regulations promulgated thereunder. The division may order wells plugged on federal lands on which there are no bonds running to the

benefit of the state in the same manner and in accordance with the same procedures as with wells drilled on state and fee land, including utilizing funds from the oil and gas reclamation fund to pay the cost of such plugging. When the costs of plugging a well drilled on federal mineral leases are paid from the oil and gas reclamation fund, the division is authorized to bring a suit against the operator or the owner of the minerals under the tract, or both, in the district court of the county in which the well is located for indemnification for all costs incurred by the division in plugging said well. Any funds collected pursuant to a judgment in a suit for indemnification brought under the Oil and Gas Act shall be deposited in the oil and gas reclamation fund.

B. The director shall make an annual report to the secretary of energy and minerals, the governor and the legislature on the use of the oil and gas reclamation fund.

C. All contracts for well plugging shall be entered into in accordance with the provisions of the Public Purchases Act. Any contractor employed by the division to plug a well is authorized to sell for salvage the equipment and material which is removed from the well in plugging it."

Section 4. Section 72-20-14 NMSA 1953 (being Laws 1959, Chapter 53, Section 14, as amended) is amended to read:

"72-20-14. DISPOSITION OF OIL CONSERVATION FUND.--The oil conservation fund, or so much thereof as may be necessary, is hereby appropriated to the energy and minerals department to be by it

expended in the performance of its duties; provided, however, that an amount equal to one-hundredths of one percent of the taxable value of sold products shall be deposited in the oil and gas reclamation fund to be used by the oil conservation division in carrying out the provisions of the Oil and Gas Act."

Section 5. TEMPORARY PROVISION--TRANSFER OF RIGHTS UNDER EXISTING BONDS.--All rights of the oil conservation commission deriving from bonds furnished to the commission prior to the effective date of the provisions of this act are hereby transferred to the oil conservation division of the energy and minerals department.

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is March 31, 1978.

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

(Amended Senate Bill No. 69)

AN ACT

To enact sections 1514.30 to 1514.32 of the Revised Code to enter into the Interstate Mining Compact and to establish the Ohio Mining Council, and to make an appropriation.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1514.30, 1514.31, and 1514.32 of the Revised Code be enacted to read as follows:

Sec. 1514.30. THE "INTERSTATE MINING COMPACT" IS HEREBY ENACTED INTO LAW AND ENTERED INTO WITH ALL OTHER JURISDICTIONS LEGALLY JOINING THEREIN IN THE FORM SUBSTANTIALLY AS FOLLOWS:

"INTERSTATE MINING COMPACT

ARTICLE I

FINDINGS AND PURPOSE

(A) THE PARTY STATES FIND THAT:

(1) MINING AND THE CONTRIBUTIONS THEREOF TO THE ECONOMY AND WELL-BEING OF EVERY STATE ARE OF BASIC SIGNIFICANCE;

(2) THE EFFECTS OF MINING ON THE AVAILABILITY OF LAND, WATER, AND OTHER RESOURCES FOR OTHER USES PRESENT SPECIAL PROBLEMS WHICH PROBABLY CAN BE APPROACHED ONLY WITH DUE CONSIDERATION FOR THE RIGHTS AND INTERESTS OF THOSE ENGAGED IN MINING, THOSE USING OR PROPOSING TO USE THESE RESOURCES FOR OTHER PURPOSES, AND THE PUBLIC;

(3) MEASURES FOR THE REDUCTION OF THE ADVERSE EFFECTS OF MINING ON LAND, WATER, AND OTHER RESOURCES MAY BE COSTLY, AND THE DEVISING

OF MEANS TO DEAL WITH THEM ARE OF BOTH PUBLIC AND PRIVATE CONCERN;

(4) SUCH VARIABLES AS SOIL STRUCTURE AND COMPOSITION, PHYSIOGRAPHY, CLIMATIC CONDITIONS, AND THE NEEDS OF THE PUBLIC MAKE IMPRACTICABLE THE APPLICATION TO ALL MINING AREAS OF A SINGLE STANDARD FOR THE CONSERVATION, ADAPTATION, OR RESTORATION OF MINED LAND, OR THE DEVELOPMENT OF MINERAL AND OTHER NATURAL RESOURCES, BUT JUSTIFIABLE REQUIREMENTS OF LAW AND PRACTICE RELATING TO THE EFFECTS OF MINING ON LAND, WATER, AND OTHER RESOURCES MAY BE REDUCED IN EQUITY OR EFFECTIVENESS UNLESS THEY PERTAIN SIMILARLY FROM STATE TO STATE FOR ALL MINING OPERATIONS SIMILARLY SITUATED;

(5) THE STATES ARE IN A POSITION AND HAVE THE RESPONSIBILITY TO ENSURE THAT MINING SHALL BE CONDUCTED IN ACCORDANCE WITH SOUND CONSERVATION PRINCIPLES AND WITH DUE REGARD FOR LOCAL CONDITIONS.

(B) THE PURPOSES OF THIS COMPACT ARE TO:

(1) ADVANCE THE PROTECTION AND RESTORATION OF LAND, WATER, AND OTHER RESOURCES AFFECTED BY MINING;

(2) ASSIST IN THE REDUCTION, ELIMINATION, OR COUNTERACTING OF POLLUTION OR DETERIORATION OF LAND, WATER, AND AIR ATTRIBUTABLE TO MINING;

(3) ENCOURAGE, WITH DUE RECOGNITION OF RELEVANT REGIONAL, PHYSICAL, AND OTHER DIFFERENCES, PROGRAMS IN EACH OF THE PARTY STATES WHICH WILL ACHIEVE COMPARABLE RESULTS IN PROTECTING, CONSERVING, AND IMPROVING THE USEFULNESS OF NATURAL RESOURCES, TO THE END THAT THE MOST DESIRABLE CONDUCT OF MINING AND RELATED OPERATIONS MAY BE UNIVERSALLY FACILITATED;

(4) ASSIST THE PARTY STATES IN THEIR EFFORTS TO FACILITATE THE USE OF LAND AND OTHER RESOURCES AFFECTED BY MINING SO THAT SUCH USE MAY BE CONSISTENT WITH SOUND LAND USE, PUBLIC HEALTH, AND PUBLIC SAFETY, AND TO THIS END TO STUDY AND RECOMMEND, WHEREVER DESIRABLE, TECHNIQUES FOR THE IMPROVEMENT, RESTORATION, OR PROTECTION OF SUCH LAND AND OTHER RESOURCES;

(5) ASSIST IN ACHIEVING AND MAINTAINING AN EFFICIENT AND PRODUCTIVE MINING INDUSTRY AND IN INCREASING ECONOMIC AND OTHER BENEFITS ATTRIBUTABLE TO MINING.

ARTICLE II

DEFINITIONS

AS USED IN THIS COMPACT:

(A) "MINING" MEANS THE BREAKING OF THE SURFACE SOIL IN ORDER TO FACILITATE OR ACCOMPLISH THE EXTRACTION OR REMOVAL OF MINERALS, ORES, OR OTHER SOLID MATTER, ANY ACTIVITY OR PROCESS CONSTITUTING ALL OR PART OF A PROCESS FOR THE EXTRACTION OR REMOVAL OF MINERALS, ORES, AND OTHER SOLID MATTER FROM ITS ORIGINAL LOCATION, AND THE PREPARATION, WASHING, CLEANING, OR OTHER TREATMENT OF MINERALS, ORES, OR OTHER SOLID MATTER SO AS TO MAKE THEM SUITABLE FOR COMMERCIAL, INDUSTRIAL, OR CONSTRUCTION USE. MINING DOES NOT INCLUDE THOSE ASPECTS OF DEEP MINING NOT HAVING SIGNIFICANT EFFECTS ON THE SURFACE AND DOES NOT INCLUDE EXCAVATION OR GRADING WHEN CONDUCTED SOLELY IN AID OF ON-SITE FARMING OR CONSTRUCTION.

(B) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, THE COMMONWEALTH OF PUERTO RICO, OR A TERRITORY OR POSSESSION OF THE UNITED STATES.

ARTICLE III

STATE PROGRAMS

EACH PARTY STATE AGREES THAT WITHIN A REASONABLE TIME IT WILL FORMULATE AND ESTABLISH AN EFFECTIVE PROGRAM FOR THE CONSERVATION AND USE OF MINED LAND, BY THE ESTABLISHMENT OF STANDARDS, ENACTMENT OF LAWS, OR THE CONTINUING OF THE SAME IN FORCE, TO ACCOMPLISH THE:

(A) PROTECTION OF THE PUBLIC AND PROTECTION OF ADJOINING AND OTHER LANDOWNERS FROM DAMAGE TO THEIR LANDS AND THE STRUCTURES AND OTHER PROPERTY THEREON RESULTING FROM THE CONDUCT OF MINING OPERATIONS OR THE ABANDONMENT OR NEGLECT OF LAND AND PROPERTY FORMERLY USED IN THE CONDUCT OF SUCH OPERATIONS;

(B) CONDUCT OF MINING AND THE HANDLING OF REFUSE AND OTHER MINING WASTES IN WAYS THAT WILL REDUCE ADVERSE EFFECTS ON THE ECONOMIC, RESIDENTIAL, RECREATIONAL, OR AESTHETIC VALUE AND UTILITY OF LAND AND WATER;

(C) INSTITUTION AND MAINTENANCE OF SUITABLE PROGRAMS OF ADAPTATION, RESTORATION, AND REHABILITATION OF MINED LANDS;

(D) PREVENTION, ABATEMENT, AND CONTROL OF WATER, AIR, AND SOIL POLLUTION RESULTING FROM PRESENT, PAST, AND FUTURE MINING.

ARTICLE IV

POWERS

IN ADDITION TO ANY OTHER POWERS CONFERRED UPON THE INTERSTATE MINING COMMISSION ESTABLISHED BY ARTICLE V OF THIS COMPACT, THE COMMISSION MAY:

(A) STUDY MINING OPERATIONS, PROCESSES, AND TECHNIQUES FOR THE PURPOSE OF GAINING KNOWLEDGE CONCERNING THE EFFECTS OF SUCH OPERATIONS, PROCESSES, AND TECHNIQUES ON LAND, SOIL, WATER, AIR, PLANT AND ANIMAL LIFE, RECREATION, AND PATTERNS OF COMMUNITY OR REGIONAL DEVELOPMENT OR CHANGE;

(B) STUDY THE CONSERVATION, ADAPTATION, IMPROVEMENT, AND RESTORATION OF LAND AND RELATED RESOURCES AFFECTED BY MINING;

(C) MAKE RECOMMENDATIONS CONCERNING ANY ASPECT OF LAW OR PRACTICE AND GOVERNMENTAL ADMINISTRATION DEALING WITH MATTERS WITHIN THE PURVIEW OF THIS COMPACT;

(D) GATHER AND DISSEMINATE INFORMATION RELATING TO ANY OF THE MATTERS WITHIN THE PURVIEW OF THIS COMPACT;

(E) COOPERATE WITH THE FEDERAL GOVERNMENT AND ANY PUBLIC OR PRIVATE ENTITIES HAVING INTEREST IN ANY SUBJECT WITHIN THE PURVIEW OF THIS COMPACT;

(F) CONSULT, UPON THE REQUEST OF A PARTY STATE AND WITHIN RESOURCES AVAILABLE THEREFOR, WITH THE OFFICIALS OF SUCH STATE WITH RESPECT TO ANY PROBLEM WITHIN THE PURVIEW OF THIS COMPACT;

(G) STUDY AND MAKE RECOMMENDATIONS WITH RESPECT TO ANY PRACTICE, PROCESS, TECHNIQUE, OR COURSE OF ACTION THAT MAY IMPROVE THE EFFICIENCY OF MINING OR THE ECONOMIC YIELD FROM MINING OPERATIONS;

(H) STUDY AND MAKE RECOMMENDATIONS RELATING TO THE SAFEGUARDING OF ACCESS TO RESOURCES WHICH ARE OR MAY BECOME THE SUBJECT OF MINING OPERATION TO THE END THAT THE NEEDS OF THE ECONOMY FOR THE PRODUCTS OF MINING MAY NOT BE ADVERSELY [illegible]ECTED BY UNPLANNED OR INAPPROPRIATE

USE OF LAND AND OTHER RESOURCES CONTAINING MINERALS OR OTHERWISE CONNECTED WITH ACTUAL OR POTENTIAL MINING SITES.

ARTICLE V

THE COMMISSION

(A) THERE IS HEREBY CREATED AN AGENCY OF THE PARTY STATES TO BE KNOWN AS THE "INTERSTATE MINING COMMISSION." THE COMMISSION SHALL BE COMPOSED OF ONE COMMISSIONER FROM EACH PARTY STATE WHO SHALL BE THE GOVERNOR THEREOF. PURSUANT TO THE LAWS OF HIS PARTY STATE, EACH GOVERNOR SHALL HAVE THE ASSISTANCE OF ANY ADVISORY BODY (INCLUDING MEMBERSHIP FROM MINING INDUSTRIES, CONSERVATION INTERESTS, AND SUCH OTHER PUBLIC AND PRIVATE INTERESTS AS MAY BE APPROPRIATE) IN CONSIDERING PROBLEMS RELATING TO MINING AND IN DISCHARGING HIS RESPONSIBILITIES AS THE COMMISSIONER OF HIS STATE ON THE COMMISSION. IN ANY INSTANCE WHERE A GOVERNOR IS UNABLE TO ATTEND A MEETING OF THE COMMISSION OR PERFORM ANY OTHER FUNCTION IN CONNECTION WITH THE BUSINESS OF THE COMMISSION, HE SHALL DESIGNATE AN ALTERNATE, FROM AMONG THE MEMBERS OF THE ADVISORY BODY REQUIRED BY THIS ARTICLE, WHO SHALL REPRESENT HIM AND ACT IN HIS PLACE AND STEAD. THE DESIGNATION OF AN ALTERNATE SHALL BE COMMUNICATED BY THE GOVERNOR TO THE COMMISSION IN SUCH MANNER AS ITS BYLAWS MAY PROVIDE.

(B) THE COMMISSIONERS SHALL BE ENTITLED TO ONE VOTE EACH ON THE COMMISSION. NO ACTION OF THE COMMISSION MAKING A RECOMMENDATION PURSUANT TO DIVISIONS (C), (G), AND (H) OF ARTICLE IV OR REQUESTING, ACCEPTING, OR DISPOSING OF FUNDS, SERVICES, OR OTHER PROPERTY PURSUANT TO THIS DIVISION, DIVISION (G) OR (H) OF THIS ARTICLE, OR ARTICLE VII SHALL BE VALID UNLESS TAKEN AT A MEETING AT WHICH A MAJORITY OF THE TOTAL NUMBER OF VOTES ON THE COMMISSION IS CAST IN FAVOR THEREOF. ALL OTHER ACTION SHALL BE BY A MAJORITY OF THOSE PRESENT AND VOTING. ACTION OF THE COMMISSION SHALL BE ONLY AT A MEETING AT WHICH A MAJORITY OF THE COMMISSIONERS, OR THEIR ALTERNATES, IS PRESENT. THE COMMISSION MAY ESTABLISH AND MAINTAIN SUCH FACILITIES AS MAY BE NECESSARY FOR THE TRANSACTING OF ITS BUSINESS. THE COMMISSION MAY ACQUIRE, HOLD, AND CONVEY REAL AND PERSONAL PROPERTY AND A[illegible]N-TERREST THEREIN.

(C) THE COMMISSION SHALL HAVE A SEAL.

(D) THE COMMISSION SHALL ELECT ANNUALLY, FROM AMONG ITS MEMBERS, A CHAIRMAN, A VICE-CHAIRMAN, AND A TREASURER. THE COMMISSION SHALL APPOINT AN EXECUTIVE DIRECTOR AND FIX HIS DUTIES AND COMPENSATION. THE EXECUTIVE DIRECTOR SHALL SERVE AT THE PLEASURE OF THE COMMISSION. THE EXECUTIVE DIRECTOR, THE TREASURER, AND SUCH OTHER PERSONNEL AS THE COMMISSION SHALL DESIGNATE SHALL BE BONDED IN SUCH AMOUNTS AS THE COMMISSION DETERMINES.

(E) IRRESPECTIVE OF THE CIVIL SERVICE, PERSONNEL, OR OTHER MERIT SYSTEM LAWS OF ANY OF THE PARTY STATES, THE EXECUTIVE DIRECTOR, WITH THE APPROVAL OF THE COMMISSION, SHALL APPOINT, AND MAY REMOVE OR DISCHARGE, SUCH PERSONNEL AS MAY BE NECESSARY FOR THE PERFORMANCE OF THE COMMISSION'S FUNCTIONS, AND SHALL FIX THE DUTIES AND COMPENSATION OF SUCH PERSONNEL.

(F) THE COMMISSION MAY ESTABLISH AND MAINTAIN INDEPENDENTLY, OR IN CONJUNCTION WITH A PARTY STATE, A SUITABLE RETIREMENT SYSTEM FOR ITS EMPLOYEES. EMPLOYEES OF THE COMMISSION SHALL BE ELIGIBLE FOR SOCIAL SECURITY COVERAGE IN RESPECT TO OLD AGE AND SURVIVOR'S INSURANCE, PROVIDED THAT THE COMMISSION TAKES SUCH STEPS AS MAY BE NECESSARY PURSUANT TO THE LAWS OF THE UNITED STATES TO PARTICIPATE IN SUCH PROGRAM OF INSURANCE AS A GOVERNMENTAL AGENCY OR UNIT. THE COMMISSION MAY ESTABLISH AND MAINTAIN OR PARTICIPATE IN SUCH ADDITIONAL PROGRAMS OF EMPLOYEE BENEFITS AS IT CONSIDERS APPROPRIATE.

(G) THE COMMISSION MAY BORROW, ACCEPT, OR CONTRACT FOR THE SERVICES OF PERSONNEL FROM ANY STATE, THE UNITED STATES, ANY GOVERNMENTAL AGENCY, OR FROM ANY PERSON.

(H) THE COMMISSION MAY ACCEPT FOR ANY OF ITS PURPOSES AND FUNCTIONS UNDER THIS COMPACT DONATIONS AND GRANTS OF MONEY, EQUIPMENT, SUPPLIES, MATERIALS, AND SERVICE, CONDITIONAL OR OTHERWISE, FROM ANY STATE, THE UNITED STATES, ANY GOVERNMENTAL AGENCY, OR FROM ANY PERSON, AND MAY RECEIVE, UTILIZE, AND DISPOSE OF THE SAME. ANY DONATION OR GRANT ACCEPTED BY THE COMMISSION PURSUANT TO THIS DIVISION OR SERVICES BORROWED PURSUANT TO DIVISION (G) OF THIS ARTICLE SHALL BE REPORTED IN THE ANNUAL REPORT OF THE COMMISSION. SUCH REPORT SHALL INCLUDE THE NATURE, AMOUNT, AND CONDITIONS, IF ANY, OF THE DONATION, GRANT, OR

SERVICES BORROWED AND THE IDENTITY OF THE DONOR OR LENDER.

(I) THE COMMISSION SHALL ADOPT BYLAWS FOR THE CONDUCT OF ITS BUSINESS AND MAY AMEND AND RESCIND THESE BYLAWS. THE COMMISSION SHALL PUBLISH ITS BYLAWS IN CONVENIENT FORM AND SHALL FILE A COPY THEREOF, AND A COPY OF ANY AMENDMENT THERETO, WITH THE APPROPRIATE AGENCY OR OFFICER IN EACH OF THE PARTY STATES.

(J) THE COMMISSION ANNUALLY SHALL MAKE TO THE GOVERNOR, LEGISLATURE, AND ADVISORY BODY REQUIRED BY DIVISION (A) OF ARTICLE V OF EACH PARTY STATE A REPORT COVERING THE ACTIVITIES OF THE COMMISSION FOR THE PRECEDING YEAR AND EMBODYING SUCH RECOMMENDATIONS AS MAY HAVE BEEN MADE BY THE COMMISSION. THE COMMISSION MAY MAKE SUCH ADDITIONAL REPORTS AS IT CONSIDERS DESIRABLE.

ARTICLE VI

ADVISORY, TECHNICAL, AND REGIONAL COMMITTEES

THE COMMISSION SHALL ESTABLISH SUCH ADVISORY, TECHNICAL, AND REGIONAL COMMITTEES AS IT CONSIDERS NECESSARY, MEMBERSHIP ON WHICH SHALL INCLUDE PRIVATE PERSONS AND PUBLIC OFFICIALS, AND SHALL COOPERATE WITH AND USE THE SERVICES OF ANY SUCH COMMITTEES AND THE ORGANIZATIONS WHICH THE MEMBERS REPRESENT IN FURTHERING ANY OF ITS ACTIVITIES. SUCH COMMITTEES MAY BE FORMED TO CONSIDER PROBLEMS OF SPECIAL INTEREST TO ANY PARTY STATES, PROBLEMS DEALING WITH PARTICULAR COMMODITIES OR TYPES OF MINING OPERATIONS, PROBLEMS RELATED TO RECLAMATION, DEVELOPMENT, OR USE OF MINED LAND, OR ANY OTHER MATTERS OF CONCERN TO THE COMMISSION.

ARTICLE VII

FINANCE

(A) THE COMMISSION SHALL SUBMIT TO THE GOVERNOR OR DESIGNATED OFFICER OF EACH PARTY STATE A BUDGET OF ITS ESTIMATED EXPENDITURES FOR SUCH PERIOD AS MAY BE REQUIRED BY THE LAWS OF THAT PARTY STATE FOR PRESENTATION TO THE LEGISLATURE THEREOF.

(B) EACH OF THE COMMISSION'S BUDGETS OF ESTIMATED EXPENDITURES SHALL CONTAIN SPECIFIC REC-

OMMENDATIONS OF THE AMOUNT TO BE APPROPRIATED BY EACH OF THE PARTY STATES. THE TOTAL AMOUNT OF APPROPRIATIONS REQUESTED UNDER ANY SUCH BUDGET SHALL BE APPORTIONED AMONG THE PARTY STATES AS FOLLOWS: ONE-HALF IN EQUAL SHARES, AND THE REMAINDER IN PROPORTION TO THE VALUE OF MINERALS, ORES, AND OTHER SOLID MATTER MINED. IN DETERMINING SUCH VALUES, THE COMMISSION SHALL EMPLOY SUCH AVAILABLE PUBLIC SOURCES OF INFORMATION AS, IN ITS JUDGMENT, PRESENT THE MOST EQUITABLE AND ACCURATE COMPARISONS AMONG THE PARTY STATES. EACH OF THE COMMISSION'S BUDGETS OF ESTIMATED EXPENDITURES AND REQUESTS FOR APPROPRIATIONS SHALL INDICATE THE SOURCES USED IN OBTAINING INFORMATION CONCERNING THE VALUE OF MINERALS, ORES, AND OTHER SOLID MATTER MINED.

(C) THE COMMISSION SHALL NOT PLEDGE THE CREDIT OF ANY PARTY STATE. THE COMMISSION MAY MEET ANY OF ITS OBLIGATIONS IN WHOLE OR IN PART WITH FUNDS AVAILABLE TO IT UNDER DIVISION (H) OF ARTICLE V OF THIS COMPACT, PROVIDED THAT THE COMMISSION TAKES SPECIFIC ACTION SETTING ASIDE SUCH FUNDS PRIOR TO INCURRING ANY OBLIGATION TO BE MET IN WHOLE OR IN PART IN SUCH MANNER. EXCEPT WHERE THE COMMISSION MAKES USE OF FUNDS AVAILABLE TO IT UNDER DIVISION (H) OF ARTICLE V OF THIS COMPACT, THE COMMISSION SHALL NOT INCUR ANY OBLIGATION PRIOR TO THE ALLOTMENT OF FUNDS BY THE PARTY STATES ADEQUATE TO MEET THE SAME.

(D) THE COMMISSION SHALL KEEP ACCURATE ACCOUNTS OF ALL RECEIPTS AND DISBURSEMENTS. THE RECEIPTS AND DISBURSEMENTS OF THE COMMISSION SHALL BE SUBJECT TO THE AUDIT AND ACCOUNTING PROCEDURES ESTABLISHED UNDER ITS BYLAWS. ALL RECEIPTS AND DISBURSEMENTS OF FUNDS HANDLED BY THE COMMISSION SHALL BE AUDITED YEARLY BY A QUALIFIED PUBLIC ACCOUNTANT, AND THE REPORT OF THE AUDIT SHALL BE INCLUDED IN AND BECOME PART OF THE ANNUAL REPORT OF THE COMMISSION.

(E) THE ACCOUNTS OF THE COMMISSION SHALL BE OPEN AT ANY REASONABLE TIME FOR INSPECTION BY DULY CONSTITUTED OFFICERS OF THE PARTY STATES AND BY ANY PERSONS AUTHORIZED BY THE COMMISSION.

(F) NOTHING CONTAINED IN THIS COMPACT SHALL BE CONSTRUED TO PREVENT COMMISSION COMPLIANCE WITH LAWS RELATING TO THE AUDIT OR INSPECTION OF ACCOUNTS BY OR ON BEHALF OF ANY GOVERNMENT CONTRIB NG TO THE SUPPORT OF THE COMMISSION.

ARTICLE VIII

ENTRY INTO FORCE AND WITHDRAWAL

(A) THIS COMPACT SHALL BECOME EFFECTIVE WHEN ENACTED INTO LAW BY ANY FOUR OR MORE STATES. THEREAFTER, THIS COMPACT SHALL BECOME EFFECTIVE AS TO ANY OTHER STATE UPON ITS ENACTMENT THEREOF.

(B) ANY PARTY STATE MAY WITHDRAW FROM THIS COMPACT BY ENACTING A STATUTE REPEALING THE SAME, BUT NO SUCH WITHDRAWAL SHALL TAKE EFFECT UNTIL ONE YEAR AFTER THE GOVERNOR OF THE WITHDRAWING STATE HAS GIVEN NOTICE IN WRITING OF THE WITHDRAWAL TO THE GOVERNORS OF ALL OTHER PARTY STATES. NO WITHDRAWAL SHALL AFFECT ANY LIABILITY ALREADY INCURRED BY OR CHARGEABLE TO A PARTY STATE PRIOR TO THE TIME OF SUCH WITHDRAWAL.

ARTICLE IX

EFFECT ON OTHER LAWS

NOTHING IN THIS COMPACT SHALL BE CONSTRUED TO LIMIT, REPEAL, OR SUPERSEDE ANY OTHER LAW OF ANY PARTY STATE.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

THIS COMPACT SHALL BE LIBERALLY CONSTRUED SO AS TO EFFECTUATE THE PURPOSES THEREOF. THE PROVISIONS OF THIS COMPACT SHALL BE SEVERABLE AND IF ANY PHRASE, CLAUSE, SENTENCE, OR PROVISION OF THIS COMPACT IS DECLARED TO BE CONTRARY TO THE CONSTITUTION OF ANY STATE OR OF THE UNITED STATES OR THE APPLICABILITY THEREOF TO ANY GOVERNMENT, AGENCY, PERSON, OR CIRCUMSTANCE IS HELD INVALID, THE VALIDITY OF THE REMAINDER OF THIS COMPACT AND THE APPLICABILITY THEREOF TO ANY GOVERNMENT, AGENCY, PERSON, OR CIRCUMSTANCE SHALL NOT BE AFFECTED THEREBY. IF THIS COMPACT SHALL BE HELD CONTRARY TO THE CONSTITUTION OF ANY STATE PARTICIPATING HEREIN, THE COMPACT SHALL REMAIN IN FULL FORCE AND EFFECT AS TO THE REMAINING PARTY STATES AND IN FULL FORCE AND EFFECT AS TO THE STATE AFFECTED AS TO ALL SEVERABLE MATTERS.

Sec. 1514.31. (A) THERE IS HEREBY CREATED THE OHIO MINING COUNCIL. THE COUNCIL IS THE ISORY

BODY REFERRED TO IN DIVISION (A) OF ARTICLE V OF THE INTERSTATE MINING COMPACT. THE COUNCIL SHALL CONSIST OF TEN MEMBERS AS FOLLOWS: THE DIRECTOR OF NATURAL RESOURCES, THE CHIEF OF THE DIVISION OF RECLAMATION IN THE DEPARTMENT OF NATURAL RESOURCES, WHO SHALL SERVE AS CHAIRMAN, THE MEMBER OF THE RECLAMATION BOARD OF REVIEW REPRESENTING THE SURFACE MINE OPERATORS APPOINTED PURSUANT TO SECTION 1514.09 OF THE REVISED CODE, AND THE OTHER MEMBERS OF THE RECLAMATION BOARD OF REVIEW.

(B) THE TERMS ON THE COUNCIL OF THE DIRECTOR OF NATURAL RESOURCES, THE CHIEF OF THE DIVISION OF RECLAMATION, AND THE MEMBERS OF THE RECLAMATION BOARD OF REVIEW SHALL COINCIDE WITH THEIR TERMS AS DIRECTOR, CHIEF, AND BOARD MEMBERS, RESPECTIVELY.

(C) THE VICE-CHAIRMAN SHALL ACT AS CHAIRMAN IN THE ABSENCE OR DISABILITY OF THE CHAIRMAN, OR DURING A VACANCY IN THAT OFFICE.

(D) MEMBERS OF THE COUNCIL SHALL SERVE WITHOUT COMPENSATION BUT SHALL BE REIMBURSED FOR EXPENSES ACTUALLY AND NECESSARILY INCURRED IN THE PERFORMANCE OF THEIR DUTIES AND FOR SERVING AS THE ALTERNATE OF THE GOVERNOR ON THE INTERSTATE MINING COMMISSION.

(E) THE COUNCIL SHALL MEET WITHIN TWO WEEKS AFTER THE INITIAL MEMBERS HAVE BEEN APPOINTED AT A TIME AND PLACE DETERMINED BY THE CHAIRMAN. AT ITS FIRST MEETING THE COUNCIL SHALL ELECT A VICE-CHAIRMAN FROM AMONG ITS MEMBERSHIP AND ADOPT RULES FOR ITS PROCEDURES. AFTER THE FIRST MEETING, THE COUNCIL SHALL MEET UPON THE CALL OF THE CHAIRMAN OR THE GOVERNOR OR UPON THE WRITTEN REQUEST OF AT LEAST SIX MEMBERS. SIX OF THE MEMBERS CONSTITUTE A QUORUM; NO ACTION SHALL BE TAKEN WITHOUT THE CONCURRENCE OF AT LEAST SIX OF THE MEMBERS.

(F) THE COUNCIL MAY APPOINT A SECRETARY TO HOLD OFFICE AT ITS PLEASURE. THE SECRETARY SHALL PERFORM SUCH DUTIES AS THE COUNCIL PRESCRIBES AND SHALL RECEIVE SUCH COMPENSATION AS THE COUNCIL FIXES.

Sec. 1514.32. AS PROVIDED BY DIVISION (I) OF ARTICLE V OF THE INTERSTATE MINING COMPACT, THE INTERSTATE MINING COMMISSION SHALL FILE COPIES OF ITS BYLAWS AND ANY AMENDMENTS THERETO WITH THE SECRETARY OF STATE.

-991-

SECTION 2. There is hereby appropriated out of any monies in the state treasury to the credit of the General Revenue Fund which are not otherwise appropriated, the following sum:

725 DEPARTMENT OF NATURAL RESOURCES

		1977-1978	1978-1979	Biennium
744-403	Membership, Interstate Mining Compact	$10,000	$10,000	$20,000

The foregoing appropriate item 744-403 is to be expended by the Director of the Department of Natural Resources for the purpose of joining Ohio in the Interstate Mining Compact.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed March 14, 1978

Approved Apr. 14, 1978
3:15 p.m.

Governor.

This section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 4th day of April, A. D. 1978,

Secretary of State.

File No. 262. Effective Date April 4, 1978.

An Act

ENROLLED HOUSE
BILL NO. 1223

BY: CALDWELL, PETERSON, THOMPSON (Don) and BENNETT of the HOUSE

and

JOHNSON and BIRDSONG of the SENATE

AN ACT RELATING TO MINES AND MINING; PROVIDING FOR SURFACE MINING SAFETY STANDARDS; DEFINING TERMS; PROVIDING FOR CERTIFICATION FOR CERTAIN MINING POSITIONS; PROVIDING FOR CERTIFICATION FEES, RECORD, NOTICE AND REVOCATION; PROVIDING FOR MINE EXAMINATION; REQUIRING FILING, POSTING AND COMPLIANCE WITH REPORTS; PROVIDING FOR FOREMAN AND SHOT FIRER; PROVIDING FOR RULES AND PROCEDURES FOR PROPER GROUND CONTROL, FIRE PREVENTION AND CONTROL, STORAGE OF EXPLOSIVES, WORKING WITH SENSITIZED AMMONIUM NITRATE BLASTING AGENTS, DRILLING WITH BLASTING, LOADING, HAULING AND DUMPING, TRAVELWAYS, ELECTRICITY, USE OF EQUIPMENT, PERSONAL PROTECTION, AUGERING AND GENERAL PROVISIONS; DIRECTING CODIFICATION; AND DECLARING AN EMERGENCY

Carried Provided by Committee on Engrossed and Enrolled Bills

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. As used in this act:

1. "Active workings" means any place in a mine where miners are normally required to work or travel;

2. "American table of distances" means the 1971 edition of "The American Table of Distances for Storage of Explosives" published by the Institute of Makers of Explosives;

3. "ANFO" means ammonium nitrate fuel oil mixtures;

4. "Approved" means tested and accepted for a specific purpose by a nationally recognized safety agency;

5. "Barricaded" means obstructed to restrict the passage of persons, vehicles or flying materials;

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6. "Berm" means a pile or mound of material capable of restraining a vehicle; also a shelf, ledge or material placed to contain loose slope material;

7. "Blasting agent" means a cap insensitive chemical composition or mixture consisting of fuel and oxidizer and no explosive ingredient but which can be made to detonate when initiated with a high strength explosive primer;

8. "Blasting area" means the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury;

9. "Blasting cap" means a detonator containing a charge of detonating compound which is ignited by electric current or the spark of a fuse and is used for detonating explosives;

10. "Blasting circuit" means electric current used to fire electric detonators or to ignite an igniter cord by means of an electric starter;

11. "Box-type magazine" means a small, portable magazine used to store limited quantities of explosives or detonators for short periods of time in locations at the mine which are convenient to the blasting sites at which they will be used;

12. "Capped fuse" means a length of safety fuse to which a detonator has been attached;

13. "Capped primer" means a package or cartridge of explosives which is specifically designed to transmit detonation to other explosives and which contains a detonator;

14. "Certified person" means an individual who has satisfactorily passed the required State Mining Board examination, thereby earning a certificate of competency which will allow him to work in a particular position for which certification is necessary;

15. "Combustible" means capable of being ignited and consumed by fire;

16. "Commercial mine" means any mine from which the product is mined for sale, exchange or commercial use. Except as the context requires otherwise, this act applies only to commercial mines;

17. "Company official" means a member of the company supervisory or technical staff;

18. "Department" means the State of Oklahoma Department of Mines;

19. "Detonator" means a device containing a small detonating charge that is used for detonating an explosive including, but not limited to, blasting caps, exploders, electric detonators and delay electric blasting caps;

20. "Distribution box" means a portable apparatus with an enclosure through which an electric circuit is carried to one (1) or more cables from a single incoming feedline, each cable circuit being connected through individual overcurrent protective devices;

21. "Electric blasting cap" means a blasting cap designed for and capable of being initiated by means of an electric current;

22. "Electric grounding" means to connect with the ground to make the earth part of the circuit;

23. "Employee" means a person who works for wages or salary in the service of an employer;

24. "Employer" means a person or organization employing one (1) or more persons to work for wages or salary;

25. "Explosive" means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion. Explosives include, but are not limited to, black powder, dynamite, nitroglycerin, fulminate and ammonium nitrate;

26. "Face" or "wall" means that part of any mine where excavating is progressing or was last done;

27. "Flammable" means capable of being easily ignited and of burning rapidly as defined by the National Fire Protection Association;

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28. "Highway" means any public road or travelway used by the general public;

29. "Igniter cord" means a fuse, cordlike in appearance, which burns progressively along its length with an external flame at the zone of burning and is used for lighting a series of safety fuses in the desired sequence;

30. "Inhabited building" means a building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, factory or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage or use of explosives;

31. "Inspector" means a mine inspector in the employ of the State of Oklahoma;

32. "Magazine" means a storage place for explosives or detonators;

33. "Major electrical installation" means an assemblage of stationary electrical equipment for the generation, transmission, distribution or conversion of electric power;

34. "Misfire" means the complete or partial failure of a blasting charge to explode as planned;

35. "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a deposit of useful materials or ores that are to be mined;

36. "Owner" means the owner, lessee, manager, superintendent, operator or agent, receiver or trustee operating any clay, coal or copper mine;

37. "Primer" or "booster" means a package or cartridge of explosives designed specifically to transmit detonation to other explosives but which does not contain a detonator;

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38. "Reverse-current protection" means a method or device used on direct-current circuits of equipment to prevent the flow of current in the reverse direction;

39. "Roll protection" means a framework or safety canopy to protect the vehicle operator if equipment should overturn;

40. "Safety can" means an approved container of not over five (5) gallons capacity having a spring-closing lid and a spout cover;

41. "Safety fuse" means a train of powder enclosed in cotton, jute yarn and waterproofing compounds which burns at a uniform rate. It is used for firing a cap containing the detonating compound which in turn sets off the explosive charge;

42. "Safety switch" means a sectionalizing switch that also provides shunt protection in blasting circuits between the blasting switch and the shot area;

43. "Scaling" means removal of insecure material from a face or highwall;

44. "Secondary safety connection" means a second connection between a conveyance and rope, intended to prevent the conveyance from running away or falling in the event the primary connection fails;

45. "Semiconductive hose" means hose having an electrical resistance of not less than five thousand (5,000) ohms per foot and not more than two (2) megohms for its total length, used in pneumatic placement of blasting agents in boreholes;

46. "Sprung hole" means a blasting hole chambered or enlarged to take an increased charge of explosives;

47. "Stemming" means the inert material, and the placing of such material, on top of any charge of explosives;

48. "Stray current" means that portion of a total electric current that flows through paths other than the intended circuit;

49. "Strip or surface pit" means the excavation in which superincumbent strata are removed exposing the natural deposit so it

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may be excavated and loaded by hand or by mechanical equipment in open working. Strip or surface pits shall be subject to such mining laws of the State of Oklahoma as apply to them, and such operations shall comply with recommendations for safety of employees made by the Chief Mine Inspector;

50. "Substantial construction" means construction of such strength, material and workmanship that the object will withstand all reasonable shock, wear, usage and deterioration to which it will normally be subjected;

51. "Suitable" means that which fits and has the qualities or qualifications to normally meet a given purpose, occasion, condition, function or circumstance;

52. "Travelway" means a passage, walk or way regularly used and designated for persons to go from one place to another while at work;

53. Voltage:

a. "low voltage" means up to and including 660 volts;

b. "medium voltage" means from 661 to 1,000 volts, and

c. "high voltage" means more than 1,000 volts;

54. "Wet drilling" means the continuous application of water to the back or bottom of the drill holes while drilling; and

55. "Working place" means any place in or about a mine where work is being performed.

SECTION 2. It shall be unlawful for any person in the State of Oklahoma to act as general manager, superintendent, mine foreman, shot firer, electrician or repairman without first having obtained a certificate of competency from the State Mining Board as herein provided for.

The examination given by the State Mining Board to an applicant for a certificate of competency as general manager, superintendent, mine foreman, shot firer, electrician or repairman shall include a written or oral or written and oral examination to determine that he fully understands the requirements of the mining laws of Oklahoma.

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Each applicant shall hold a first-aid certificate issued to him within two (2) years previous to the date of the examination by an organization recognized by the State Mining Board.

Certificates of competency for the positions enumerated shall be granted to persons who have given the State Mining Board satisfactory evidence of their ability to perform the duties of the positions applied for and who have obtained the necessary grades as determined by the Board for respective positions. In determining the grade of each applicant, due respect shall be given to the applicant's previous experience and record of service which shall have equal weight with the oral or written examination given to test the practical and technical knowledge of the applicant for the certificate of competency being sought.

SECTION 3. Certifications provided for this act shall be issued under the signature and seal of the State Mining Board; such certificates shall bear the date of issuance, full name, age and years of experience of recipient, and shall designate the position for which the recipient is certified by the Board. Provided that all persons making applications to the State Mining Board for certificates of competency as general manager, mine superintendent, mine foreman, shot firer, electrician or repairman shall accompany said application with a fee of Two Dollars and fifty cents ($2.50) as a fee for such examination and shall pay an additional fee of Two Dollars and fifty cents ($2.50) when said certificate is issued.

SECTION 4. The Secretary of the Board shall maintain a record of the names, addresses and other pertinent information of all persons to whom certificates are issued. Certificates of competency, when issued as provided for herein, shall entitle the holders thereof to accept and discharge the duties for which said certificates declare them qualified.

SECTION 5. The State Mining Board shall have power to revoke any certificates, by it granted, because of incompetency, intoxication or

other sufficient cause, provided that any person against whom charges are made shall have ten (10) days written notice from the Board and shall have opportunity to be heard by it in his own behalf.

SECTION 6. The Secretary of the Board may, upon the recommendation of at least two (2) other members of the Board, issue a temporary permit to an applicant for a certificate for mine foreman, shot firer or electrician. Said temporary permit shall be valid only until the next meeting of the Board or not to exceed thirty-one (31) days.

SECTION 7. It shall be the duty of the Chief Mine Inspector, or his assistant mine inspectors, to enter into and examine thoroughly each and every strip or surface mine in the state at least once a month and as often as to him seems necessary or expedient, to see that the provisions of this act are observed and strictly carried out. The Chief Mine Inspector or assistant inspectors, or both, may enter, inspect and examine any strip or surface pit and the works and machinery belonging thereto at all times; by night or by day, and the owner and the employees may each designate a man who shall accompany the inspector during the state inspection of the mine; and after each inspection the inspector shall make a report in triplicate of the condition of the mine with recommendations and/or orders. One (1) copy shall be placed on file in the office of the Chief Mine Inspector, one (1) copy shall remain in the hands of the inspector, and one (1) copy shall be given to the operator who shall post it in a conspicuous place under glass cover outside the mine office where it can be read and where it shall remain until the next state inspection report is issued. Within thirty (30) days after receiving the inspector's report wherein any important recommendations are made, the owner shall send a report to the Chief Mine Inspector stating what steps have been taken to comply with such recommendations.

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SECTION 8. The operator shall employ a certified strip pit mine foreman for every mine except those mines in which no more than three (3) persons including the operator are employed, in which case one (1) man must have at least the status of a certified shot firer. The mine foreman shall have full charge of all workings and of all persons employed therein in order that all the provisions of this act, so far as they relate to his duties, shall be complied with and the regulations prescribed for each class of workmen under his charge shall be carried out in the strictest possible manner.

SECTION 9. The mine foreman shall keep a careful watch over all operations with the utmost regard for the safety of all employees. His responsibility includes the use, storage and handling of explosives, condition of all equipment used, condition of roads in and out of the pits, drainage, roads to the tipple and other surface structures. Strip pit foremen shall devote the whole of their time to their duties when the strip mine is in operation.

SECTION 10. A. The following rules and procedures shall be complied with for proper ground control:

1. Practices and standards acceptable to the Chief Mine Inspector for the safe control of surface mine walls including the overall slope of the mine wall shall be established and followed by the operator. Such standards shall be consistent with sound engineering, the nature of the ground and the seam mined, and the insuring of safe working conditions according to the degree of slope. Mining methods shall be selected which will provide wall stability; including benching if necessary, to obtain a safe overall slope;

2. All loose and hazardous material shall be stripped for a safe distance from the edge of the highwall;

3. The width and height of benches shall be governed by the type of equipment to be used and the operation to be performed;

4. Safe means of scaling walls shall be provided. Loose material or trees on exposed wall areas shall be removed before any other work is performed in the exposed wall area;

5. Men shall not work under dangerous walls. Hazardous overhanging walls shall be taken down immediately and other unsafe ground conditions shall be corrected promptly or the areas shall be barricaded or posted;

6. When removing rock by hand, men shall approach loose rock from above and shall scale from a safe location those areas on walls which must be scaled;

7. The supervisor or a certified person designated by him shall examine working areas and faces of walls for unsafe conditions at least at the beginning of each shift, during the shift while men are working, and after blasting. Any unsafe condition found shall be corrected before any further work is performed at the immediate area or face at which the unsafe condition exists;

8. Men shall examine their working places before starting work and frequently thereafter and any unsafe condition shall be reported immediately to the supervisor before any other work is performed;

9. Large boulders requiring secondary blasting shall be in a safe location before they are drilled or broken; and

10. Men shall not be permitted to work between equipment and the mine wall where the equipment may hinder escape from falls or slides of the wall, unless special safety precautions are taken in advance.

B. The following rules and procedures shall be complied with for proper fire prevention and control:

1. No person shall smoke or use an open flame where flammable or combustible liquids or greases are stored or in areas or places where fire or explosion hazards exist;

2. Signs warning against smoking and open flames shall be posted so they can readily be seen in areas or places where fire or explosion hazards exist;

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3. Areas surrounding flammable-liquid storage tanks and electric substations and transformers shall be kept free from dry grass, weeds, underbrush and other combustible materials for at least twenty-five (25) feet in all directions;

4. Fires used for warming purposes shall be enclosed to prevent persons from coming in contact with flame or coals which would ignite clothing. Oily or easily ignited clothing shall not be worn where ignition hazards are present;

5. Buildings or rooms in which oil, grease, flammable liquids or similar flammable materials are stored shall be of fire-resistant construction and well ventilated. Provisions shall be made to control spilled flammable liquids;

6. Abandoned electrical circuits shall be de-energized and isolated so that they cannot become energized inadvertently. If no further use is intended they shall be removed;

7. Combustible materials, grease, lubricants or flammable liquids shall not be allowed to accumulate where they can create a fire hazard;

8. Materials, such as oily waste and rags, which are subject to spontaneous combustion shall be placed in tightly covered metal containers until disposed of properly;

9. When flammable solvents are used for cleaning, such solvents shall be transported in safety cans of not over five-gallon capacity. When used to clean parts, the containers used shall have tight-fitting covers. No cleaning may be done with flammable solvents near a possible source of ignition;

10. Oxygen cylinders shall not be stored near oil or grease;

11. Gauges and regulators used with oxygen or acetylene cylinders shall be kept clean and free of oil and grease;

12. Valves on oxygen and acetylene tanks shall be kept closed when they are not in use;

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13. Battery charging stations shall be located in well-ventilated areas and in the clear of other equipment;

14. Internal combustion engines shall be shut off and stopped before being fueled;

15. Each mine shall have available, or be provided with, appropriate types of fire-fighting equipment adequate for the size of the mine;

16. Fire-fighting equipment shall be strategically located, readily accessible, plainly marked, properly maintained and inspected periodically with records kept of such inspections;

17. Fire extinguishers shall be:

a. adequate in number and size and of the appropriate type for each particular fire hazard involved,

b. replaced immediately with full charged extinguishers of the same capability after any discharge is made from the extinguishers,

c. inspected at least every three (3) months, tested at least once every six (6) months and maintained according to the manufacturer's recommendation. Each extinguisher shall bear a tag showing the date of inspection, the date of testing and the name of the person making the examination for inspection or testing, and

d. approved by Underwriter's Laboratories, Inc. or Factory Mutual Research Corporation;

18. Appropriate fire extinguishers shall be provided on self-propelled mobile equipment;

19. Fire extinguishers of the appropriate type and size shall be an integral part of portable cutting and welding equipment;

20. When welding or cutting near combustible materials, precautions shall be taken to insure that smoldering metal or sparks do not result in fire; and

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21. Belt conveyors in locations where fire would create a hazard to personnel shall be provided with safety switches to stop the drive pulley automatically in the event the belt stalls or there is excessive slippage.

SECTION 11. A. Rules and procedures as follows shall be complied with for storage of explosives:

1. Detonators and other cap sensitive high explosives shall be stored in magazines provided for that purpose. Blasting agents may be stored in van-type trailers, provided they are well-ventilated, kept clean and free of extraneous material that could create a fire hazard;

2. Separate magazines shall be provided for the storage of detonators and for explosives;

3. Detonators shall not be stored in the same magazine with explosives or blasting agents;

4. Blasting agents, safety fuse or detonating cord may be stored with explosives, but blasting agents must be kept physically separated from the fuse, detonating cord and explosives;

5. Magazines shall be:

a. located in accordance with the current American Table or Distances for Storage of Explosives,

b. detached structures located away from power lines, fuel storage area and other possible sources of fire,

c. constructed substantially of noncombustible material or covered with fire resistant material,

d. reasonably bullet resistant,

e. electrically bonded and grounded if constructed of metal,

f. made of nonsparking materials on the inside, including floors,

g. provided with adequate and effectively screened ventilation openings near the floor and ceiling,

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h. kept securely locked when unattended,

i. posted with suitable danger signs so located that a bullet passing through the face of a sign will not strike the magazine,

j. used exclusively for storage of blasting agents, explosives, or detonators and kept free of all extraneous materials,

k. kept clean and dry in the interior, and in good repair, and

l. unheated unless heated in a manner that does not create a fire or explosion hazard. Electrical heating devices shall not be used inside a magazine;

6. Only permissible lights, worn or carried, shall be used inside magazines;

7. Areas surrounding magazines not less than twenty-five (25) feet in all directions shall be kept free of rubbish and other combustibles;

8. Smoking and open flames shall not be permitted within twenty-five (25) feet of explosives and detonator storage magazines;

9. Cases of explosives shall be stored in such a manner as to assure the use of the oldest stock first;

10. Ammonium nitrate fuel oil mixtures shall be physically separated from dynamite stored in the same magazine and in such a manner that oil does not contaminate the dynamite; and

11. Cases of explosives shall not be stored on case ends or sides nor in stacks over six (6) feet high.

B. Rules and procedures as follows shall be complied with in the transportation of explosives:

1. Explosives and detonators shall be transported in separate vehicles unless separated by four (4) inches of hardwood or the equivalent;

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2. Self-propelled vehicles used to transport explosives or detonators shall be equipped with suitable fire extinguishers and marked with proper warning signs;

3. When vehicles containing explosives or detonators are parked, the brakes shall be set, the motive power shut off when not in use, and if parked on an incline the vehicle shall be blocked securely against rolling;

4. Vehicles containing explosives or detonators shall not be left unattended except in blasting areas where loading or charging is in progress;

5. Vehicles containing explosives or detonators shall not be taken to a repair garage or shop for any purpose;

6. Vehicles used to transport explosives or detonators shall be maintained in good condition and shall be operated at a safe speed and in accordance with recognized safe operating practices;

7. Vehicles used to transport explosives other than ANFO mixtures shall have substantially constructed bodies, no sparking metal exposed in the cargo space, and shall not be piled higher than the side or end enclosures;

8. Explosives shall be transported at times and over routes that expose a minimum number of persons;

9. Other materials or supplies shall not be placed on or in the cargo space of a conveyance containing explosives or detonators;

10. No person shall smoke while transporting or handling explosives or detonators;

11. Only the necessary attendants shall ride on or in vehicles containing explosives or detonators;

12. Explosives shall be transported promptly without undue delays in transit;

13. Nonconductive containers with tight-fitting covers shall be used to transport or carry capped fuses and electric detonators to blasting sites; and

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14. Substantial nonconductive closed containers shall be used to carry explosives to blasting sites.

C. Rules and procedures as follows shall be complied with in the use of explosives:

1. Persons who use explosives, blasting agents or detonators shall be certified by the State Mining Board. They shall understand the hazards involved, and trainees shall do such work only under the supervision of and in the immediate presence of certified men;

2. Blasting operations shall be under the direct control of certified persons designated by the operator for that purpose;

3. Damaged or deteriorated explosives, blasting agents and detonators shall be disposed of in a safe manner;

4. Explosives or detonators shall not be taken to the face or within fifty (50) feet of the blasting site until all other work has been completed;

5. Holes to be blasted shall be charged as near to blasting time as practical and such holes shall be blasted as soon as practicable after charging has been completed;

6. No person shall smoke within fifty (50) feet of explosives, blasting agents or detonators;

7. Explosives and blasting agents shall be kept separated from detonators until charging of holes is started;

8. Primers shall be made up at the time of charging and as close to the blasting site as conditions allow;

9. Only wooden or other nonsparking devices shall be used to punch holes in explosives cartridges;

10. Tamping poles shall be blunt and squared at one end and made of wood or other nonsparking material;

11. No tamping shall be done directly on primer cartridges;

12. Unused explosives and detonators shall be moved to a safe location as soon as charging operations are completed;

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13. Approaches to areas in which charged holes are awaiting firing shall be guarded, or barricaded and posted, or flagged, against unauthorized entry. If blasting is done after dark, red flashing lights shall be used at the approaches to the blasting area;

14. When a blast is about to be fired, ample warning shall be given to allow all persons to retreat to a safe place. Each mine shall have a definite plan of warning signals that can be clearly seen or heard by anyone in the blasting area. The operator shall inform all employees at the local mine as to the established procedure;

15. Enclosed blasting shelters constructed of strong materials shall be provided to protect all men endangered by flying rock from blasting;

16. When safety fuse has been used, men shall not return to misfired holes for at least thirty (30) minutes;

17. When electric blasting caps have been used, men shall not return to misfired holes for at least fifteen (15) minutes. Leading wires from the power source must be disconnected before men can be allowed to return to the blasting sites;

18. Blasted materials shall be examined for undetonated explosives after each blast and undetonated explosives found shall be disposed of safely;

19. Misfires shall be reported to the proper supervisor and shall be disposed of safely before any other work is performed in the blasting area;

20. Blast holes in "hot-hole" areas and holes that have been sprung shall not be charged before tests have been made to insure that the heat has been dissipated to a safe level;

21. If explosives are suspected of burning in a hole, all persons in the endangered area shall move to a safe location until the danger has passed;

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22. Holes shall not be drilled where there is danger of intersecting a charge or misfired hole;

23. Fuses and igniters shall be stored in a cool, dry place away from oils or grease;

24. Fuses shall not be kinked, bent sharply or handled roughly;

25. Fuses shall be cut and capped in safe, dry locations posted with "No Smoking" signs;

26. Blasting caps shall be crimped to fuses only with devices designed for that specific purpose;

27. Fuse of less than forty-eight (48) inches in length shall not be used for any purpose;

28. At least two (2) men shall be present when lighting fuses, and no man shall light more than fifteen (15) individual fuses. If more than fifteen (15) holes per man are to be fired, igniter cord and connectors or electric blasting shall be used;

29. A safe interval of time shall be allowed to light a round and evacuate the blasting area;

30. Fuse shall be ignited with hot-wire lighters, lead spitters, igniter cord or other such devices designed for this purpose;

31. Fuse shall not be ignited before the primer and the entire charge are securely in place;

32. Electric detonators of different brands shall not be used in the same round;

33. Electric detonators shall remain shunted until they are being wired into the blasting circuit. Lead lines and wired rounds shall be kept shunted until immediately before blasting;

34. Completely wired rounds shall be tested with a blasting galvanometer before connections are made to the blasting line;

35. Lead wires and blasting lines shall not be strung across power conductors, pipelines or within twenty (20) feet of bare power lines. They shall be protected from sources of static or other electrical contact;

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36. Permanent blasting lines shall be properly supported, insulated and kept in good repair;

37. Charging shall be stopped immediately when the presence of static electricity or stray current is detected; the condition shall be corrected before charging is resumed;

38. Charging of holes shall be suspended and the men withdrawn to a safe location upon the approach of an electrical storm;

39. Safety switches and blasting switches shall be labeled, encased in boxes and arranged so that the covers of the boxes cannot be closed with the switches in closed position;

40. Blasting switches shall be locked in the open position except when closed to fire the blast. Lead wires shall not be connected to the blasting switch until the shot is ready to be fired;

41. The key to a blasting switch shall be entrusted only to the person designated to fire blasts;

42. Electric circuits from the blasting switches to the blast area shall not be grounded;

43. At least a five-foot air gap shall be provided between the blasting circuit and the power circuit;

44. Where electric blasting is to be performed, electric circuits to equipment within twenty-five (25) feet of a hole that is to be charged with an electric blasting cap shall be de-energized before electric detonators are brought into the immediate area, or the electric-equipment shall be moved out of the immediate area;

45. Power sources shall be suitable for the number of electric detonators to be fired and for the type of circuits used;

46. When instantaneous blasting is performed, the double-trunkline or loop system shall be used in detonating-cord blasting;

47. When instantaneous blasting is performed, trunklines in multiple-row blasting shall make one (1) or more complete loops with crossties between loops at intervals of not over two hundred (200) feet;

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48. All detonating-cord knots shall be tight and all connections shall be kept at right angles to the trunklines;

49. Delay connectors for firing detonating cord shall be treated and handled with the same safety precautions as blasting caps and electric detonators; and

50. Detonating cord shall not be kinked, bent or otherwise handled in such a manner that the train of detonation may be interrupted.

D. Rules and procedures as follows shall be complied with in dealing with sensitized ammonium nitrate blasting agents:

1. When sensitized ammonium nitrate mixtures and blasting agents are used, the same precautions shall be taken as for high explosives;

2. Adequate priming shall be employed to guard against misfires, increased toxic fumes and poor performance;

3. Where pneumatic loading is employed, before any type of blasting operation using blasting agents is put into effect, an evaluation of the potential hazard of static electricity shall be made. Adequate steps, including the grounding of the conductive parts of pneumatic loading equipment, shall be taken to eliminate the hazard of static electricity before blasting agent preparation is commenced;

4. Pneumatic loading equipment shall not be grounded to water lines, air lines, rails or other permanent electrical grounding systems;

5. Hoses used in connection with pneumatic loading machines shall be of the semiconductive type having a total resistance low enough to permit the dissipation of static electricity and high enough to limit the flow of stray electric currents to a safe level. Wire-countered hose shall not be used because of the potential hazard from stray electric currents; and

6. Plastic tubes shall not be used to protect pneumatically loaded blasting agent charges against water unless a positive

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grounding system is provided to drain electrostatic charges from the holes.

SECTION 12. The following rules and procedures shall be complied with when dealing with drilling for blasting:

1. Equipment shall be inspected each shift by a certified person designated by the operator. Equipment defects affecting safety shall be reported immediately;

2. Equipment defects affecting safety shall be corrected before the equipment is used;

3. The drilling area shall be inspected by a certified person, designated by the operator, for hazards before drilling operations are started;

4. Men shall not be on the mast while the drill is in operation;

5. Drill crews and others shall stay clear of augers or drill stems that are in motion. Persons shall not pass under or step over a moving stem or auger;

6. Receptacles or racks shall be provided for drill steel stored on drills;

7. Tools and other objects shall not be left loose on the mast or drill platform;

8. When a drill is being moved from one drilling area to another, drill steel, tools and other equipment shall be secured and the mast placed in a safe position;

9. In the event of power failure, drill controls shall be placed in the neutral position until power is restored;

10. While in operation drills shall be attended at all times;

11. Drill holes large enough to constitute a hazard shall be covered or guarded;

12. Men shall not drill from positions that hinder their access to the control levers or from insecure footing or staging or from atop equipment not designed for this purpose;

Correctly Enrolled; _____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

13. Bit wrenches or bit knockers shall be used to remove detachable bits from drill steel;

14. Starter steels shall be used when collaring holes with handheld or feedleg drills;

15. Men shall not hold the drill steel while collaring holes or rest their hands on the chuck or centralizer while drilling; and

16. Air shall be turned off and bled from the hose before handheld drills are moved from one working area to another.

SECTION 13. The following rules and procedures shall be complied with when loading, hauling or dumping:

1. Equipment shall be inspected each shift by a certified person designated by the operator. Equipment defects affecting safety shall be reported immediately;

2. Equipment defects affecting safety shall be corrected before the equipment is used;

3. Powered mobile equipment shall be provided with adequate brakes;

4. Powered mobile haulage equipment shall be provided with audible warning devices. Lights shall be provided on both ends when required;

5. Equipment operators shall be certain, by signal or other means, that all persons are in the clear before starting or moving equipment;

6. When the entire length of a conveyor is visible from the starting switch, the operator shall visually check to make certain that all persons are in the clear before starting the conveyor. When the entire length of the conveyor is not visible from the starting switch, a positive audible warning system shall be installed and operated to warn persons that the conveyor will be started;

7. Trucks, shuttle cars and front-end loaders shall be equipped with emergency brakes separate and independent of the regular braking system;

Correctly Enrolled: _____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

8. Operators' cabs shall be constructed to permit operators to see without difficulty and shall be reasonably comfortable;

9. Cab windows shall be of safety glass or equivalent, in good condition, and be kept clean;

10. Cabs of mobile equipment shall be kept free of extraneous materials;

11. Adequate back stops or brakes shall be installed on inclined conveyor drive units to prevent conveyors from running in reverse if a hazard to personnel will result;

12. No person shall be permitted to ride a power-driven chain belt or bucket conveyor unless the chain, belt or conveyor is specifically designed for the transportation of persons;

13. Equipment operating speeds shall be prudent and consistent with conditions of roadway, grades, clearance, visibility, traffic and the type of equipment used;

14. Dust control measures shall be taken where dust significantly reduces visibility of equipment operators. Haulage roads shall be wet down as necessary unless dust is controlled adequately by other methods;

15. Mobile equipment operators shall have full control of the equipment while it is in motion;

16. Dippers, buckets, loading booms or heavy suspended loads shall not be swung over the cabs of haulage vehicles until the drivers are out of the cabs and in safe locations unless the trucks are designed specifically to protect the drivers from falling material;

17. Only authorized persons shall be present in areas of loading or dumping operations;

18. Unless safe provisions are made for persons to mount or leave equipment while it is in operation, the operator shall be notified of their intentions before getting on or off;

Correctly Enrolled, [illegible] Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

19. Men shall not work or pass under the buckets or booms of loaders in operation;

20. When traveling between work areas, the equipment shall be secured in the travel position;

21. Dippers, buckets, scraper blades, and similar movable parts shall be secured or lowered to the ground when not in use;

22. Men shall not ride in dippers, buckets, forks, clamshells or other parts of any equipment not specifically designed for the transportation of persons;

23. Loaded cars or trucks shall not be moved until the loads are trimmed properly;

24. Electrically powered mobile equipment shall not be left unattended unless the master switch is in the "off" position, all operating controls are in the neutral position, and the brakes are set or other equivalent precautions are taken against rolling;

25. Mobile equipment shall not be left unattended unless the brakes are set. The wheels shall be turned into a bank or wall, or shall be blocked, when such equipment is parked on a grade;

26. Men shall not ride on top of loaded haulage equipment;

27. Men shall not ride outside the cabs and beds of mobile equipment;

28. Equipment which is to be hauled shall be properly loaded and secured;

29. Dumping locations and haulage roads shall be kept reasonably free of water, debris and spillage;

30. Berms, bumper blocks, safety hooks or similar means shall be provided to prevent overtravel and overturning at dumping locations;

31. If truck spotters are used they shall be well in the clear while trucks are backing into dumping position and dumping; lights shall be used at night to direct trucks;

32. Where overhead clearance is restricted, warning devices shall be installed and the restricted area shall be conspicuously marked;

Correctly Enrolled: Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

33. Ramps and dumps shall be of solid construction, of ample width, have ample side clearance and headroom, and be kept reasonably free of spillage;

34. Lights, flares or other warning devices shall be posted when parked equipment creates a hazard to vehicular traffic;

35. Tires shall be deflated before repairs on them are started, and adequate means shall be provided to prevent wheel locking rims from creating a hazard during tire inflation;

36. Any load extending more than four (4) feet beyond the rear of the vehicle body shall be marked clearly with a red flag by day and a red light by night;

37. A tow bar shall be used to tow heavy equipment. A safety chain shall be used in conjunction with the tow bar; and

38. When heavy equipment is to be towed, the towing vehicle shall be of suitable weight and strength to maintain safe control of the load.

SECTION 14. The following rules and procedures shall be complied with in dealing with travelways:

1. Safe means of access shall be provided and maintained to all working places;

2. Crossovers, elevated walkways, elevated ramps and stairways shall be of substantial construction, provided with handrails and maintained in good condition. Where necessary, toeboards shall be provided;

3. Ladders shall be of substantial construction, maintained in good condition and regularly inspected;

4. Portable straight ladders shall be provided with nonslip bases, shall be placed against a safe backing at the proper angle and set on secure footing;

5. Fixed ladders shall be anchored securely and installed to provide at least three (3) inches of toe clearance;

Correctly Enrolled: /s/ [illegible] Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

6. Fixed ladders shall have substantial railed landings at least every thirty (30) feet unless backguards are provided;

7. Steep fixed ladders, seventy (70) degrees to ninety (90) degrees from the horizontal, thirty (30) feet or more in length shall be provided with backguards, cages or equivalent protection, starting at a point not more than seven (7) feet from the bottom of the ladder;

8. Fixed ladders shall project at least three (3) feet above landings or substantial handholds shall be provided above the landings;

9. Wooden members of ladders shall not be painted;

10. Ladderways, stairways, walkways and ramps shall be kept free of loose rock and extraneous materials;

11. Men climbing or descending ladders shall face the ladders and have both hands free for climbing;

12. Railed walkways shall be provided wherever persons are regularly required to walk along conveyor belts. Inclined railed walkways shall be nonskid or provided with cleats;

13. Openings above, below or near travelways through which men or materials may fall shall be protected by railings, barriers or covers. Where it is impractical to install such protective devices, adequate warning signals shall be posted;

14. Scaffolds and working platforms shall be of substantial construction and provided with handrails and maintained in good condition. Floorboards shall be laid properly and the scaffolds and working platforms shall not be overloaded. Working platforms shall be provided with toeboards where necessary;

15. Crossovers shall be provided where it is necessary to cross conveyors;

16. Moving conveyors shall be crossed only at designated crossover points;

Correctly Enrolled; _____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

17. Slippery walkways shall be provided with cleats and handrails and/or ropes; and

18. Regularly used walkways and travelways shall be sanded, salted or cleared of snow and ice as soon as practicable.

SECTION 15. The following rules and procedures shall be complied with in dealing with electricity:

1. Circuits shall be protected against excessive overloads by fuses or circuit breakers of the correct type and capacity;

2. Powerlines and telephone circuits shall be protected against short circuits and lightning;

3. Electric equipment and circuits shall be provided with switches or other controls. Such switches or controls shall be of approved design and construction and shall be properly installed;

4. Individual overload protection or short-circuit protection shall be provided for the trailing cables of mobile equipment;

5. Power wires and cables shall have adequate current-carrying capacity and shall be protected from mechanical injury;

6. Neither crawler-mounted nor rubber-tired equipment shall run over trailing cables unless the cables are properly bridged or otherwise protected;

7. Distribution boxes shall be provided with disconnect switches;

8. Trailing cable and power cable connections to junction boxes shall not be made or broken under load;

9. Power wires and cables shall be insulated adequately where they pass into or out of electrical compartments;

10. Power wires and cables which present a fire hazard shall be well installed on acceptable insulators;

11. Where metallic tools or equipment can come in contact with bare power lines, the lines shall be guarded or de-energized;

12. Telephone and low potential electric signal wires shall be protected from contacting energized power lines;

Correctly Enrolled: _____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

13. High potential transmission cables shall be covered, insulated or placed according to acceptable electrical codes to prevent contact with low potential circuits;

14. The potential on bare signal wires accessible to personal contact should not exceed thirty (30) volts;

15. Splices in power cables, including ground conductor, where provided, shall be:

a. mechanically strong with adequate electrical conductivity,

b. effectively insulated and sealed to exclude moisture, and

c. provided with mechanical protection and electrical conductivity as near as possible to that of the original;

16. Shovel trailing cables shall not be moved with the shovel dipper unless cable slings or sleds are used;

17. Energized high potential cables shall be handled with insulated hooks or tongs;

18. Electrical equipment shall be de-energized before work is done on such equipment. Switches shall be locked out and suitable warning signs posted by the individuals who are to do the work; locks shall be removed only by authorized persons;

19. Power circuits shall be de-energized before work is done on such circuits unless hot line tools are used. Switches shall be locked out and suitable warning signs posted by the individuals who are to do the work; locks shall be removed only by authorized persons;

20. Principal power switches shall be labeled to show which units they control;

21. At least three (3) feet of clearance shall be provided around all parts of stationary electric equipment or switch gear where access or travel is necessary;

Correctly Enrolled: [illegible] Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Correctly Enrolled: [illegible] Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

22. Dry wooden platforms, insulating mats or other electrically nonconductive material shall be kept in place at all switchboards and power control switches where shock hazards exist. However, metal plates on which a person normally would stand, plates which are kept at the same potential as the grounded metal noncurrent carrying parts of the power switches to be operated may be used;

23. Suitable danger signs shall be posted at all major electrical installations;

24. Areas containing major electrical installations shall be entered only by authorized personnel;

25. Electrical connections and resistor grids that are difficult or impractical to insulate shall be guarded unless protection is provided by location;

26. Reverse-current protection shall be provided at storage battery charging stations;

27. All metal enclosing or encasing electrical circuits shall be grounded or provided with equivalent protection. This requirement does not apply to battery-operated equipment;

28. Metal fencing and metal buildings enclosing transformers and switch gear shall be grounded;

29. Frame grounding or equivalent protection shall be provided for mobile equipment powered through trailing cables;

30. Continuity and resistance of grounding systems shall be tested immediately after installation;

31. Electric equipment and wiring shall be inspected by a certified person as often as necessary to assure safe operating conditions;

32. When a potentially dangerous condition is found it shall be corrected before equipment or wiring is energized;

33. Inspection and cover plates on electrical equipment shall be kept in place at all times except during testing or repairs;

34. Circuits shall be de-energized before fuses are removed or replaced;

35. Fuse tongs or hot line tools shall be used when fuses are removed or replaced in medium or high voltage circuits;

36. Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections;

37. Surplus trailing cables to shovels, cranes and similar equipment shall be stored in cable boots or on reels mounted on the equipment or otherwise protected from mechanical damage;

38. Operating controls shall be installed so that they can be operated without danger of contact with energized conductors;

39. Equipment with booms or masts which are not properly protected shall not be operated where the booms or masts can come within ten (10) feet of an energized overhead power line;

40. Overhead high potential power lines shall be installed as specified by the National Electrical Safety Code;

41. When equipment must be moved under energized power lines and the clearance is less than ten (10) feet, the power lines shall be de-energized or other precautions shall be taken;

42. Guy wires from poles supporting high voltage transmission lines shall be securely connected to the system ground or be provided with insulators installed near the pole end;

43. Telegraph, telephone or signal wires shall not be installed on the same crossarm with power conductors. When carried on poles supporting power lines, they shall be installed as specified by the National Electrical Safety Code;

44. Transformers shall be totally enclosed or shall be placed at least fifteen (15) feet above the ground, twenty (20) feet above driveways and haulage ways, or installed in a transformer house, or surrounded by a subtantial fence at least six (6) feet high and at least three (3) feet from any energized parts, casings or wiring;

Correctly Enrolled: _____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

45. Transformer enclosures shall be kept locked against unauthorized entry; and

46. Tools and supplies shall be carried in the hands and not on the shoulders when men travel near bare power conductors.

SECTION 16. The following rules and procedures shall be complied with in dealing with the use of equipment:

1. Gears, sprockets, chains, drive, head, tail and take-up pulleys, flywheels, couplings, shafts, saw blades, fan inlets and similar exposed moving machine parts which may cause injury to persons shall be guarded;

2. Overhead belts shall be guarded if the whipping action from a broken belt would be hazardous to persons below;

3. Guards at conveyor drive, head and tail pulleys shall be sufficient to prevent a person from reaching behind the guard and becoming caught between the belt and the pulley;

4. Protruding set screws on revolving parts shall be guarded;

5. Except when testing the machinery, guards shall be securely in place while machinery is being operated;

6. Guards shall be sufficiently strong and maintained to provide the required protection;

7. Stationary grinding machines other than special bit grinders shall be equipped with:

a. peripheral hoods, less than ninety-degree throat openings, capable of withstanding the force of a bursting wheel,

b. adjustable tool rests set as close as practical to the wheel, and

c. safety washers;

8. Face shields or goggles, in good condition, shall be worn when operating a grinding wheel;

9. Hand-held power tools, other than rock drills, shall be equipped with controls requiring constant hand or finger pressure to

Correctly Enrolled: _____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

operate the tools or shall be equipped with friction or other equivalent safety devices;

10. Guards or shields shall be provided in areas where flying or falling materials present a hazard;

11. Vehicles such as forklifts, trucks, front-end loaders and bulldozers shall be provided with roll bar protection when necessary to protect the operator;

12. Forklifts, trucks, front-end loaders and bulldozers shall be provided with substantial canopies when necessary to protect the operator against falling material;

13. Unsafe equipment or machinery shall be removed from service immediately;

14. Machinery and equipment shall be operated only by authorized and experienced persons;

15. Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except when machinery motion is necessary to make adjustments or when non-energized components of large machinery can be safely repaired while the machine is operating;

16. Men shall not work on mobile equipment in a raised position until it has been blocked in place securely. This does not preclude the use of equipment specifically designed, such as elevated mobile work platforms;

17. Drive belts shall not be shifted while in motion unless the machines are equipped with mechanical shifters;

18. Belts, chains, and/or ropes shall not be guided onto power-driven moving equipment especially designed for hand feeding;

19. Pulleys or conveyors shall not be cleaned manually while the conveyor is in motion;

20. Belt dressing shall not be applied manually while belts are in motion unless an aerosol-type dressing is used; and

Correctly Enrolled; _____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

21. Machinery shall not be lubricated while in motion when a hazard exists unless equipped with extended fittings or cups.

SECTION 17. The following rules and procedures shall be complied with in dealing with personal protection:

1. Adequate first-aid materials, including stretchers and blankets, shall be provided at places convenient to all working areas. Water or neutralizing agents shall be available where corrosive chemicals or other harmful substances are stored, handled or used;

2. All persons shall wear suitable hard hats when in or around mine plants or active workings of the mine;

3. All persons shall wear suitable protective footwear when in or around mine plants or active workings of the mine;

4. All persons shall wear safety glasses, goggles or face shields when doing work hazardous to the eyes;

5. Safety belts and lines shall be worn when men work where there is danger of falling, and a second person shall tend the lifeline when bins, tanks or other dangerous areas are entered;

6. Life jackets or belts shall be worn where there is danger of falling into deep water;

7. Protective clothing, rubber gloves, goggles or face shields shall be worn by persons handling substances that are corrosive, toxic or injurious to the skin;

8. Protective clothing or equipment and face shields or goggles shall be worn when welding, cutting or working with molten metal;

9. Snug-fitting clothing shall be worn by persons working around moving equipment and machinery;

10. Protective gloves shall be worn by employees handling materials which may cause injury;

11. Gloves shall not be worn where they could create a hazard by becoming entwined or caught in moving parts of machinery; and

Correctly Enrolled; _____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

12. Effective hearing protection shall be worn where noise levels may cause permanent ear damage or hearing loss unless the wearing of the protective devices would create a greater danger to the employee. In such case the noise shall be reduced to safe levels.

SECTION 18. The following rules and procedures shall be complied with in dealing with augering:

1. Planning:

before augering is done, advance planning shall be made to insure that no hazards shall be created affecting active underground workings. Auger mine workings and holes drilled shall be located so as to prevent:

(1) interference with the ventilation system of any underground mine, and

(2) inundation hazards from the surface to active underground workings;

2. Inspection:

a. at least fifty (50) feet on each side of highwalls being drilled shall be inspected for loose material before drilling or other work in the area is begun, and an inspection shall be made at least once during each operating shift,

b. when abandoned mines or abandoned parts of active mines are penetrated by drilling, machinery shall be stopped and tests shall be made at the collar of the hole for explosive gas or oxygen or oxygen deficiency by a certified person qualified to use approved instruments to make such tests. If tests show the presence of gas or the lack of oxygen, the equipment shall not be operated until the condition has been corrected;

3. Auger holes; persons not to enter:

Correctly Enrolled: _____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Correctly Enrolled: _____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

a. no person shall enter an auger hole for any purpose without having first received permission from a representative of the Oklahoma Department of Mines,

b. auger machines and other related equipment on which persons are required to work during drilling operations shall be protected against falling material from highwalls by heavy gauge screen or equivalent material subject to the approval of the mine inspector. The protective screen shall permit workmen to keep the highwall in view at all times,

c. no work shall be done on the highwall in the vicinity of drilling equipment while it is in operation;

4. Auger equipment; operation:

a. persons shall stay clear of the auger train while it is in motion, and they shall not pass over or under the auger train except where crossing facilities are provided;

b. persons must be in the clear while auger sections are being swung into position,

c. auger operators shall not leave the controls of the equipment while the auger is operating, and

d. when auger operations are performed after dark, adequate illumination shall be provided;

5. Auger Holes; blocking: auger holes shall be securely blocked by spoil or other suitable material before they are abandoned.

SECTION 19. The following general rules and procedures shall be complied with:

1. Each place of work shall be visited by a certified person at the beginning of, and at least once during, each shift and more frequently as is necessary to insure that work is being done in a safe manner;

2. No employee shall be assigned, allowed or required to perform work alone in any area where hazardous conditions exist that would

endanger his safety unless he can communicate with others, can be heard or can be seen;

3. When work is performed after dark, the areas of drilling, blasting, stripping and loading shall be properly illuminated;

4. An authorized, certified person shall be in charge at all times when men are working;

5. Where telephone service is not available, emergency communications shall be provided to the nearest point of assistance; and

6. Arrangements shall be made in advance for obtaining emergency medical assistance and transportation for injured persons.

SECTION 20. Sections 1 through 19 of this act shall be codified in the Oklahoma Statutes as Sections 901 through 919 of Title 45, unless there is created a duplication in numbering.

SECTION 21. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Correctly Enrolled: _____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Passed the House of Representatives the 27th day of February, 1978.

Wm P. Willis
Speaker of the House of Representatives.

Passed the Senate the 30th day of March, 1978.

acting J. Hugh Sutton
President of the Senate.

OFFICE OF THE GOVERNOR

Received by the Governor this 3rd
day of April, 1978
at 4:35, o'clock P M.

By: Bette H. Smith

Approved by the Governor of the State of Oklahoma the 7th day of
April, 1978, at 10:20 o'clock A m.

David L. Boren
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 7th
day of April, 1978,
at 10:55, o'clock A. M.
Jean W. Boyd
By:

Carefully Enrolled by ..... Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

An Act

ENROLLED HOUSE
BILL NO. 1463

BY: PARRIS of the HOUSE

and

JOHNSON of the SENATE

AN ACT RELATING TO MINES AND MINING; AMENDING 45 O.S. 1971, SECTIONS 3 AND 31; PROVIDING FOR APPOINTMENT INSTEAD OF ELECTION OF CHIEF MINING INSPECTOR; DEFINING TERMS; PROVIDING FOR APPOINTMENT OF ASSISTANT MINE INSPECTORS; DELETING CERTAIN CONFLICTING PROVISIONS; REPEALING 45 O.S. 1971, SECTIONS 35 AND 36; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. 45 O.S. 1971, Section 3, is amended to read as follows:

Section 3. The Chief Mine Inspector shall be a citizen of the United States and shall have been a resident of the State of Oklahoma for the three (3) years prior to his appointment to office, and shall have had two (2) years' actual experience as a practical miner. At any time that such office becomes vacant, the Governor shall appoint a successor to complete the unfinished term of office, by and with the consent of the Senate. Such practical miner shall be a person who has actively engaged in the professional endeavor of mining.

The Assistant Mine Inspectors shall possess the same residency requirements necessary for the Chief Mine Inspector and shall be appointed by the Chief Mine Inspector. Such Assistant Mine Inspectors shall be residents of the mining district in which they are appointed to serve and they shall at all times be subject to and under the direction of the Chief Mine Inspector. They shall be

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reimbursed all actual and necessary expenses in accordance with the provisions of the State Travel Reimbursement Act.

SECTION 2. 45 O.S. 1971, Section 31, is amended to read as follows:

Section 31. It shall be the duty of the Chief Mine Inspector to devote the whole of his time to the duties of his office and to see that the mining laws of the state are faithfully executed.

The Chief Mine Inspector shall take charge of and preserve in his office all reports made by the district mine inspectors and transmit to the Governor annually, on or before the first day of August, a synopsis of them together with such other statistical data and matter of public interest as he may have collected. He is hereby authorized to make such examinations and investigations as may enable him to report on the various systems of mining practiced in the state, methods of mine ventilation and kind and classes of machinery employed, and such other matter as may pertain to the general welfare of the public, miners and others connected with mining, and the interest of mine owners and operators in the state. He shall be reimbursed all actual and necessary expenses in accordance with the provisions of the State Travel Reimbursement Act.

SECTION 3. 45 O.S. 1971, Sections 35 and 36, are hereby repealed.

SECTION 4. This act shall become effective January 8, 1979.

Passed the House of Representatives the 4th day of April, 1978.

Speaker pro tem of the House of Representatives.

Passed the Senate the 30th day of March, 1978.

President of the Senate.

OFFICE OF THE GOVERNOR

Received by the Governor this 5th day of April, 1978, at 3:30, o'clock P M.

By: Patricia Smith

Approved by the Governor of the State of Oklahoma the 11th day of April, 1978, at 9:47 o'clock A m.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 11th day of April, 1978, at 11:15, o'clock A M.

By: Jeanne W. Byrd

Corrected, Enrolled and Delivered by the Committee on Engrossed and Enrolled Bills

Chairman

ENR. H. B. NO. 1463
hih

An Act

ENROLLED HOUSE
BILL NO. 1690

BY: FORD and MATHESON of the HOUSE

and

KEATING and JOHNSON of the SENATE

AN ACT RELATING TO MINES AND MINING; AMENDING 45 O.S. 1971, SECTION 729; PROVIDING FOR DETERMINATION BY DEPARTMENT OF MINES AND MINING OF VIOLATIONS BY MINE OPERATORS; PRESCRIBING NOTICE, PROCEDURES AND HEARINGS FOR MAKING SUCH DETERMINATION; AND DENYING MINING PERMITS TO DEFAULTING OPERATORS AND AUTHORIZING ATTORNEY GENERAL TO BRING SUIT.

Vice Chairman, COMMITTEE ON ENROLLED AND ENGROSSED BILLS

(Enrolled in accordance with Senate Bill No. 116 of the Twenty-second Legislature)

ENGROSSED HOUSE
BILL NO. 1690

BY: FORD and MATHESON

AN ACT RELATING TO MINES AND MINING; AMENDING 45 O.S. 1971, SECTION 729; PROVIDING FOR DETERMINATION BY DEPARTMENT OF MINES AND MINING OF VIOLATIONS BY MINE OPERATORS; PRESCRIBING NOTICE, PROCEDURES AND HEARINGS FOR MAKING SUCH DETERMINATION; AND DENYING MINING PERMITS TO DEFAULTING OPERATORS AND AUTHORIZING ATTORNEY GENERAL TO BRING SUIT.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. 45 O.S. 1971, Section 729, is amended to read as follows:

Section 729. The Department shall notify the operator and the surety in writing of any claimed violation of the provisions of this act or the rules and regulations of the Department. If the operator denies the alleged violation, the Department shall hold a hearing on said charges. Said hearing shall be held not less than thirty (30) days from the notice of hearing.

At such hearing the operator shall have the right to present evidence in opposition to the claimed violation.

If upon such hearing the Department shall determine that a violation has occurred, the Department shall make detailed findings of the violation and the necessary corrective measures. The order shall provide a reasonable time, commensurate with the work to be done, for the operator to perform the corrective measures. The surety may perform for the operator.

If the operator fails to perform the corrective work required by the Department or fails to properly perform said work, the Department may contract for the work to be done. The Department shall not issue any permits to an operator who has failed to perform such corrective work, or has defaulted with respect to the bond or other security

Correctly Enrolled: Vice Chairman, Committee on Engrossed and Enrolled Bills

Correctly Engrossed: Chairman, Committee on Engrossed and Enrolled Bills

required by Section 728 of this title, until such obligations are met by the operator or his surety or agent, as determined by the Department.

The Attorney General, upon request of the Department, shall institute proceedings to recover any damages and expense which the Department may have sustained by reason of the default of the operator but in no event shall such recovery exceed the face amount of the bond. Such proceedings shall be brought against the operator and surety either in Oklahoma County or the county in which the violation occurred.

Passed the House of Representatives the 21st day of February, 1978.

Wm P. Willis
Speaker of the House of Representatives.

Passed the Senate the 14 day of March, 1978.

President of the Senate.

Passed the House of Representatives the 21st day of February, 1978.

Wm P. Willis
Speaker of the House of Representatives.

Passed the Senate the 14th day of March, 1978.

Acting President of the Senate.

OFFICE OF THE GOVERNOR

Received by the Governor this 15th day of March, 1978, at 3:00 o'clock P M.

By: Brian W. Smith

Approved by the Governor of the State of Oklahoma the 21st day of March, 1978, at 2:30 o'clock P m.

David L. Boren
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 21st day of March, 1978, at 4:15 o'clock P M.

Jeane W. Byrd

By:

ENR. H. B. NO. 1690
hjn

Correctly Enrolled: [illegible] Vice Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

(Enrolled in accordance with Senate Bill No. 116 of the Twenty-seventh Legislature)

An Act

ENROLLED HOUSE
BILL NO. 1779

BY: ERVIN of the HOUSE

and

SMITH of the SENATE

Correctly Enrolled H.B. No. 1779 by Committee on Energy and Environment

AN ACT RELATING TO OIL AND GAS; AUTHORIZING PROCEEDINGS BEFORE CORPORATION COMMISSION WITH RESPECT TO COMMON CARRIERS OF NATURAL GAS; PROVIDING FOR ORDER TO TRANSPORT NATURAL GAS UNDER CERTAIN CIRCUMSTANCES; DEFINING TERMS; DIRECTING CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. Any person, firm or municipality aggrieved by reason of the refusal by a common carrier of natural gas to purchase or transport natural gas produced by such person or firm or gas production owned by said municipality may file a complaint before the Corporation Commission. The Corporation Commission shall conduct a hearing and take evidence as is necessary to determine the complaint. Notice shall be given to the common carrier at least ten (10) days prior to such hearing. The Corporation Commission shall order the common carrier to purchase or transport the natural gas, and fix a fair rate for such transportation, unless the common carrier establishes and the Commission determines that:

1. Such natural gas cannot reasonably be carried by the named common carrier, because of the difficulty or expense involved;

2. Some other common carrier of natural gas can more conveniently purchase or transport such natural gas; or

3. The gas might dilute or pollute the gas being carried in their line.

SECTION 2. As used herein the term person, firm or municipality shall include all natural persons, corporations, business, municipal and nonprofit, rural gas districts, municipal and industrial trusts.

SECTION 3. Sections 1 and 2 of this act shall be codified in th Oklahoma Statutes as Sections 24.1 and 24.2 of Title 52, unless ther is created a duplication in numbering.

SECTION 4. This act shall become effective October 1, 1978.

Correctly Enrolled: [signature] Vice Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Passed the House of Representatives the 23rd day of March, 1978.

Wm P. Willis
Speaker of the House of Representatives.

Passed the Senate the 21st day of March, 1978.

[signature]
President of the Senate.

OFFICE OF THE GOVERNOR

Received by the Governor this 27th day of March, 1978, at 2:25 o'clock P M.

By: Boston H. Smith

Approved by the Governor of the State of Oklahoma the 29th day of March, 1978, at 10:45 o'clock A m.

[signature]
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 29th day of March, 1978, at 2:45 o'clock P M.

Joann W. Boyd

By:

Correctly Enrolled: [signature], Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

An Act

ENROLLED SENATE
BILL NO. 43

BY: GRANTHAM, DAWSON, FIELD and BERRONG of the SENATE

and

ELDER, WINN, KAMAS, WEICHEL and McKEE of the HOUSE

AN ACT RELATING TO PROPERTY; SUBJECTING CERTAIN MINERAL INTERESTS TO ESCHEAT; REQUIRING REPORTS; AUTHORIZING THE TAX COMMISSION TO MAKE CERTAIN REGULATIONS; PROVIDING PROCEDURES FOR ESCHEAT SALES; DIRECTING CODIFICATION; PROVIDING SEVERABILITY; AND SETTING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. Any mineral interest in land in Oklahoma shall be subject to escheat under the provisions of Sections 271 through 277 of Title 84 of the Oklahoma Statutes if it generates an intangible property interest which is presumed abandoned under the Uniform Disposition of Property Act as provided in Sections 651 through 687 of Title 60 of the Oklahoma Statutes; or under similar laws of another state as described in Section 660 of Title 60 of the Oklahoma Statutes.

All holders of intangible property interests generated by a mineral interest in land in Oklahoma shall report to the Commission, in addition to the reporting otherwise required by law, the names of the last-known owners of record of the unclaimed mineral interest, the legal description of the land affected, and the extent of the property rights in the mineral interest.

The Commission shall send a copy of the report required by this section to the Attorney General and to the district attorney of the county in which the land is located.

Correctly Enrolled. ____ Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

The Commission is authorized to develop procedures for the implementation of this act.

SECTION 2. If the proceeds or other intangible property interest from any mineral interests are abandoned, as provided in Sections 651 through 687 of Title 60 of the Oklahoma Statutes, or under similar laws of another state as described in Section 660 of Title 60 of the Oklahoma Statutes, then the mineral interest which generates the intangible property interest shall be subject to escheat as provided in Sections 271 through 277 of Title 84 of the Oklahoma Statutes.

If a judgment is rendered in favor of the state in such proceedings, a sale of the mineral interest shall be ordered, then:

1. All escheatable mineral interests within a single production unit shall be grouped together, as far as practicable, for purposes of sale.

2. Any interest escheated to the state, or sold by the state in an escheat sale, shall remain subject to all prior valid pooling and drilling orders, rules or regulations of the Corporation Commission.

3. The record owner or owners of the surface from which abandoned mineral interests have been severed shall be mailed at the last-known address as shown by the records of the county treasurer, a notice of the sale of such abandoned mineral interest at least ten (10) days prior to such sale.

SECTION 3. Section 1 of this act shall be codified in the Oklahoma Statutes as Section 658.1 of Title 60, unless there is created a duplication in numbering.

Section 2 of this act shall be codified in the Oklahoma Statutes as Section 271.1 of Title 84, unless there is created a duplication in numbering.

SECTION 4. The provisions of this act are severable and if any part or provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

SECTION 5. This act shall become effective January 1, 1979.

Correctly Enrolled: _____ Chairman, COMMITTEE ON ENGROSSED AND ENGOLLED BILLS

Passed the Senate the 12th day of April, 1978.

acting President of the Senate

Passed the House of Representatives the 13th day of April, 1978.

Speaker of the House of Representatives

Correctly Enrolled: Grady Hall, Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

OFFICE OF THE GOVERNOR

Received by the Governor this 17th day of April, 1978, at 4:30 o'clock P M.

By:

Approved by the Governor of the State of Oklahoma the _____ day of _____, 19____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 24th day of April, 1978, at 12:15 o'clock P M.

By:

An Act

ENROLLED SENATE
BILL NO. 512

BY: JOHNSON, DAHL, ROZELL, TALIAFERRO and WADLEY of the SENATE

and

CRUTCHER, ROBERTS, THOMPSON (Mick) and WILSON of the HOUSE

DO NOT
REMOVE FROM FILE

AN ACT RELATING TO MINES AND MINING; AMENDING 45 O.S. 1971, SECTION 725; PROVIDING SHORT TITLE; DEFINING TERMS; PROVIDING RECLAMATION PERFORMANCE STANDARDS; PROVIDING RECLAMATION PERFORMANCE STANDARDS FOR THE SURFACE EFFECTS OF UNDERGROUND COAL MINES; REQUIRING AVAILABILITY OF CERTAIN RECORDS; AUTHORIZING RULES AND REGULATIONS; REQUIRING COMPLIANCE WITH ALL FEDERAL LAWS, RULES AND REGULATIONS; DIRECTING CODIFICATION; AND DECLARING AN EMERGENCY

ENGROSSED SENATE
BILL NO. 512

BY: JOHNSON, DAHL, ROZELL, TALIAFERRO and WADLEY of the SENATE

and

CRUTCHER of the HOUSE

AN ACT RELATING TO MINES AND MINING; AMENDING 45 O.S. 1971, SECTION 725; PROVIDING SHORT TITLE; DEFINING TERMS; PROVIDING RECLAMATION PERFORMANCE STANDARDS; PROVIDING RECLAMATION PERFORMANCE STANDARDS FOR THE SURFACE EFFECTS OF UNDERGROUND COAL MINES; REQUIRING AVAILABILITY OF CERTAIN RECORDS; AUTHORIZING RULES AND REGULATIONS; REQUIRING COMPLIANCE WITH ALL FEDERAL LAWS, RULES AND REGULATIONS; DIRECTING CODIFICATION; AND DECLARING AN EMERGENCY.

Correctly Enrolled: Chairman, Committee on Enrolled and Enrolled Bills

Correctly Engrossed: Chairman, Committee on Engrossed and Enrolled Bills

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. 45 O.S. 1971, Section 725, is amended to read as follows:

Section 725. (a) All affected land <u>other than lands affected by coal mining operations</u> shall be reclaimed as provided in this ~~act~~ <u>section</u>.

(b) The operator shall determine which parts of the affected land shall be reclaimed for forest, pasture, crop, horticultural, homesite, recreational, industrial or other use including food, shelter and ground cover for wildlife.

(c) All ridges and peaks of overburden created by surface mining shall be graded to a rolling topography traversable by machines or equipment customarily used in connection with the use to be made of the land after reclamation, but such slopes need not be reduced to less than the original grade of the area prior to mining, and the slope of the ridge of overburden resulting from a box cut need not be reduced to less than twenty-five (25) degrees from horizontal. Surface mining operations conducted in the flood plains of streams

and rivers and subject to periodic flooding shall be exempt from the grading requirements of this section.

(d) The operator may construct earth dams to form lakes in pits resulting from surface mining operations, provided that the formation of lakes shall not interfere with other mining operations or damage property of others.

(e) The operator shall cover the exposed face of a mineral seam, where significant concentrations of acid-forming materials are present, to a depth of not less than three (3) feet with earth that will support plant life or with a permanent water impoundment.

(f) The operator shall grade down the banks of any pits or depressions created by the removal of sand or gravel by surface mining to a degree of slope determined by the Department, which shall give due consideration to the natural topography of the land affected and adjacent lands, the composition of such banks and the most beneficial use of the pits and depressions comprising the affected land after reclamation.

(g) All affected land except that which is to be covered with water or used for homesites or industrial purposes shall be revegetated by the planting of seeds, plants, trees, shrubs or other plantings appropriate to the use to be made of the land as determined by the operator. No planting of any kind shall be required on any affected land so long as the chemical and physical characteristics of the soil of such affected land are toxic, deficient in plant nutrients or composed of sand, gravel, shale or stone to such an extent as to seriously inhibit plant growth. The Department may prescribe by rules and regulations the required density of such plantings, and may make replanting requirements.

(h) Except where prevented by weather conditions, all grading shall be completed within one year after mining of the affected land has been completed. Initial seeding or planting shall be made at the first appropriate time following completion of grading. If the operator is unable to acquire sufficient planting stock of desired species from state nurseries, or acquire such species elsewhere at comparable prices the Department shall grant the operator an

extension of time until planting stock is available to plant such land as originally planned.

SECTION 2. This act shall be known and may be cited as the "Coal Reclamation Act of 1978."

SECTION 3. As used in this act:

1. Affected land means the area of land from which overburden shall have been removed, or upon which overburden or refuse has been deposited, or both. It includes all land disturbed by surface coal mining operations;

2. Approximate original contour means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated;

3. Department means the office of the Chief Mine Inspector, herein called the Department of Mines and Mining, or such department, bureau or commission as may lawfully succeed to the powers and duties of such Department;

4. Director means the Chief Mine Inspector of the State of Oklahoma or such officer, bureau or commission as may lawfully succeed to the powers and duties of such Chief Mine Inspector;

5. Hydrologic balance means the relationship between the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaporation and the change in ground and surface water storage;

6. Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves thence along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration;

Correctly Engrossed: Chairman, Committee on Engrossed and Enrolled Bills

Correctly Enrolled:

7. Operator means any person, partnership, firm or corporation engaged in and controlling a coal mining operation who removes or intends to remove more than two hundred fifty (250) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one location;

8. Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil;

9. Regulatory authority means the Department of Mines and Mining;

10. Roads mean access and haul roads constructed, used, reconstructed, improved or maintained for use in surface coal mining and reclamation operations, including use by coal-hauling vehicles leading to transfer, processing or storage areas. The term includes any such road used and not graded to approximate original contour within forty-five (45) days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all federal, state, county or local roads are excluded;

11. Slope means average inclination of a surface, measured from the horizontal; normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e.g., one unit vertical (1v) to five units horizontal (5h)=20 percent=11.3 degrees);

12. Soil horizons mean contrasting layers of soil lying one below the other, parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three (3) major soil horizons are:

a. A horizon. The uppermost layer in the soil profile often called the surface soil. It is the part of the soil in which organic matter is most abundant and where leaching of soluble or suspended particles is the greatest,

b. B horizon. The layer immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron or aluminum than the A or C horizons, and

c. C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity;

13. Spoil means displaced overburden; and

14. Surface coal mining operations mean:

a. activities conducted on the surface of lands in connection with a surface coal mine or surface operations and surface impacts incident to an underground coal mine. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site. Such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16 2/3%) of the tonnage of minerals removed for purposes of commercial use or sale or coal exploration, and

b. the areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to such activities.

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SECTION 4. All surface coal mining operations which commence operations pursuant to a permit issued on or after February 3, 1978, shall comply, and such permits shall contain terms requiring compliance with the provisions set out in this act.

On and after May 3, 1978, all surface coal mining operations shall comply with this act, except as provided below.

SECTION 5. Surface coal mining operations in operation pursuant to a permit issued by this state before August 3, 1977, issued to a person in existence prior to May 2, 1977, and operated by a person whose total annual production of coal from surface and underground coal mining operations does not exceed one hundred thousand (100,000) tons shall not be subject to the provisions of this section except with reference to the provisions relating to steep slope mining in Section 15 of this act until January 1, 1979.

SECTION 6. The operator shall restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as such use or uses do not present any actual or probable hazard to public health or safety or of water diminution or pollution. The permit applicant's declared proposed land use following reclamation shall not be impractical or unreasonable, inconsistent with applicable land use policies and plans, involve unreasonable delay in implementation, or violate federal, state or local law.

SECTION 7. The operator shall backfill, compact where advisable to insure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour of the land with all highwalls, spoil piles and depressions eliminated unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this act.

SECTION 8. In surface coal mining:

1. Which is carried out at the same location over a substantial period of time when the operation transects the coal deposit;

2. The thickness of the coal deposits relative to the volume of the overburden is large; and

3. Where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour;

the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose. The operator shall provide adequate drainage and cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region.

SECTION 9. In surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall after restoring the approximate contour, backfill, grade and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region. Such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion and water pollution and shall be revegetated in accordance with the requirements of this act.

SECTION 10. The operator shall remove the topsoil from the land in a separate layer, replace it on the backfill area or if not utilized immediately, segregate it in a separate pile from other spoil. When the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, the operator shall maintain a successful cover by quick-growing plants or other means so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored

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during reclamation. If the topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate and preserve in a like manner such other strata which is best able to support vegetation.

SECTION 11. The operator shall minimize the disturbances to the prevailing hydrologic balance, at the mine site and in associated offsite areas, and to the quality and quantity of water in surface and ground water systems both during and after surface coal mining operations and during reclamation by:

1. Avoiding acid or other toxic mine drainage by such measures as, but not limited to:

a. preventing or removing water from contact with toxic producing deposits,

b. treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses, and

c. casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering ground and surface waters;

2. a. Conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law, and

b. constructing any siltation structures pursuant to this paragraph prior to commencement of surface coal mining operations. Such structures shall be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

3. Cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the Department;

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4. Restoring recharge capacity of the mined area to approximate premining conditions;

5. Avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

6. Preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

7. Such other actions as the Department may prescribe.

SECTION 12. The operator shall design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with the standards and criteria developed by the Department, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments.

SECTION 13. The operator shall insure that explosives are used only in accordance with existing state and federal law and the regulations promulgated by the Department, which shall require:

1. Adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality, and by mailing a copy of the proposed blasting schedule to every resident living within one-half (1/2) mile of the proposed blasting site and by providing daily notice to resident/occupiers in such areas prior to any blasting;

2. Maintaining for a period of at least three (3) years and making available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

3. Limiting the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts

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on any underground mine, and change in the course, channel, or availability of ground or surface water outside the permit area;

4. All blasting operations be conducted by trained and competent persons as certified by the Department; and

5. Upon the request of a resident or owner of a man-made dwelling or structure within one-half (1/2) mile of any portion of the permitted area the applicant or permittee shall conduct a pre-blasting survey of such structures and submit the survey to the Department and a copy to the resident or owner making the request. The area of the survey shall be decided by the Department.

SECTION 14. The operator shall establish on the regraded areas and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except, that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan.

SECTION 15. The following performance standards shall be applicable to steep slope surface coal mining and shall be in addition to those general performance standards required by this act. These provisions shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area.

1. The operator shall insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut;

2. Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the appropriate original contour, which material will maintain stability following mining and reclamation;

3. The operator may not disturb land above the top of the highwall unless the Department finds that such disturbance will

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facilitate compliance with the environmental protection standards of this act. The land disturbed above the highwall shall be limited to that amount necessary to facilitate said compliance; and

4. For the purposes of this section, the term steep slope is any slope above twenty (20) degrees or such lesser slope as may be defined by the Department after consideration of soil, climate and other characteristics of a region or state.

SECTION 16. Where a surface coal mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, such operation shall require that:

1. The toe of the lowest coal seam and the overburden associated with it are retained in place as a barrier to slides and erosion;

2. The reclaimed area is stable;

3. The resulting plateau or rolling contour drains inward from the outslopes except at specified points;

4. No damage will be done to natural watercourses;

5. Spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use; and

6. Stability of the spoil retained on the mountaintop is insured and meets the other requirements of this act.

Such operation shall not be required to restore the original contour as provided in Section 7 of this act.

SECTION 17. If the area proposed to be mined contains prime farmland, the Department shall, after consultation with the United States Secretary of Agriculture, and pursuant to regulations issued by the United States Secretary of the Interior with the concurrence of the United States Secretary of Agriculture, grant a permit to mine on prime farmland if the Department finds in writing that the operator has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards.

Correctly Engrossed — Chairman, Committee on Engrossed and Enrolled Bills — Correctly Enrolled

The requirements of this section shall apply to all permits issued after August 3, 1977.

Nothing in this section shall apply to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing surface mining operations for which a permit was issued prior to August 3, 1977.

1. The operator shall be required to segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

2. Segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of such horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil; and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

3. Replace and regrade the root zone material described in paragraph 2 above with proper compaction and uniform depth over the regraded spoil material; and

4. Redistribute and grade in a uniform manner the surface soil horizon described in paragraph 1 of this section.

SECTION 18. To be considered prime farmland, soils shall meet all of the following criteria:

1. The soils have:

a. aquic, udic, ustic or xeric moisture regimes and sufficient available water capacity within a depth of forty (40) inches, or in the root zone if the root zone is less than forty (40) inches deep, to produce the commonly grown crops in seven (7) or more years out of ten (10), or

b. xeric or ustic moisture regimes in which the available water capacity is limited but the area has a developed irrigation water supply that is dependable and of adequate quality; a dependable water supply is one in which enough water is available for irrigation in eight (8) out of ten (10) years for the crops commonly grown, or

c. aridic or torric moisture regimes and the area has a developed irrigation water supply that is dependable and of adequate quality;

2. The soils have a temperature regime that is frigid, mesic, thermic or hyperthermic; pergelic and cryic regimes are excluded. These are soils that at a depth of twenty (20) inches have a mean annual temperature higher than thirty-two (32) degrees Fahrenheit. In addition, the mean summer temperature at this depth in soils with an O horizon is higher than forty-seven (47) degrees Fahrenheit; in soils that have no O horizon the mean summer temperature is higher than fifty-nine (59) degrees Fahrenheit;

3. The soils have a pH between four and five-tenths (4.5) and eight and four-tenths (8.4) in all horizons within a depth of forty (40) inches or in the root zone if the root zone is less than forty (40) inches deep;

4. The soils either have no water table or have a water table that is maintained at a sufficient depth during the crop season to allow food, feed, fiber, forage and oilseed crops common to the area, to be grown;

5. The soils can be managed so that, in all horizons within a depth of forty (40) inches or in the root zone if the root zone is less than forty (40) inches deep, during part of each year the electric conductivity of saturation extract is less than four mili mhos per centimeter (4 mmhos/cm) and the exchangeable sodium percentage (ESP) is less than fifteen (15);

6. The soils are not flooded frequently during the growing season, less often than once in two (2) years;

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7. The soils have a product of K (erodibility factor) times percent slope of less than two (2.0) and a product of I (soil erodibility) times C (climatic factor) not exceeding sixty (60);

8. The soils have a permeability rate of at least 0.06 inch per hour in the upper twenty (20) inches and the mean annual soil temperature at a depth of twenty (20) inches is less than fifty-nine (59) degrees Fahrenheit; the permeability rate is not a limiting factor if the mean annual soil temperature is fifty-nine (59) degrees Fahrenheit or higher; and

9. Less than ten percent (10%) of the surface layer, upper six (6) inches, in these soils consists of rock fragments coarser than three (3) inches.

SECTION 19. The land shall not be considered prime farmland where the applicant can demonstrate one or more of the following situations:

1. Lands within the proposed permit boundaries have been used for the production of cultivated crops for less than five (5) years out of twenty (20) years preceding the date of the permit application;

2. The slope of all land within the permit area is ten percent (10%) or greater;

3. Land within the permit area is not irrigated or naturally subirrigated, has no developed water supply that is dependable and of adequate quality, and the average annual precipitation is fourteen (14) inches or less;

4. Other factors exist, such as a very rocky surface or the land is frequently flooded, which clearly place all land within the area outside the purview of prime farmland; or

5. A written notification based on scientific findings and soil surveys that land within the proposed mining area does not meet the applicability requirements in Section 18 of this act is submitted to the Department by a qualified person other than the applicant, and is approved by the Department.

SECTION 20. Each permit issued relating to underground coal mining shall require the operator to:

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1. Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible. The operator shall maximize mine stability and maintain the value and reasonably foreseeable use of surface lands, except in those instances when the mining technology used requires planned subsidence in a predictable and controlled manner. Nothing in this paragraph shall be construed to prohibit the standard method of room and pillar mining;

2. Seal all portals, entryways, drifts, shafts or other openings between the surface and underground mine working when no longer needed for the conduct of the mining operations;

3. Fill or seal exploratory holes no longer necessary for mining, maximizing to the extent technologically and economically feasible the return of mine and processing waste, tailings and any other waste incident to the mining operation, to the mine workings or excavations;

4. Stabilize, with respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine workings or excavations, all waste piles created by the permittee from current operations through construction in compacted layers including the use of incombustible and impervious materials if necessary. The operator shall assure that the leachate will not degrade below water quality standards established pursuant to applicable federal and state law surface or ground waters. The operator shall assure that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

5. Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments as required by the Department;

6. Establish on regraded areas and all other lands affected, a diverse and permanent vegetative cover capable of self-regeneration

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and plant succession and at least equal in extent of cover to the natural vegetation of the area;

7. Protect offsite areas from damages which may result from such mining operations;

8. Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to the public health and safety;

9. Minimize the disturbances of the prevailing hydrologic balance at the minesite and in associated offsite areas and to the quantity of water in surface ground water systems both during and after coal mining operations and during reclamation by:

a. avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(1) preventing or removing water from contact with toxic producing deposits,

(2) treating drainage to reduce toxic content which adversely affects downstream water upon being released to watercourses, and

(3) casing, sealing or otherwise managing boreholes, shafts and wells to keep acid or other toxic drainage from entering ground and surface waters, and

b. conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area. In no event shall such contributions be in excess of requirements set by applicable state or federal law. The operator shall avoid channel deepening or enlargement in operations requiring the discharge of water from mines;

10. Operate, with respect to other surface impacts not specified in this section, including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities or other property or materials on the surface, resulting from or incident to such activities, in accordance with the

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Correctly Engrossed: Chairman Committee on Engrossed and Enrolled Bills

standards established under this title for such effects which result from surface coal mining operations. The Department shall make such modifications in the requirements imposed by this paragraph as are necessary to accommodate the distinct difference between surface and underground coal mining;

11. Minimize, to the extent possible using the best technology currently available, disturbances and adverse impacts of the operation on fish, wildlife and related environmental values and achieve enhancement of such resources where practicable; and

12. Locate openings for all new drift mines working acid-producing or iron-producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

SECTION 21. A copy of all current permits, licenses, approved plans or other authorizations to operate the mine shall be available for inspection at or near the mine site.

SECTION 22. By February 3, 1978, and no later than April 3, 1973, the Department shall make and have published such necessary rules and regulations for the implementation of this act. If no regulations are adopted by February 3, 1978, the relevant regulations then in force by the Office of Surface Mining, United States Department of the Interior, shall be followed in all permit applications and surface mining operations, until April 3, 1978. If by April 3, 1978, the Department shall not have adopted and published the necessary rules and regulations, the Governor shall have necessary rules and regulations drafted and implemented.

SECTION 23. In compliance with all federal laws, rules and regulations, the Department shall take any such action as it shall deem necessary to make such compliance. The Department shall make every effort to obtain full reimbursement from the Director of the Office of Surface Mining and Reclamation for the costs of performing its duties under this act.

SECTION 24. The Department is authorized to call upon the expertise of all state agencies in the implementation of this act. All state agencies shall provide any assistance as available on the request of the Department.

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SECTION 25. Sections 2 through 24 of this act shall be codified in the Oklahoma Statutes as Sections 742 through 764 of Title 45, unless there is created a duplication in numbering.

SECTION 26. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 25th day of January, 1978.

acting President of the Senate

Passed the House of Representatives the 31st day of January, 1978.

Speaker of the House of Representatives

Correctly Enrolled

Chairman, Committee on Engrossed and Enrolled Bills

Correctly Engrossed

Passed the Senate the 25th day of January, 1978, and correctly enrolled the 31st day of January, 1978.

acting President of the Senate

Passed the House of Representatives the 31st day of January, 1978.

Wm P. Willis
Speaker of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 1st
day of February, 1978,
at 4:00, o'clock P M.

By: Botsworth Smith

Approved by the Governor of the State of Oklahoma the 2nd day of February, 1978, at 5:25 o'clock P M.

David B. Boren
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 3rd
day of February, 1978,
at 9:00, o'clock A M.

Jerome W. Byrd
By:

Correctly Enrolled: Ezzie Reese, Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS
(Enrolled in accordance with Senate Bill No. 116 of the Twenty-seventh Legislature)

ENR. S. B. NO. 512

An Act

ENROLLED SENATE
BILL NO. 531

BY: SCHUELEIN and WADLEY of the SENATE

and

VAUGHN of the HOUSE

AN ACT RELATING TO MINES AND MINING; AMENDING 45 O.S. 1971, SECTIONS 1 AND 2; PROVIDING FOR THE STATE MINING BOARD; PROVIDING FOR APPOINTMENT, QUALIFICATIONS, DUTIES AND REIMBURSEMENT OF MEMBERS; PROVIDING FOR MEETINGS AND VOTING; PROVIDING CERTAIN GUIDELINES FOR HEARINGS OF THE BOARD; EXPANDING BOARD AND CHANGING QUALIFICATIONS; PROVIDING REQUIREMENTS FOR CERTIFICATES OF COMPETENCY; REQUIRING EXAMINATIONS AND DEMONSTRATIONS; LIMITING ADMINISTRATION OF TEST TO CERTAIN BOARD MEMBERS; REQUIRING CERTAIN OTHER QUALIFICATIONS; PROVIDING CERTAIN RECORDS; AND PROVIDING PENALTIES.

Correctly Enrolled, ... Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Enrolled in accordance with Senate Bill No. 116 of the Twenty-seventh Legislature

ENGROSSED SENATE
BILL NO. 531

BY: SCHUELEIN and WADLEY of the SENATE

and

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AN ACT RELATING TO MINES AND MINING; AMENDING 45 O.S. 1971, SECTIONS 1 and 2; PROVIDING FOR THE STATE MINING BOARD; PROVIDING FOR APPOINTMENT, QUALIFICATIONS, DUTIES AND REIMBURSEMENT OF MEMBERS; PROVIDING FOR MEETINGS AND VOTING; PROVIDING CERTAIN GUIDELINES FOR HEARINGS OF THE BOARD; EXPANDING BOARD AND CHANGING QUALIFICATIONS; PROVIDING REQUIREMENTS FOR CERTIFICATES OF COMPETENCY; REQUIRING EXAMINATIONS AND DEMONSTRATIONS; LIMITING ADMINISTRATION OF TEST TO CERTAIN BOARD MEMBERS; REQUIRING CERTAIN OTHER QUALIFICATIONS; PROVIDING CERTAIN RECORDS; AND PROVIDING PENALTIES.

Correctly Enrolled: Chairman, Committee on Engrossed and Enrolled Bills

Correctly Engrossed: Chairman, Committee on Engrossed and Enrolled Bills

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. 45 O.S. 1971, Section 1, is amended to read as follows:

Section 1. ~~(A)~~ ~~A~~ A. The State Mining Board ~~is hereby created~~ which shall be composed of ~~five~~ seven (7) members~~, two~~. Four of ~~whom~~ such members shall be practical miners, two of which shall be strip miners and shall not be required to hold a certificate of competency and two of such members shall hold a Mine Superintendent, Mine Foreman or a Fire Boss Certificate issued by this state. Two of such members shall be superintendents or owners of coal ~~operators~~ mines, and the last member shall be the Chief Mine Inspector, who shall be the executive officer of the Board. Provided that, the two strip miner members of the Board shall be appointed to serve terms coterminous with the present members of the Board. A practical miner shall be such person who has actively engaged in the professional endeavor of mining for two (2) years. The Governor shall receive recommendations as to the appointment of miner members of the Board from miners and shall receive recommendations as to the appointment

of the coal operator members from the coal operators, and such members shall be appointed by the Governor and with the consent of the Senate, for a term of four (4) years, or until their successors are appointed and qualified unless sooner removed for cause. Provided that any member being appointed to the Board shall have been a qualified elector of the State of Oklahoma for at least three (3) years prior to his appointment. ~~After the passage of this act, no person shall be appointed to said Board unless he holds a Mine Superintendent, a Mine Foreman, or a Fire Boss Certificate issued by the State of Oklahoma.~~ A majority of said Board shall constitute a quorum to transact business and they shall have the power to adopt rules and regulations in connection with new methods of mining affecting the health and safety of persons employed in the mines. The Chief Mine Inspector shall execute the orders, rules, and regulations ~~made and~~ promulgated by the Mining Board. ~~Said~~ The Board shall meet at such times and places as the members may deem most convenient for the transaction of business and the examination of applicants for certificates of competency; provided, that members of said Board ~~except the Chief Mine Inspector~~ shall receive ~~per diem~~ reimbursement for actual and necessary travel expenses as provided in the State Travel Reimbursement Act for not more than three twelve (12) days in any one ~~quarter~~-annual period. ~~Said Board shall be composed of citizens of the United States and of the State of Oklahoma, and shall take the oath of office as prescribed in the Constitution.~~

~~(B)~~ B. Two ~~(2)~~ members of the Mining Board or the executive officer may call a meeting of the Mining Board at any time and at any place within the state. Only in case of a tie vote shall the executive officer have the right to vote.

~~(C)~~ C. In conducting hearings before the Mining Board, any member of the Mining Board shall have the power to administer oaths to any and all persons appearing before the Mining Board, and any person who shall wilfully, corruptly, and falsely testify under oath with respect to any charges or evidence offered shall be deemed

guilty of perjury and shall be subject to the penalties as prescribed by the laws of this state.

SECTION 2. 45 O.S. 1971, Section 2, is amended to read as follows:

Section 2. ~~(A)~~ A. It shall be unlawful for any person in this state to act as ~~Chief Mine Inspector,~~ district mine inspector, mine superintendent, mine foreman, fire boss, shot firer or hoisting engineer who handles men on slope or on cage other than the rope rider, in any underground coal mine with shafts, slopes, drifts or tunnels for the extraction of coal within this state, without first having obtained a certificate of competency from the State Mining Board as herein provided for.

The examination ~~given by the State Mining Board to an applicant~~ for a certificate of competency as mine superintendent, mine foreman, fire boss, shot firer, or hoisting engineer shall be administered by only those members of the Board who also hold certificates of competency and shall include a written or oral or written and oral examination to determine that he fully understands the requirements of the coal mining laws of ~~the~~ this state ~~of Oklahoma~~.

Each applicant for a certificate of competency as mine superintendent, mine foreman, fire boss, or shot firer shall also demonstrate ~~to the State Mining Board~~ that he can correctly distinguish, name and describe the purpose of each part of at least one kind of a permissible flame safety lamp and correctly assemble all parts in a complete safety lamp. By actual tests in a test chamber each applicant shall demonstrate that he can correctly use a permissible flame safety lamp and that with such a lamp he can detect methane in air in amounts of one and five-tenths percent (1.5%) ~~per cent~~ or less. If the applicant receives a certificate from the State Mining Board it shall state plainly on the certificate whether or not the applicant has to wear glasses to detect said quantity of gas.

Each applicant for mine superintendent, mine foreman, or fire boss certificate of competency shall demonstrate that he can correctly use an anemometer and can correctly calculate mine air

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quantities and he shall describe ~~to the Board~~ the correct method of removing gas accumulations.

The Board may require such additional actual demonstrations of devices or equipment as it believes necessary to determine that the applicant is fully qualified to fulfill the duties of the position requiring such certificate of competency.

Each applicant for mine superintendent, mine foreman, fire boss, or shot firer shall hold a first-aid certificate issued to him within two (2) years previous to the date of the examination by the U. S. Bureau of Mines, American Red Cross, or other organization recognized by the ~~State Mining~~ Board. The applicant shall also prove to the applicable members of the Board that he is well versed in the use of mine rescue apparatus and in mine rescue recovery operations, provided that the examination of his knowledge of the use of mine rescue apparatus shall be waived if the applicant shows a mine rescue certificate issued within two (2) years previous to the examination by the U. S. Bureau of Mines or other organization recognized by the ~~State Mining~~ Board. Each applicant shall prove by examination that he fully understands the meaning of the word "permissible" as used on mining machinery, explosives, and other devices approved by the U. S. Bureau of Mines.

Certificates of competency for the positions enumerated shall be granted to persons who have given the State Mining Board satisfactory evidence of their ability to perform the duties of the positions applied for, and who shall have obtained the necessary grade determined by the Board for the respective positions. In determining the grade of ~~each applicant~~ applicants, due respect shall be given to their previous experience and record of service and which shall have equal weight with their oral or written examination testing their practical and technical knowledge for the certificate of competency they seek.

~~(B)~~ B. The Superintendent or Operator of each ~~and every~~ coal mine shall keep a record on the surface of the mine of the certificates of competency issued by the ~~State Mining~~ Board of each ~~and every~~ employee therein required to obtain a certificate of

competency, and this record shall be available for inspection by interested persons.

~~(c)~~ C. A violation of the provisions of ~~this Act~~ Sections 1 through 8 of this title shall be deemed a misdemeanor and shall be punished by a fine of not less than Fifty Dollars ($50.00), or more than Two Hundred and Fifty Dollars ($250.00), or by imprisonment in the county jail for not less than ten (10) days nor more than thirty (30) days, or by both such fine and imprisonment.

Passed the Senate the 8th day of February, 1978.

Secretary _____
President of the Senate

Passed the House of Representatives the 27th day of March, 1978.

Wm P. Willis
Speaker of the House of Representatives

Correctly Engrossed: Chairman, Committee on Engrossed and Enrolled Bills

Correctly Enrolled: Chairman, Committee on Engrossed and Enrolled Bills

Passed the Senate the 8th day of February, 1978, and correctly enrolled the 27th day of March, 1978.

[signature]
President of the Senate

Passed the House of Representatives the 27th day of March, 1978.

[signature]
Speaker of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 28th day of March, 19 78, at 4:30, o'clock P M.

By: [signature]

Approved by the Governor of the State of Oklahoma the 31st day of March, 19 78, at 2:55 o'clock P M.

[signature]
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 31st day of March, 19 78, at 3:50 o'clock P M.

Jeanne W. Byrd

By: [signature]

Correctly Enrolled: [signature] Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

(Enrolled in accordance with Senate Bill No. 113 of the Twenty-seventh Legislature)

E.R. S. B. NO. 531

ENGROSSED

HOUSE JOINT RESOLUTION NO. 95

House Amendments in [ ] - February 16, 1978

Continuing the Joint Subcommittee of the House Mining and Mineral Resources Committee and the Senate Agriculture, Conservation and Natural Resources Committee requested to study the effects of surface mining of coal on highways, watercourses, buildings and structures located nearby; and to examine the present surface mining regulatory program being conducted by the Department of Conservation and Economic Development.

Patron--Quillen

Referred to the Committee on Mining and Mineral Resources

WHEREAS, the surface mining of coal is of great economic importance to the Commonwealth and provides a vital energy source to both this State and the nation; and

WHEREAS, recognizing the importance of the surface mining of coal and the needs for an effective regulatory program, the General Assembly in nineteen hundred seventy-seven, pursuant to House Joint Resolution No. 285, created a Joint Subcommittee to study certain effects of coal surface mining and to examine the overall State regulatory program conducted by the Division of Mined Land Reclamation of the Department of Conservation and Economic Development; and

WHEREAS, the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) was enacted into law by the United States Congress on August third, nineteen hundred seventy-seven; and

WHEREAS, the scope and impact of the newly enacted Federal law is substantial and will require major efforts by coal producing states in order to comply with its provisions; and

WHEREAS, a great deal of time and effort has been expended by both the General Assembly and the Department of Conservation and Economic Development in order to fully understand and comply with the new Federal law; and

WHEREAS, although the Joint Subcommittee worked diligently

throughout the past year, much work remains to be done; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Joint Subcommittee of the Mining and Mineral Resources Committee of the House of Delegates and the Agriculture, Conservation and Natural Resources Committee of the Senate studying Surface Mining of Coal, created pursuant to House Joint Resolution No. 285 by the nineteen hundred seventy-seven Session of the General Assembly, is hereby continued. The Joint Subcommittee shall continue its study on surface mining and shall provide legislative advice and guidance to those State agencies involved in bringing Virginia into compliance with the provisions of the Surface Mining Control and Reclamation Act of 1977. The Joint Subcommittee shall thoroughly analyze the extent of federal funding available for conducting the coal surface mining regulatory program pursuant to the Federal act.

The present six members shall continue to serve on the Joint Subcommittee. In addition to those already serving, the Joint Subcommittee is hereby enlarged by [~~two~~ three] members to be appointed as follows: the Chairman of the Mining and Mineral Resources Committee of the House shall choose [~~one person~~ two additional persons] from the membership thereof and the Privileges and Elections Committee of the Senate shall choose one person from the membership of the Senate. In the event that a vacancy should occur, a successor shall be appointed in the same manner as the original appointment. Upon completion of its study, the Joint Subcommittee shall introduce such legislation and make such recommendations as it deems appropriate.

CHAPTER 729

An Act to amend and reenact §§ 45.1-7, 45.1-12, 45.1-13, 45.1-17, 45.1-26, 45.1-30, 45.1-34, 45.1-36, 45.1-37, 45.1-39, 45.1-40, 45.1-44, 45.1-48, 45.1-59, 45.1-68, 45.1-69, 45.1-90 and 45.1-98 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 45.1-53.1 and 45.1-99.1, the amended and added sections relating to coal mine health and safety; prohibited acts; penalties.

[S 188]

Approved APR 9 1978

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-7, 45.1-12, 45.1-13, 45.1-17, 45.1-26, 45.1-30, 45.1-34, 45.1-36, 45.1-37, 45.1-39, 45.1-40, 45.1-44, 45.1-48, 45.1-59, 45.1-68, 45.1-69, 45.1-90 and 45.1-98 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 45.1-53.1 and 45.1-99.1 as follows:

§ 45.1-7. Board of Examiners; membership; appointment, terms, qualifications, etc., of appointive members.—(a) The Board of Examiners in the Division of Mines is continued *and shall be a function of the Division* . The Board shall consist of the Chief and ~~two~~ *six* members to be appointed by the Governor. All vacancies occurring on the Board among appointive members shall be filled by the Governor for the unexpired term. One of the appointive members of such Board shall be a miner holding a mine foreman's certificate, first class, who has had at least five years' practical experience in *underground* mining, and who is actually employed in mining coal in a nonsupervisory capacity at the time of appointment; ~~and~~ *one of the appointive members shall be a miner who has had at least five years' practical experience in surface mining, and who is actually currently employed in mining coal in a nonsupervisory capacity at the time of appointment; one of the appointive members shall be a miner who has had at least five years practical experience in the mining of minerals other than coal, and who is actually currently employed in a nonsupervisory capacity at the time of appointment; one of the appointive members shall be an operator, who is, at the time of appointment, actually engaged in the operation of a surface coal mine in this State, and holding a mine foreman's certificate, first class;* one appointive member shall be an operator, who is, at the time of appointment, actually engaged in the operation of ~~a~~ *an underground* coal mine in this State, and holding a mine foreman's certificate, first class *; and one of the appointive members shall be an operator, who is, at the time of appointment, actually engaged in the operation of a noncoal mine in this State* .

(b) The terms of the present appointed members shall continue until their term of office expires. Thereafter as continue until their term of office expires. Thereafter as the terms of office, respectively, of the members expire, the Governor shall appoint, to fill the vacancies so occasioned, qualified persons whose terms shall be for four years from the day on which that of their immediate predecessors expired.

(c) Each appointment on such Board may be made from a list of at least five names from each group submitted to the Governor or to the Governor-elect by the Commissioner of Labor and Industry, except that each miners' organization in the State, if they so desire shall have the right to nominate ~~one member~~ *two members* of their organization for membership on the Board, to be considered by the Governor for the miner ~~member~~ *members* on the Board. Nominations are to be made to the Governor by June first of the year in which vacancies occur by expiration of term of appointment. In no case shall the Governor be bound to make any appointment from the nominations submitted.

§ 45.1-12. Examination and certification of certain persons employed in mines.—The Board may require certification of persons who work in mines and who are responsible for the operation, inspection or maintenance of machinery or equipment of any kind whatsoever which is used in mines or mining, or the installation, operation, repair or maintenance of electrical systems or equipment, or the use or handling or storage of explosives in connection with mining or mining operations, and such persons whose duties and responsibilities in relation to mining require competency, skill or knowledge in order to perform consistently with the health and safety of persons and property. Certification shall be required for a mine foreman, section foreman, fire boss, surface mine foreman, chief electrician, *hoisting personnel, firers of shot,* maintenance foreman or repairman.

The Board may require examination of applicants for certification, and may require such other information from applicants as may be necessary to ascertain competency and qualifications *for each particular job skill* . The examinations herein provided for shall be conducted under such rules, conditions and regulations as the Board shall deem most efficient for carrying into effect the spirit and intent of Chapters 1 to 14 (§§ 45.1-1 to 45.1-161) of this title. Such rules, when formulated, shall be made a part of the permanent record of the Board, and such of them as relate to candidates shall be published for their information and guidance at least ten days prior to each examination, and shall be of uniform application to all candidates. Any person engaged in any activity for which certification is required by the Board before the effective date of the Board's regulations promulgated hereunder may continue such activity without certification. No person taking the examination shall be issued a certificate of competency whose grade on any one subject is less than seventy-five per centum. The Board shall observe the following requirements in conducting the examination:

(a) Each applicant for a mine foreman, assistant or section foreman certificate shall prove to the Board or Chief subject to approval of the Board by written and oral examination and by demonstration where practicable, that he has a thorough knowledge of the theory and practice of coal mining; nature and properties of noxious, poisonous, and explosive gases, and methods for their detection and control; requirements of the coal-mining laws of this State; and responsibilities and duties of a mine foreman under State law; and that he is otherwise qualified by law.

(b) Each applicant for a fire boss certificate shall prove to the Board, or Chief subject to approval of the Board, by written and

oral examination and by demonstration where practicable, that he has a thorough knowledge of the nature and properties of noxious, poisonous, and explosive gases and methods for their detection and control; practical aspects of coal mining pertaining especially to ventilation and roof control; responsibilities of a fire boss under the coal-mining laws of this State; and that he is otherwise qualified by law.

(c) Each applicant for a chief electrician, maintenance foreman or repairman certificate shall prove to the Board, or Chief subject to approval of the Board, by written and oral examination, that he has a thorough knowledge of the theory and practice of electricity and maintenance of equipment that pertains to coal mining and that he is otherwise qualified by law.

(d) Each applicant for a surface foreman certificate shall prove to the Board, or Chief, subject to approval of the Board, by written and oral examination that he has a thorough knowledge of the theory and practice of surface coal mining and that he is otherwise qualified by law.

§ 45.1-13. Revocation of certificate; reexamination; filing of certificate at mine office; replacement of lost or destroyed certificates.–Any certificate granted before and subsequent to June twenty-seven, nineteen hundred sixty-six, may be revoked by the Board after hearing, upon due notice to the holder of the certificate, and upon written charges preferred by the Chief, or his designated agent, or ten persons, or in mines employing less than ten employees, a majority of the employees at the mine in which he is employed. Complaint may be filed against the holder of a certificate for intoxication while in duty status, mental disabilities, neglect of duty, violation of the coal-mining laws of this State, *use of any controlled substance without the prescription of a licensed physician,* or other sufficient cause. The holder of a certificate so revoked shall be entitled to examination by the Board after three months have elapsed from the date of revocation thereof; provided he can prove to the satisfaction of the Board that the cause for revocation of his certificate has ceased to exist. The holder of a mine foreman, assistant or section foreman, or fire boss certificate issued before or after June twenty-seven, nineteen hundred sixty-six, shall present same or photostatic copy thereof to the official of the mine where he is employed, who shall file said certificate or photostatic copy thereof in the office at said mine, and such file shall be made available for inspection by interested persons. In case of the loss or destruction of any certificate, the Chief may supply a copy thereof to the person losing the same, upon the payment of one dollar to the Chief; provided, it shall be known to the satisfaction of the Board of Examiners that the loss has actually occurred and that the loser was the holder of such certificate.

§ 45.1-17. Duties of mine foreman, assistant foremen and section foremen.–(a) The mine foreman shall see that the requirements of the mining laws of this State that pertain to his duties and to the health and safety of the employees are fully complied with at all times. Where it is necessary that the mine foreman be temporarily absent from the mine, he shall place the mine in charge of a properly certified assistant, or have permission from the Chief to use a competent person.

(b) It shall be the duty of the mine foreman, assistant mine foreman and section foreman of every coal mine in this State to see that every person employed to work in such mine shall, before beginning work therein, be instructed in all dangers incident to his work in such mine. It shall further be the duty of such mine foreman to see that every person employed in such mine shall be furnished with copies of Chapters 1-14 (§§ 45.1-1 to 45.1-161) of this title and the printed rules pertaining to such mines.

(c) Every inexperienced person shall be required to work with ~~or under the direction of~~ an experienced person for a period of at least one year following his *underground* employment. *For the purposes of this law, every person with less than one year's underground mining experience shall be considered an inexperienced person.*

(d) The mine foreman shall give prompt attention to the removal of all dangers reported to him by his assistants, the fire boss, or any other person working in the mine, and in case it is impracticable to remove the danger at once, he shall notify every person whose safety is menaced thereby to remain away from the portion where the dangerous condition exists. He or his assistants shall, at least once each week, travel and examine all the air courses, roads and openings that give access to old workings or falls, and make a record of the condition of all places where safety hazards are found, with ink or indelible pencil, in the book provided for that purpose. *No inexperienced underground mining employee shall be assigned, or allowed, or be required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless he can communicate with others, can be heard, or* can be seen. Any dangerous condition that cannot be removed within a reasonable time must be reported to the Chief by the quickest available means.

§ 45.1-26. Prohibited acts by miners, workmen or other persons; mine employees to comply with law.—(a) No miner, workman, or other person shall knowingly damage any shaft, lamp, instrument, air course, or brattice or obstruct airways, or carry therein any intoxicating liquors *or controlled drugs without the prescription of a licensed physician* , or disturb any part of the machinery or appliances, or open a door used for directing ventilation and fail to close it again, or enter any part of a mine against caution, or disobey any order given in carrying out any of the provisions of Chapters 1 to 14 (§§ 45.1-1 to 45.1-161) of this title.

(b) The employees at any mine shall comply fully with the provisions of the mining laws of this State that pertain to their duties.

§ 45.1-30. Allowing person to work in mine in violation of instructions.—Any operator, his agent, superintendent or mine foreman, having charge of any mine, who shall knowingly permit any person to work in any part of a mine in violation of written instructions issued by the mine inspector, made in compliance with the requirements of Chapters 1 to 14 (§§ 45.1-1 to 45.1-161) of this title, shall , *upon conviction,* be guilty of a *Class 1* misdemeanor ; ~~and upon conviction thereof shall be punished as hereinafter provided~~ .

§ 45.1-34. Control of dust; scaffolding and overhead protection;

use of arc or flame in dusty atmosphere; fire-fighting apparatus.—(a) In surface structures at excessively dusty mines or quarries, electric motors, switches, lighting fixtures, and controls shall be protected by dust-tight construction.

(b) Surface structures shall be kept free of coal-dust accumulations.

(c) Where repairs are being made to the plant, or where equipment or material is being used or transported overhead, proper scaffolding or proper overhead protection shall be provided.

(d) Welding or cutting with arc or flame shall not be done in excessively dusty atmospheres or dusty locations, and fire-fighting apparatus shall be readily available.

(e) Painting or operations creating noxious fumes shall be performed only in a well ventilated atmosphere.

§ 45.1-36. Stairways, platforms, runways and floor openings.—(a) Stairways, platforms, and runways shall be provided where men work or travel aboveground.

(b) Stairways, elevated platforms, floor openings and elevated runways shall be equipped with suitable handrails or guardrails.

(c) Elevated platforms, floor openings, stairways and runways shall be provided with toe boards. Platforms, stairways and runways shall be kept clear of stumbling and slipping hazards and maintained in good repair.

(d) A crane operator shall at all times during any hazardous crane operation maintain visual or auditory communication with all persons involved in the crane operation.

§ 45.1-37. Housekeeping.—Good housekeeping shall be practiced in and around mine buildings , *shafts, slopes* and yards. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails, broken glass and possible falling and rolling materials.

§ 45.1-39. Flammable or combustible materials; smoking.—(a) Oil, grease, and similar flammable materials shall be kept in closed containers, separate from other materials so as not to create a fire hazard to nearby buildings or mines. If oil or grease is stored in a building, the building or room in which it is stored shall be of fireproof construction and well ventilated.

(b) Oily rags, oily waste and wastepaper shall be kept in closed metal containers until removed for disposal.

(c) Smoking shall be prohibited in or around oil houses, explosive magazines, tipples and other places where such practice may cause a fire or explosion.

(d) The area within one hundred feet of all mine openings shall be kept free of combustible material; provided, however, that this shall not apply to the temporary storage of not more than a one day's supply of such materials.

(e) All oxygen and acetyl[illegible] bottles shall be stored in racks designated and constructed for the storage of such bottles with caps in place and secured when not in use. Any storage place for such materials shall be posted to prohibit smoking.

§ 45.1-40. Standards for supports; roof bolts; recovery of roof supports; method of mining not to expose workmen to unusual dangers.—(a) Where necessary, adequate minimum standards for systematic support suitable to the roof conditions and mining system

of each mine shall be prescribed by the Chief and complied with. Such standards shall show the minimum number and the location of supports, such as posts, crossbars or bolts that shall be installed. Irrespective of natural conditions, the plan shall provide for some temporary support at all working places ~~unless self-supporting~~ .

(b) Such standards shall be posted conspicuously near the main entrance to the mine.

(b1) The operator shall instruct all miners in the removal or installation of temporary and permanent roof supports and furnish a copy upon request of the approved plan required herein to all such persons engaged in removing or installing temporary or permanent roof supports.

(c) Supports additional to those required by the minimum standards shall be installed as needed to afford adequate protection.

(d) Roof bolts shall not be used in lieu of conventional timbering unless a permit has been issued by the Division of Mines. Roof bolts shall not be removed where complete extractions of pillars are attempted, nor shall bolts be removed adjacent to clay veins, nor at the locations of other irregularities that induce abnormal hazards. Where roof bolt recovery is practical, it shall be done only by reasonable methods approved by the Chief. Recovery of roof supports shall not be done except by experienced persons and only where adequate temporary support is provided.

(e) The method of mining followed shall not expose the workmen to unusual dangers caused by excessive widths of rooms and entries, faulty pillar-recovery methods, or other dangerous mining methods or working conditions.

§ 45.1-44. Surface storage of explosives, detonators and Cardox heater elements.—(a) Separate surface magazines shall be provided for the storage of explosives, detonators, and Cardox heater elements.

(b) Surface magazines for storing and distributing explosives in amounts exceeding one hundred fifty pounds shall be:

(1) Reasonably bulletproof and constructed of incombustible material or covered with fire-resistive material. The roofs of magazines so located that it is impossible to fire bullets directly through the roof from the ground, need not be bulletproof, but where it is possible to fire bullets directly through them, roofs shall be made bullet-resistant by material construction, or by a ceiling that forms a tray containing not less than a four-inch thickness of sand, or by other methods.

(2) Provided with doors constructed of three-eighth inch steel plate lined with a two-inch thickness of wood, or the equivalent.

(3) Provided with dry floors made of wood or other nonsparking material and have no metal exposed inside the magazine.

(4) Provided with suitable warning signs so located that a bullet passing directly through the face of a sign will not strike the magazine.

(5) Provided with properly screened ventilators.

(6) Equipped with no openings except for entrance and ventilation.

(7) Kept locked securely when unattended.

(c) Surface magazines for storing detonators and Cardox heater elements need not be bulletproof, but they shall be in accordance

with other provisions for storing explosives.

(d) Explosives or Cardox heater elements in amounts of one hundred fifty pounds or less or five thousand detonators or less shall be stored in accordance with preceding standards or in separate locked box-type magazines. Box-type magazines may also be used as distributing magazines when quantities do not exceed those mentioned. Box-type magazines shall be constructed strongly of two-inch hardwood or the equivalent. Metal magazines shall be lined with nonsparking material. No magazine shall be placed in a building containing oil, grease, gasoline, wastepaper or other highly flammable material; nor shall a magazine be placed within twenty feet of a stove, furnace, open fire or flame.

(e) The location of magazines shall be not less than three hundred feet from any mine opening, occupied building or public road *or any road which the Chief designates in order to promote safety* . However, *in the event that a magazine cannot be practicably located at such a distance,* if sufficiently barricaded and approved by the Chief, such magazine may be located less than three hundred feet from any mine opening, occupied building or ~~public~~ road.

(f) The supply kept in distribution magazines shall be limited to approximately a forty-eight hour supply, and such supplies of explosives and detonators may be distributed from the same magazine, if separated by at least a four-inch substantially fastened hardwood partition or the equivalent.

(g) The area surrounding magazines for not less than twenty-five feet in all directions shall be kept free of rubbish, dry grass or other materials of a combustible nature.

(h) If the explosives magazine is illuminated electrically, the lamps shall be of vapor-proof type, installed and wired so as to present minimum fire and contact hazards.

(i) Only nonmetallic tools shall be used for opening wooden containers. Extraneous materials shall not be stored in an explosives, detonator or Cardox heater element magazine.

(j) Smoking, carrying smokers' articles or open flames shall be prohibited in or near any magazine.

§ 45.1-48. Blasting practices.–(a) Prior to the use of Cardox or air breaking methods, both of which are classed as permissible blasting methods, or any other blasting device or method that may later be classed as permissible, the operator must secure written approval from the Chief. The Chief, in granting approval, will issue instructions as to storage, transportation, handling, charging, tamping, detonating and handling misfires. These instructions will be made conditions of the approval, and violations of any of them shall be considered violations of this section. The Chief may at his discretion approve the use of delay electric detonators, which may be used upon his written permission, and under such rules as he may promulgate.

(b) All explosives used underground in coal mines shall be of the permissible type and shall be used as follows:

(1) Fired only with electric detonators of proper strength, unless permission is obtained from the Chief, to use fuse and caps.

(2) Fired with permissible shot-firing units, unless firing is done from the surface when all men are out of the mine, or a permit is

secured to use other appropriate devices.

(3) Boreholes in coal shall not be drilled beyond the limits of the cut where the coal is cut nor into the roof or floor.

(4) Boreholes shall be cleaned, and shall be checked to see that they are placed properly and are of correct depth in relation to the cut, before being charged.

(5) All blasting charges in coal shall have a burden of at least eighteen inches in all directions if the height of the coal permits.

(6) Boreholes shall be stemmed with at least twenty-four inches of incombustible material, or at least one half of the length of the hole shall be stemmed if the hole is less than four feet in depth. The Chief may authorize the use of newly developed stemming devices.

(7) In gassy mines, examinations for gas shall be made immediately before firing each shot or group of multiple shots, and after blasting is completed.

(8) Shots shall not be fired in any place where methane can be detected with a flame safety lamp.

(9) Without permit, charges exceeding one and one-half pounds, but not exceeding three pounds, shall be used only if boreholes are six feet or more in depth; the explosives are charged in a continuous train, with no cartridges deliberately deformed or crushed; with all cartridges in contact with each other, with the end cartridges touching the back of the hole and the stemming, respectively; and Class A or Class B permissible explosives are used; provided, however, that the three-pound limit shall not apply to solid rock work.

(10) In any mine in which solid shooting is done, the chief mine inspector shall prescribe the conditions under which such solid shooting may be done. Any operator, or mine foreman, who causes or permits any solid shooting to be done in any mine without first having obtained a written permit from the Chief, or any miner therein who shoots coal from the solid, without first having obtained permission so to do from the operator, or the mine foreman, shall be guilty of a misdemeanor, and upon conviction, shall be fined as hereinafter provided.

(11) The operator shall designate ~~competent~~ *certified* persons to fire shots.

(12) Boreholes shall not be charged while any other work is being done at the face, and the shot or shots shall be fired before any other work is done in the zone of danger from blasting except that which is necessary to safeguard the employees.

(13) Only nonmetallic tamping bars shall be used for charging and tamping boreholes. This does not prohibit the use of a nonmetallic tamping bar with a nonsparking metallic scraper on one end.

(14) The leg wires of electric detonators shall be kept shunted until ready to connect to the firing cable.

(15) Shots shall not be fired from the power or signal circuit while any men are in the mine.

(16) The roof and faces of working places shall be tested before and after firing each shot or group of multiple shots.

(17) Ample warning shall be given before shots are fired, and care shall be taken to ascertain that all persons are in the clear.

Men shall be removed from adjoining working places when there is danger of a shot blowing through.

(18) Mixed types or brands of explosives shall not be charged or fired in any borehole.

(19) Adobe (mudcap) or other open, unconfined shots shall not be fired in any mine.

(20) Power wires and cables that could contact blasting cables or leg wires shall be de-energized during charging and firing.

§ 45.1-53.1. Explosives and blasting practices in shaft and slope operations.—A. Blasting areas in shaft or slope operations shall be covered with mats or materials when the excavations are too shallow to retain the blasted material.

B. When explosives are in the shaft or slope and an electrical storm approaches, all persons shall be removed from such working places until the storm has passed.

§ 45.1-59. Breakthroughs and stoppings.—(a) Breakthroughs shall be made between entries and between rooms at intervals not to exceed eighty feet. If greater distance is required, prior approval must be obtained from the Chief.

(b) Breakthroughs between intake and return air courses shall be closed, except the one nearest the face; breakthroughs between rooms shall be closed where necessary to provide adequate ventilation at the working face.

(c) Where practicable, a breakthrough shall be provided at or near the face of each entry or room before the place is abandoned.

(d) Entries or rooms shall not be started off an entry beyond the last open breakthrough.

(e) Permanent stoppings between intake and return air courses shall be built of substantial, incombustible material such as concrete, concrete blocks, brick, tile, or other approved material; provided, however, that where physical conditions prohibit the use of such materials, timbers laid longitudinally "skin to skin" may be used. This does not prohibit the use of a temporary stopping in the second breakthrough out by the face.

(f) Stoppings shall be reasonably airtight.

(g) To provide easy access between the return, belt and intake escapeway entries, substantially constructed man-doors properly marked so as to be readily detected shall be installed in at least every fifth crosscut in the stopping lines separating such entries.

§ 45.1-68. Hoisting; hoisting engineer; stop controls, brakes, etc.; testing and inspection of equipment; ropes.—(a) Where men are transported into or out of a mine or underground by hoists, or on surface inclines, a ~~qualified hoisting engineer~~ *person who is certified to operate hoisting equipment* , who shall be a person who has operated a hoist for at least one year *, has handled materials only under the direct and immediate supervision of a person who is certified to operate hoisting equipment possessing such experience as is required by the Board,* and who has passed an examination given by the Chief and approved by the Board, shall be on duty continuously at each hoist necessary to provide immediate transportation while any person is underground; provided, however, that this shall not apply to automatically operated elevators that can be operated safely by any workman. *Any application for certification as hoisting personnel shall be accompanied by the*

sworn affidavit of a person certified to operate a hoist stating that the applicant has had a minimum of one year's experience under the direct and immediate supervision of certified hoisting personnel and that such applicant possesses the necessary skills to safely operate hoisting equipment.

(b) A hoist used for handling men shall be equipped with overspeed, overwind, and automatic stop controls ~~, unless a second engineer is on duty, and a stop control is provided for his immediate use~~ . *All suspended work decks and platforms shall operate automatically, shall be equipped with guard rails capable of protecting men and materials from accidental overturning and shall be equipped with safety belts and other protective devices provided for by regulation.*

(b1) When moving the platform or work deck, all men traveling thereon shall have safety belts secured.

(c) ~~The~~ Hoisting ~~engineer~~ *personnel* shall operate the empty cages up and down the shaft at least one round trip at the beginning of each shift and after the hoist has been idle for one hour or more before hoisting or lowering men. Similar procedure shall be followed in slope and surface incline hoisting except that an attendant may ride on the trip.

(c1) It shall also be the duty of the hoisting personnel to inspect all cable or rope fastenings at all cages, buckets, or slope cars, inspect hammer locks and pins, thimbles, and clamps, inspect safety chains on buckets, cage or slope cars, inspect the braking system for malfunctions, clean all excess oil and extraneous materials from the hoist housing construction, inspect the overwind, overtravel, and lilly switch or control from stopping at the collar and within one hundred feet of the workdeck, and to check communications between the top house, work deck and work deck tugger house.

(d) Slope, shaft, or surface incline hoists shall be equipped with brakes capable of stopping and holding the fully loaded unbalanced cage or trip at any point in the shaft, slope, or on the incline.

(e) An accurate and reliable indicator, showing the position of the cage or trip, shall be placed so as to be in clear view of the engineer, unless the position of the car or trip is clearly visible to the engineer at all times.

(f) Hoisting equipment including the headgear, cages, ropes, connections, links and chains, shaft guides, shaft walls, and other facilities shall be inspected daily by a competent person designated by the operator. *Such person shall also inspect all bull wheels and lighting systems on the head frame.* Such inspector shall report immediately to his superior any defects found, and any such defect shall be corrected promptly. The person making such examination shall make a daily permanent record of such inspection, which shall be open for inspection by interested persons.

(g) Hoisting ropes on all cages or trips shall be adequate in size to handle the load and have a proper factor of safety. Ropes used to hoist or lower coal and other materials shall have a factor of safety of not less than five to one; ropes used to hoist or lower men shall have a factor of safety of not less than ten to one. The rope shall be replaced as soon as there is evidence of possible failure *and shall be inspected at the beginning of each shift by hoisting personnel* .

(h) The rope shall have at least three full turns on the drum when extended to its maximum working length and shall make at least one full turn on the drum shaft or around the spoke of the drum, in case of a free drum, and be fastened securely by means of clamps.

(i) The hoisting rope shall be fastened to its load by a spelter-filled socket or by a thimble and adequate number of clamps properly spaced and installed.

(j) Any rope attached to a cage, man-car, or trip used for hoisting or lowering men *or materials* shall be provided with two bridle chains or cables connected securely to the rope at least three feet above the socket or thimble and to the crosspiece of the cage or to the man-car or trip.

(k) Any platform or work deck used for transporting men or materials shall be equipped with leveling indicators and such conveyance shall be maintained and operated in a reasonably level position at all times.

§ 45.1-69. Same; cages; shafts; slopes.–(a) Cages used for hoisting men shall be of substantial construction; with adequate steel bonnets, with enclosed sides; with gates, safety chains, or bars across the ends of the cage when men are being hoisted or lowered; and with sufficient handholds or charins for all men on the cage to maintain their balance. A locking device to prevent tilting of the cage shall be used on all self-dumping cages when men are transported thereon.

(b) The floor of the cage shall be constructed so that it will be adequate to carry the load and so that it will be impossible for a workman's foot or body to enter any opening in the bottom of the cage.

(c) Cages used for handling men shall be equipped with safety catches that act quickly and effectively in case of an emergency.

(d) A test of safety catches on cages shall be made at least once each month. A written record shall be kept of such tests, and such record shall be open for inspection by interested persons.

(e) The speed of the cage, car, or trip in shafts, slopes, or on surface inclines shall not exceed one thousand feet a minute when men are being hoisted or lowered.

(f) Two independent means of signaling shall be provided between the top, bottom, and all intermediate landings of shafts, slopes, and surface inclines and the hoisting station. At least one of these means of signaling shall be audible to the hoisting engineer. *Bell cords shall be installed in shafts in such a manner as to prevent unnecessary movement of such cords within the shaft. All chokers and slings used to transport materials within a shaft or slope shall meet the United States of America Standards Institute specifications.*

(g) ~~An approved~~ *A uniform* signal code *approved by the Chief* shall be in use at each mine and shall be at the cage station designated by the shaftman.

(h) When men are being hoisted or lowered in shafts, slopes, or on surface inclines, the loading and unloading of men and movement of the cage, car, or trip shall be under the direction of qualified attendants, unless automatic elevator type hoists are used.

(i) All shafts shall be equipped with safety gates at the top and

at each landing. Where possible, such gates shall be self-closing and shall be kept closed except when the cage is being loaded or unloaded.

(j) Positive stopblocks or derails shall be placed near the top and at intermediate landings of slopes and surface inclines and at the approaches to all shaft landings.

(k) At the bottom of each hoisting shaft and at intermediate landings, a "runaround" shall be provided for safe passage from one side of the shaft to the other. This passageway shall be not less than five feet in height and three feet in width.

(l) Ice shall not be permitted to accumulate excessively in any shaft where men are hoisted or lowered.

(m) No person shall ride on a loaded cage.

(n) The number of persons riding in any cage or car at one time shall be prescribed by the Chief.

(o) Conveyances being lowered into a shaft in which men are working shall be stopped at least twenty feet above the area where such men are working.

(p) Whenever men are working at the bottom of a shaft, there shall be an adjustable ladder or chain ladder attached to the work deck to provide an additional means of escape. Such ladder shall be at least twenty feet in length.

(q) Any conveyance used to haul men or materials within a shaft or slope shall be designed to prevent materials from falling back into the shaft or slope and shall be equipped with at least a six-inch retaining edge to prevent objects from falling.

§ 45.1-90. Flammable oils; internal combustion engines.–(a) No gasoline, benzine, kerosene or other flammable oils shall be used underground in powering machinery ; ~~except that equipment powered by diesel engines, approved by the Chief before installation, may be used underground in the operation of other than coal mines, and except as hereinafter provided~~ *without the written approval of the Chief* .

(b) Internal combustion engines shall not be permitted underground in any coal mine except with the written approval of the Chief. ~~The Chief may in his discretion approve diesel-powered locomotives, shuttle cars, or other equipment, which may be operated only upon his written permission and under such rules as he may promulgate.~~

§ 45.1-98. Smoking, etc.; arcs, sparks and flames.–(a) Smoking, the carrying of matches, other flame-making devices, and smokers' articles and the intentional creation of any arc, spark or open flame, except as provided in the following subsection, shall be prohibited in all mines.

(b) Welding and cutting with arc or flame or soldering underground in other than fireproof enclosure ventilated with intake air shall be done under the direct supervision of a competent person who shall test for methane before and during such operations in gassy mines and shall make a diligent search for fire after such operation in all mines. Rock dust or suitable fire extinguishers shall be immediately available during such welding or cutting. *Welding operations shall be performed only in well-ventilated areas.*

§ 45.1-99.1. Noise levels and ear protection.–A. The Chief shall promulgate by regulation such feasible engineering controls and

mining equipment noise levels as are deemed necessary. Such noise levels shall meet minimum federal noise level standards.

B. Ear protectors shall be supplied by the operator to all miners upon request.

President of the Senate

Speaker of the House of Delegates

Approved:

Governor

Reenrolled

CHAPTER 120

An Act to amend and reenact §§ 45.1-2, 45.1-4, 45.1-5, 45.1-8, 45.1-10, 45.1-16, 45.1-19, 45.1-20, 45.1-54, 45.1-56, 45.1-57, 45.1-58, 45.1-65, 45.1-67 and 45.1-104 of the Code of Virginia; and to repeal §§ 45.1-29 and 45.1-33.6 of the Code of Virginia, the amended and repealed sections relating to coal mine health and safety.

[S 145]

Approved MAR 2 2 1978

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-2, 45.1-4, 45.1-5, 45.1-8, 45.1-10, 45.1-16, 45.1-19, 45.1-20, 45.1-54, 45.1-56, 45.1-57, 45.1-58, 45.1-65, 45.1-67 and 45.1-104 of the Code of Virginia are amended and reenacted as follows:

§ 45.1-2. Definitions.—As used in Chapters 1 to 14 (§§ 45.1-1 to 45.1-161) of this title, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning:

(1) "Commissioner" means the Commissioner of the Department of Labor and Industry or such other public officer, employee, board, commission, or other authority that may by law be assigned the duties and authority of the Commissioner of the Department of Labor and Industry.

(2) "Chief" means the Chief of the Division of Mines of the Department of Labor and Industry, or such other public officer, employee, board, commission or other authority that may in emergencies be acting in the stead, or by law be assigned the duties and authority of the Chief of the Division of Mines of the Department of Labor and Industry.

(3) "Mine inspector" means a public employee assigned by the Chief to make mine inspections as required by Chapters 1 to 14 of this title, and other laws from time to time in such cases made and provided.

(4) "Superintendent" means the person placed in overall charge of the operation of a coal mine or mines.

(5) "Operator" means the owner, part owner, operator, or lessee to whom the superintendent reports and is accountable for the operation. The operator may also be the superintendent.

(6) "Mine foreman" means a person holding a valid certificate of qualification duly issued by action of the Board of Examiners, and also including the person acting in the stead of a mine foreman appointed as provided hereunder when a certified mine foreman is unavailable.

(7) "Supervisor" may be used to designate a mine foreman, assistant mine foreman, section foreman, traffic man, maintenance foreman, etc., and is restricted herein to mean those persons employed by the operator or superintendent to manage all or a part of the mine operations.

(8) "Fire boss" means a person holding a valid certificate of qualification duly issued by action of the Board of Examiners, and also including the person acting in the stead of a fire boss appointed as provided hereunder when a certified fire boss is unavailable.

(9) "Approved competent person" is one who has had at least two years of practical experience, has knowledge of mine roof, timbering and ventilation, and who has demonstrated knowledge of mine gases and the use of permissible flame safety lamps, such demonstration to be given and made of record in a manner prescribed by the Chief.

(10) "Abandoned workings" means excavations, either caved or sealed, that are deserted and in which further mining is not intended, and open workings which are not ventilated and inspected regularly.

(11) "Active workings" means all places in a mine that are ventilated and inspected regularly.

(12) "Approved" means a device, apparatus, equipment, condition, method or practice approved in writing by the Chief.

(13) "Armored cable" means a cable provided with a wrapping of metal, plastic or other approved material.

(14) "Blower fan" means a fan with tubing used to direct part of a particular circuit of air to a working face.

(15) "Booster fan" means an underground fan installed in conjunction with a main fan to increase the volume of air in one or more circuits.

(16) "Cable" means a stranded conductor (single-conductor cable) or a combination of conductors insulated from one another (multiple-conductor cable).

(17) "Circuit" means a conducting part or a system of conducting parts through which an electric current is intended to flow.

(18) "Circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

(19) "Main entry" means the principal entry or set of entries driven through the coal bed from which cross entries, room entries, or rooms are turned.

(20) "Room entry" means any entry or set of entries from which rooms are turned—a panel entry.

(21) "Cross entry" means any entry or set of entries, turned from main entries, from which room entries are turned.

(22) "Fuse" means an overcurrent protective device with a circuit-opening fusible member directly heated and destroyed by the passage of overcurrent through it.

(23) "Gassy or gaseous mine" means a mine in which the percentage of explosive gas exceeds one-fourth of one per centum at the return of any one split, or in which methane has been detected by a flame safety lamp or one in which there is a record of methane having been ignited.

(24) "Nongassy mine" means any mine which is not classified gassy or gaseous.

(25) "Ground" means a conducting connection between an electric circuit or equipment and earth or to some conducting body which serves in place of earth.

(26) "Grounded" means connected to earth or to some connecting body which serves in place of the earth.

(27) "High-potential" shall conform to § 45.1-83 (e).

(28) "Interested persons" means members of the mine safety committee and other duly authorized representatives of the

employees at the mine; federal and State coal-mine inspectors; and, to the extent required by the State mining law any other person.

(29) "Mine" means any open pit or any underground workings from which coal or other minerals are produced for sale, exchange, or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with such mine. *All work areas utilized to prepare a site shall also be considered as a part of the mine.* Mines that are adjacent to each other and under the same management and which are administered as distinct units shall be considered as separate mines.

(30) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half per centum oxygen nor more than one half of one per centum of carbon dioxide, nor any dangerous quantities of flammable gas nor any harmful amounts of poisonous gas.

(31) "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible or pillared workings. Area within a panel shall not be deemed abandoned until such panel is abandoned.

(32) "Permissible" means a device, process, or equipment or method heretofore or hereafter classified by such term by the United States Bureau of Mines, when such classification is adopted by the Chief, and includes, unless otherwise herein expressly stated, all requirements, restrictions, exceptions, limitations, and conditions attached to such classification by the said Bureau.

(33) "Shot firer" means a *certified* person employed *at a coal mine* or designated by the foreman to charge, stem and fire shots.

(34) "Substation" means an electrical installation containing generating or power-conversion equipment and associated electric equipment and parts, such as switchboards, switches, wiring, fuses, circuit breakers, compensators and transformers.

(35) "Working face" means those areas within a mine from which coal is being extracted or is to be extracted, including all of the area extending inby from the last open crosscut or cross entry to the coal face.

(36) "Working place" means any place within the mine where men are required to work or travel.

(37) "Serious personal injury " means any injury requiring at least one day of hospital confinement.

(38) "Working coal miner" means a person who is employed to work in coal mining operations and may include supervisory personnel.

§ 45.1-4. Qualifications of Chief and mine inspectors; removal of inspectors; records of inspections; affiliation with labor union, coal company, etc.; retirement; interest in coal mine.–(a) The Chief and mine inspectors shall have a thorough knowledge of the various systems of working and ventilating coal mines, nature and properties of mine gases and methods for their detection and control, the control of mine roof, methods of rescue and recovery work in mine disasters, application of electricity and mechanical loading in mining operations, equipment and explosives used in mining, methods for preventing gas and dust explosions in mines, and ~~mile~~ *mine* haulage.

Each must have a first-class mine foreman's certificate of competency from the Board of Examiners of the Commonwealth of Virginia; and, be not less than thirty years of age. They shall be of good moral character and temperate habits, and shall have at least twelve years' experience underground at coal mines. As evidence of possession of the knowledge required by Chapters 1-14 (§§ 45.1-1 to 45.1-161) of this title, any person appointed as mine inspector shall possess a first-class mine foreman's certificate and also shall be subject to the mine inspector's examination, as prescribed by the Board and given by the Chief. The mine inspectors may be removed from office for cause. The Chief shall keep a record of all inspections made by him and the mine inspectors and a comprehensive report shall be made to the Commissioner of Labor and Industry. The Chief shall also keep a permanent record thereof properly indexed, which record shall at all times be open to inspection by any citizen of the Commonwealth and shall be collated and embodied in the annual report of the Department.

(b) Neither the Chief nor any other officer or employee of the Division of Mines shall, upon taking office or being employed, or at any other time during the term of his office or employment, have any affiliation with any operating coal company, operator's association, or labor union. Retirement at age sixty-five shall be compulsory. No mine inspector while in office shall be directly or indirectly interested as owner, lessor, operator, stockholder, superintendent or engineer of any coal mine.

§ 45.1-5. Schedule of mine inspections; conduct of inspections; certificates of inspection; accidents; clearing mines in dangerous condition.—(a) The following schedule of mine inspections shall be maintained: All mines shall have one complete inspection at least every ninety days. However, special, partial or complete inspections shall be made when deemed necessary by the Chief, or if requested in writing by ten men engaged in any one mine, or the owner, operator or superintendent of such mine, and shall make a personal examination of the interior of such mine, and of the outside of the mine where any danger may exist to the workmen. During an inspection, the inspector shall inspect the surface plant, every working place in the mine, all active haulageways and travelways, entrances to abandoned workings, and accessible old workings, at least one entry of each intake and return airway in its entirety, escapeways and other places where men work or travel or where dangerous conditions may exist, electric installations and equipment, haulage facilities, first-aid equipment, ventilation facilities, communication installations, roof and rib conditions, and roof-support practices, blasting practices, haulage practices and equipment, and any other condition, practice or equipment pertaining to the health and safety of the employees. The quantity of air passing through the last crosscut between the intake and return in any set of entries shall be not less than ~~six~~ *nine* thousand cubic feet of air per minute, and as much more as is necessary to direct and render harmless and carry away flammable and harmful gases. Provided, however, that the quantity of air reaching the last crosscut in pillar sections may be less than ~~six~~ *nine* thousand cubic feet of air per minute, if ~~six~~ *nine* thousand cubic feet of air per minute is being delivered to the intake of the pillar line. He shall make tests for

gas and oxygen deficiency in each place which he is required to inspect in the mine. In mines operating more than one shift in a twenty-four-hour period, the inspector shall devote sufficient time on the second and third shifts to determine conditions and practices relating to the health and safety of the employees.

(b) The certificate of inspection shall show the date of inspection, the condition in which the mine is found, the extent to which the mining laws are being violated, the progress made in the improvement of the mine as such progress relates to the health and safety of the employees, the number of accidents and injuries occurring in and about the mine since the last previous inspection, and all other facts and information of public interest concerning the condition of the mine as may be useful and proper. Where any violations of the mining law exist, the report shall show the specific section or sections violated and recommendations made or action taken to eliminate such violations.

(c) The mine inspector shall deliver one copy of the certificate of inspection to the owner, superintendent, or mine foreman, one copy to the employee's safety committee and one copy shall be posted at a prominent place on the premises where it can be read conveniently by the employees.

(d) The mine inspector shall report immediately, and by the quickest available means, any mine fire, mine explosion, and any accident resulting in loss of life, to his superior.

(e) The mine inspector shall proceed immediately to the scene of any accident at any mine under his jurisdiction that results in loss of life or serious personal injury, and to the scene of any mine fire or explosion regardless of whether there is loss of life or personal injury. He shall make such investigation and suggestions and render such assistance as he deems necessary for the future safety of the employees, and make a complete report to the Chief as soon as practicable. He shall have the power to compel the attendance of witnesses, and to administer oaths or affirmations; and the cost of such investigation shall be paid by the county in which such accident occurred.

(f) The mine inspector shall take charge of mine rescue and recovery operations whenever a mine fire, mine explosion, or other serious accident occurs, and shall supervise the reopening of all mines or sections thereof that have been sealed or abandoned on account of fire or any other cause.

(g) The Chief or mine inspector shall, and is hereby authorized to, order any mine or section thereof cleared of all persons where, in his opinion, there is imminent or serious danger to the life, or health of the employees therein and refuse further entry to all persons, except those necessary to correct or eliminate such dangerous condition. Whenever such a mine or section thereof is ordered cleared of persons by the Chief, or mine inspector, he shall immediately thereafter notify the owner, agent, superintendent, or mine foreman of the mine, in writing, setting forth the reasons therefor and shall forward promptly a copy thereof to this superior. Whenever the operator of such mine has complied with the requirements of the mine inspector, the operator shall call the Chief who shall assign an inspector to reinspect the mine.

§ 45.1-8. Examination fees; Examiners' fund.—A fee of ten dollars,

money order or certified check, shall be paid to the Chief by each person examined, before the examination is begun. All such fees collected, including moneys collected pursuant to § *§ 45.1-9 and* 45.1-13 of the Code, *shall be retained by the Division and* shall be promptly paid by the Chief into the State Treasury and shall constitute an Examiners' fund under the control of the Chief for the payment of the compensation and expenses of the members of the Board of Examiners and the expenses of the Board, as hereinafter provided, for which purposes such moneys are hereby appropriated.

§ 45.1-10. Meetings of Board; per diem and expenses.–The Board shall meet at least once a year and shall be called by the Chief to meet at such other times as he deems necessary. The Board shall meet at such place or places and at such times as may be designated by the Chief, and the Board shall remain in session until its work is completed; but no one session of the Board shall continue more than three days. Out of the Examiners' fund, there shall be paid to each member of the Board, except the Chief who shall serve without extra pay, his necessary expenses incurred in the service of the Board and a per diem not to exceed ~~twenty~~ *thirty-five* dollars for each day or part thereof the Board is in session.

§ 45.1-16. Employment and qualifications of mine foreman; qualifications of assistant foremen and section foremen.–In every commercial coal mine where three or more persons work during any part of any period of twenty-four hours, the operator thereof or the agent of such operator shall employ a competent and practical inside overseer, to be called mine foreman ~~who shall be a citizen of the United States~~ , and who, except as otherwise provided in the first paragraph (§ 45.1-15), above, shall hold a certificate of competency for such position, issued to him by the Board. Every assistant foreman and section foreman employed to assist the mine foreman in the immediate supervision of a portion or the whole of a mine and the persons employed therein shall have had five years of practical experience in a coal mine and shall hold a certificate of competency for such position issued to him by the Board.

§ 45.1-19. Employment, duties and qualifications of fire bosses or other certified persons.–(a) Operators of mines ~~classed as gaseous or gassy~~ shall employ one or more certified fire bosses or other certified persons to make examinations prior to the beginning of a coal-producing shift. The duties of the fire boss or other certified persons are to examine for dangerous conditions, all manways, slopes, entries used by men in traveling to and from work, and to examine for gas and other dangerous conditions all working places, adjoining abandoned places, and accessible pillar falls for accumulations of gas.

(b) Each such fire boss or other certified person shall have such knowledge of fire damp and other dangerous gases as to be able to detect the same with the use of safety lamps. He shall also have a practical knowledge of the subject of ventilation of mines, and the machinery and appliances used for that purpose; at least five years' experience in mines; and hold a fire boss certificate issued by the Board of Mine Examiners.

§ 45.1-20. Examination of mines by fire bosses or others; portable illumination.–(a) It shall be the duty of such fire boss, or bosses,

where employed in any ~~gaseous~~ mine, or mines, to prepare a danger signal, with suitable color, at each mine entrance, and no person except the mine owner or operator, or his agent, in cases of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss, and the same, or certain parts thereof, reported by him to be safe.

(b) In the performance of the duties on the part of the fire boss, or bosses, they shall have no superior officer, but all employees working inside the mine, or mines, shall be subordinate to the fire boss, or bosses, in the execution of their duties under chapters 1 to 14 (§§ 45.1-1 to 45.1-161) of this title.

(c) No person shall enter the mine or mines for any purpose at the beginning of work upon any shift therein, until such signal or warning has been given by the fire boss or bosses as to the safety thereof, as provided by statute, except under the direction of the fire boss or bosses, and then for the purpose of assisting in making the mine safe; provided, however, that men regularly employed on a shift during which the mine is being preshift examined by a fire boss or certified person, shall be permitted to leave or enter the mine in the performance of their duties.

(d) The fire boss will ascertain that the air is traveling in its proper course and that all ventilation appliances are in good condition and working effectively. The fire boss will indicate his examination of working and abandoned places, pillar falls and ventilating appliances by marking his initial and the date conspicuously in or at such places.

(e) Whenever gas is detected, or danger exists to men entering any place in the mine, the fire boss shall leave at each entrance to that place a conspicuous DANGER sign.

(f) Examination of the first working place in *all* mines ~~classed as gaseous or gassy~~ shall take place not more than ~~four~~ *three* hours, prior to the beginning of a coal-producing shift, before the men are permitted to enter the mine or to pass a designated station underground. In such mines, a light or other signal shall be provided at the mine entrance. When the fire boss or fire bosses report the mine clear, which they do by telephone or other means, the signal shall be changed to clear by the mine foreman or by his designated subordinate. The Chief shall have authority in certain mines in his discretion to authorize man trips to proceed to a designated station underground, which they may not pass until the fire boss or fire bosses report the remainder of the mine clear.

(g) In multiple shift operations, certified supervisors may be used to make the fire boss examination for the next or succeeding shift.

(h) The fire boss shall record the results of his inspection in ink or indelible pencil in a book kept on the surface for that purpose. Similar records may be kept at designated stations or offices underground. This book shall be countersigned daily by the mine foreman.

(i) Idle or abandoned parts of any mine ~~classed as gaseous or gassy~~ shall be examined by a certified person immediately before other employees are permitted to enter or work in such areas.

(j) Examination for gas and other dangerous conditions shall be made by a certified official or approved competent person, in *all*

mines ~~classed as gaseous or gassy~~ , before taking loading or cutting machines in by the open breakthrough nearest the face or before applying power to machinery that remains at or near the face at not more than ~~thirty~~ *twenty* -minute intervals during cutting, drilling, or mechanical loading; before drilling with electric drills, before blasting, after blasting, before other work is resumed and at such other times as may be necessary or designated by the operator or mine inspector for adequate safety.

(k) In *all* mines ~~classed as gaseous or gassy~~ , all persons underground shall use only permissible electric cap lamps that are worn on the person for portable illumination. This does not preclude the use of other type of permissible electric lamps, permissible flashlights, permissible safety lamps, or any other portable illumination classed as permissible.

§ 45.1-54. Main fans in gaseous, gassy and nongassy coal mines; ventilation in other mines.–(a) All gaseous or gassy mines shall be ventilated by means of main fans installed as follows:

(1) On the surface.

(2) In fireproof housings.

(3) Offset not less than fifteen feet from the nearest side of the mine opening; provided, however, that this shall not apply to fans that are offset any distance from the mine opening if they otherwise comply with subparagraph ~~five~~ *(5)* of this section.

(4) Equipped with fireproof air ducts and ample means of pressure relief.

(5) In lieu of requirements for the location of the fan and the pressure relief facilities, the fan may be directly in front of, or over, the mine opening; provided, however, that the opening is not in direct line with possible forces coming out of the mine should an explosion occur, and provided further that there is another opening having a weak-wall stopping or explosion doors that would be in direct line with the forces coming out of the mine should an explosion occur; such opening to be not less than fifteen feet nor more than one hundred feet from the fan opening.

(b) Main mine fans shall be installed to permit the reversal of airflow. Unless such fan is attended constantly, it shall be provided with an automatic device to give alarm when the fan slows down or stops. This device shall be placed so that it will be seen or heard by a responsible person.

(c) At gassy mines, main fans shall be on separate power circuits, independent of the mine circuit.

(d) The area surrounding main fan installations shall be kept free of combustible material for at least one hundred feet in all directions where physical conditions permit.

(e) A daily inspection shall be made of all main fans and machinery connected therewith by a competent person and a record kept of the same in a book prescribed for this purpose or by adequate facilities provided to permanently record the performance of the main fan and to give warning of an interruption to a fan.

(f) When the main fan of a gassy mine fails or stops, the power shall be cut off the mine and the men shall be withdrawn from the face regions. If ventilation is restored within a reasonable time, the face regions and other places where methane is likely to accumulate shall be examined by properly certified persons, and if found to be

free of explosive or harmful gasses, power may be restored and work resumed. If ventilation is not restored within a reasonable time, and in no case more than ~~thirty~~ *fifteen* minutes, all persons shall be removed from the mine. The main fan shall be operated for a period of not less than two hours, and thereafter the mine shall be examined by properly certified persons before the men are permitted again underground. The power wires underground shall not be energized until the mine is reported safe following such examination.

(g) Coal mines classified as nongaseous shall be ventilated by main fans offset not less than fifteen feet from the nearest side of the mine opening, when considered necessary by the Chief.

(h) When the main fan of a nongassy mine fails or stops and cannot be started within a reasonable time, the men shall be withdrawn from the face regions. If ventilation is not restored within a reasonable time, to be determined as provided in subsection (f), all persons shall be removed from the mine, and the mine shall be examined by properly certified persons before the men are permitted again underground.

(i) Main fans at nongassy mines shall be operated continuously except when the mine is shut down with all men out of the mine. If the main fan of a nongassy mine is stopped after all men are out of the mine, the fan shall be operated for a period of at least two hours before any man is allowed underground.

(j) Except for repairs, main fans at gassy mines shall be operated continuously day and night unless written permission is granted by the Chief for planned stoppages. If the main fan of a gassy mine is stopped after all men are out of the mine, the fan shall be operated for a period of at least two hours before any man is allowed underground.

(k) Where electric power is available, main mine fans shall not be powered by means of gasoline-powered engines; provided, however, that where electric power is not available or for emergency use, main mine fans may be powered with internal combustion engines, but they shall be surrounded with safeguards as follows:

(1) The fan shall be operated exhausting, unless otherwise permitted by the Chief.

(2) The engine operating the fan shall be offset at least ten feet from the fan and housed in a separate fireproof structure.

(l) Main fans at gassy mines shall be provided with pressure-recording gauges.

(m) The ventilation in other mines for minerals, stone, sand, clay, talc, salt, etc., shall be such that the air in all of its workings that are in use or are to be used by workmen or others shall be free from dangerous amounts of noxious impurities and shall contain sufficient oxygen to prevent danger to the health of anyone employed in any such mine. Where such conditions cannot be obtained by natural ventilation, approved means for mechanical ventilation shall be provided and kept in operation until such workings have been abandoned or until satisfactory natural ventilation shall have been brought about therein.

§ 45.1-56. Volume of air; bleeders.—(a) The quantity of air passing through the last open crosscut in any pair or set of active

entries shall be not less than ~~six~~ *nine* thousand cubic feet per minute; provided, however, that the quantity of air reaching the last crosscut in any pair or set of entries in pillar-recovery sections may be less than ~~six~~ *nine* thousand cubic feet per minute if at least ~~six~~ *nine* thousand cubic feet of air per minute is being delivered to the intake end of the pillar line.

(b) [Repealed.]

(c) The air current at working faces shall under all conditions have a sufficient volume and velocity to readily dilute and carry away smoke from blasting and any flammable or harmful gases.

(d) At least once each week, a properly certified person shall measure the volume of air entering the main intakes and leaving the main returns, the volume passing through the last open crosscut in each active entry, the volume being delivered to the intake end of each pillar line, and the volume at the intake, and return of each split. A record of such measurements shall be kept in a book on the surface, and the record shall be open for inspection by interested persons.

(e) In gassy mines a system of bleeder openings or air courses designed to provide positive movement of air through and/or around abandoned or caved areas, sufficient to prevent dangerous accumulation of gas in such areas and to minimize the effect of variations in atmospheric pressure, shall be made a part of pillar-recovery plans projected hereafter [after June twenty-seven, nineteen hundred sixty-six]. Mines not having bleeders established must provide them as soon as practicable.

§ 45.1-57. Coursing of air.—(a) The main intake and return air currents of drifts or slope mines opened after June twenty-seven, nineteen hundred sixty-six, shall not be in a single partitioned opening.

(b) All entries driven in coal after June twenty-seven, nineteen hundred sixty-six, shall be in sets of two or more.

(c) Permanently installed underground stables, battery-charging stations, substations, transformer stations, and stations for electrically operated pumps and compressors shall be ventilated by separate splits of air conducted directly to the main return air courses. Portable type substations and battery-charging stations shall be in well ventilated places.

(d) Changes in ventilation that materially affect the main air current or any split thereof shall be made when the mine is not in operation and with no men in the mine other than those engaged in changing the ventilation.

(e) The number of men on the same air current or split shall not exceed seventy.

(f) Each section in a ~~gassy or gaseous~~ mine must be ventilated by a separate split of air, unless permission is granted by the Chief to ventilate two or more sections with the same split of air.

§ 45.1-58. Quality of air.—(a) Mine air in which men work or travel shall contain at least nineteen and five-tenths per centum oxygen, not more than five-tenths per centum carbon dioxide, and shall not be contaminated with noxious or poisonous gases.

(b) If the air immediately returning from a split that ventilates any group of active workings contains more than one per centum methane, as determined with a permissible flame safety lamp, by

air analysis, or by other recognized means of accurate detection, the ventilation shall be improved.

(c) If a split of air returning from active underground working places in a mine contains one and five-tenths per centum of methane, as determined by a permissible methane detector, a permissible flame safety lamp, air analysis, or other recognized means of accurately detecting such gas, the employees shall be withdrawn from the portion of the mine endangered thereby, and all power shall be cut off from such portion of the mine, until the quantity of methane in such split shall be less than one and five-tenths per centum. However, in virgin territory in mines ventilated by exhaust fans where methane is liberated in large amounts, if the quantity of air in a split ventilating the workings in such territory equals or exceeds twice the minimum volume of air, which is ~~six~~ *nine* thousand cubic feet per minute and if only permissible electric equipment is used in such workings and the air in the split returning from such workings does not pass over trolley or other bare power wires, and if a certified person designated by the mine operator is continually testing the gas content of the air in such split during mining operations in such workings, it shall be necessary to withdraw the employees and cut off all power from the portion of the mine endangered by such methane only when the quantity thereof in the air returning from such workings exceeds two per centum, as determined by a permissible methane detector, a permissible flame safety lamp, air analysis, or other recognized means of accurately detecting such gas.

§ 45.1-65. Examination of mines for gas and other dangers.—(a) Officials whose regular duties require them to inspect working places in any mine for dangers shall have in their possession, and shall use, when underground, a suitable permissible device capable of detecting methane and oxygen deficiency.

(b) All ~~gassy~~ mines shall be examined for gas and other dangers by properly certified persons assigned specifically to make fire-boss examinations before other men are permitted to enter irrespective of whether the mine is being operated or is idle. ~~In gassy mines,~~ Such certified persons shall begin their examination in the first working place in their assigned territory not more than ~~four~~ *three* hours before each shift enters the mine ; ~~in nongassy mines they shall begin their examination in the first working place in their assigned territory not more than four hours before the first shift enters the mine~~ .

(c) During the preshift examination, the fire boss shall visit every live working place in the mine and inactive places adjacent thereto, and during each visit shall test for methane and oxygen deficiency with a suitable permissible device; examine all seals and doors; test and inspect the roof, face and rib conditions in all working places visited, inspect active roadways, travelways, approaches to abandoned workings, and accessible falls in active sections for explosive gas and other dangers; be certain that the air is traveling in its regular course and in sufficient volume in each split; and he shall place his initials and the date at or near the face of each place examined.

(d) Where dangerous conditions are found, the fire boss shall danger-off each approach to such place by placing a "danger" sign

thereon; no one but an authorized person shall pass such danger sign, and then only for the purpose of examining the place or correcting the condition.

(e) Upon completing his examination, each fire boss shall return to the surface or a designated station underground and report in person to the mine foreman or a designated certified assistant before other men enter the mine; immediately upon reaching the surface, the fire boss shall record in ink or indelible pencil the result of his inspection in a regular fire-boss book kept on the surface for that purpose.

(f) Idle and abandoned sections shall be inspected for gas and other dangerous conditions by a certified foreman, assistant mine foreman or fire boss immediately before other employees are permitted to enter or work in such places. A certified official shall supervise the correction of exceptionally dangerous conditions.

(g) The working places in all mines shall be examined for dangers by a properly certified official at least once during each shift while the men are in the mines, or oftener if necessary for safety. Such examination shall include tests with a suitable permissible device for detecting methane and oxygen deficiency. Any danger found shall be eliminated promptly or the men shall be withdrawn and the affected area plainly marked with "danger" signs.

(h) Pillar workings shall be examined by a certified official for methane and other dangers before a fall is made purposely. If methane can be detected with a flame safety lamp, it shall be removed, if possible before the fall is made. Where it is not practicable to remove the gas before such fall is made, all electric power shall be cut off that portion of the mine that might be affected, and all men except those necessary to complete the fall shall be removed from such area.

(i) Examinations for dangerous conditions, including tests for methane with a permissible flame safety lamp, a permissible methane detector, or by chemical analysis shall be made at least once each week by the mine foreman or other properly certified person designated by him. Such examinations and tests shall be made in the return of each split where it enters the main return, or pillar falls, at seals, in the main return, at least one entry of each intake and return airway in its entirety, idle workings, and, insofar as conditions permit, abandoned workings. The person making such examinations and tests shall mark his initials and the date at the places examined, and if dangerous conditions are found, they shall be reported promptly. A record of these examinations and tests shall be kept at the mine.

(j) The mine foreman shall read and countersign promptly the daily reports of the fire bosses and assistant mine foreman, and he shall read and countersign promptly the weekly report covering the examinations for dangerous conditions. Where such reports disclose dangerous conditions, the mine foreman shall take prompt action to have such conditions corrected. The mine superintendent, where such official is in charge at the mine, shall also read and countersign promptly the daily and weekly reports of the mine officials.

(k) Each day, the mine foreman or each assistant shall enter

plainly and sign with ink or indelible pencil in a book provided for that purpose a report of the condition of the mine or portion thereof under his supervision, which report shall state clearly the location and nature of any danger observed by them or reported to them during the day, and the report shall state what action, if any, was taken to remedy such danger.

(l) All records of daily and weekly reports shall be open for inspection by interested persons.

§ 45.1-67. Rock dusting.—(a) All dry coal mines, or parts of mines, or sections thereof, shall be rock dusted if conditions are found to be so dusty as to constitute a hazard after proper inspection. Should such conditions be found to exist, the Chief or his accredited representative shall require the necessary rock dusting to make the mine, part of mine, or section thereof safe.

(b) ~~In all mines accumulations of fine dry coal dust shall, as far as is practicable, be removed from the mine, and all dry and dusty operating sections kept thoroughly watered or rock dusted or the dust allayed by other methods approved by the Chief; but in every dusty mine, or in any part or section thereof rock dusting shall be applied to maintain at all times a minimum of sixty-five per centum of noncombustible matter to within forty feet of the faces. All open breakthroughs within the forty-foot zone shall be rock dusted. Samples taken to determine noncombustible content shall be taken around the perimeter of the place. The term "dusty mine" shall not include a wet or damp mine, but the provisions hereof relating to rock dusting shall apply to any dusty part or section of a wet or damp mine. The Chief may at his discretion approve rock dusting regulations consistent with advanced mining methods.~~

(c) Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials shall be cleaned up and not be permitted to accumulate excessively in active workings, or on electric equipment therein.

(d) Where underground mining operations in active workings create or raise excessive amounts of dust, water or water with a wetting agent added to it, or other no less effective methods approved by the Chief or his authorized representative, shall be used to abate such dust. In working places, particularly in distances less than forty feet from the face, water, with or without a wetting agent, or other no less effective methods approved by the Chief, or his authorized representative, shall be applied to coal dust on the ribs, roof, and floor to reduce dispersibility and to minimize the explosion hazard.

(e) All underground areas of a coal mine, except those areas in which the dust is too wet or too high in incombustible content to propagate an explosion, shall be rock dusted to within forty feet of all working faces, unless such areas are inaccessible or unsafe to enter or unless the Chief, or his authorized representative, permits an exception upon his finding that such exception will not pose a hazard to the miners. All crosscuts that are less than forty feet from a working face shall also be rock dusted.

§ 45.1-104. Responsibilities of owners and operators; rules and regulations of Chief.—(a) Nothing in Chapters 1 to 14 (§§ 45.1-1 to 45.1-161) of this title shall be so construed as to relieve the mine owner or operator from seeing that all of the provisions of Chapters

1 to 14 of this title are strictly complied with, nor from the duty imposed at common law to secure the reasonable safety of their employees and, in the performance of those duties that are nonassignable at common law, as well as those duties required by Chapters 1 to 14 of this title, the mine foreman, assistants, or fire boss, shall be considered as acting for the mine owner or operator as a vice-principal.

(b) ~~The Chief shall have the authority to promulgate rules and regulations in accordance with the provisions of Chapter 1.1 (§ 9-6.1 et seq.) of Title 9 of the Code of Virginia. The Chief shall appoint two mine safety advisory committees. These committees shall consult with and make recommendations to the Chief on matters involving or relating to mine health and safety. One committee shall be composed of the following: One member shall be a coal mine operator or a coal mine operator's representative, who is actually engaged in or the representative of a coal mine operation in this State. One member shall be a miner or a representative of a mine worker's organization who has a mine foreman's first-class certificate and who is in a nonsupervisory capacity. The other committee shall have one member representing the noncoal mining industry who is an operator or an operator's representative. One member shall represent labor or a labor representative of persons who work in noncoal mines, which member is in a nonsupervisory capacity. Thereafter, as vacancies occur, the Chief shall appoint persons who have the qualifications described herein to fill such vacancies.~~

~~The committee representing coal mining shall consider rules and regulations dealing with coal mine health and safety; the committee representing noncoal mining shall consider health and safety rules and regulations dealing with noncoal mining industry and make recommendations for adoption by the Chief.~~

~~The Chief is authorized to adopt, after consultation with the appropriate advisory committee, health and safety rules and regulations relating to:~~

The Chief shall appoint four safety advisory committees, constituted as follows:

(1) An underground coal mine safety advisory committee shall be established and have two members. One member shall be a coal mine operator or a coal mine operator's representative, who is actually engaged in, or the representative of, an underground coal mine operation in this State. One member shall be a miner or a representative of a mine worker's organization who has a mine foreman's first-class certificate and who is employed in a nonsupervisory capacity in an underground coal mine in this State.

(2) A surface coal mine safety advisory committee shall be established and have one member who is a surface coal mine operator or operator's representative in this State, and one member who is a miner employed in a nonsupervisory capacity at a surface mine operation in this State.

(3) A noncoal mine safety advisory committee shall be established and have one member representing the noncoal mining industry who is an operator or an operator's representative and one member, employed in a nonsupervisory capacity at a noncoal mine, who shall represent persons working in noncoal mines.

(4) An oil and gas production safety advisory committee shall be

established, composed of one oil and gas well driller, owner or operator or operator's representative, and one worker who is employed in a nonsupervisory capacity in the oil and gas production industry in this State.

(b1) As vacancies occur in the safety advisory committees established pursuant to subsection (b) of this section, the Chief shall appoint persons who have the qualifications described therein to fill such vacancies. The safety advisory committees established pursuant to this section shall consult with and make recommendations to the Chief on matters involving or relating to health and safety in their respective fields of mining or oil and gas well operations.

The Chief shall have authority, after consultation with the appropriate safety advisory committee and in accordance with the provisons of the Administrative Process Act (§ 9-6.14:1 et seq.), to promulgate health and safety rules and regulations, not in conflict with the Constitution or any statute of the Commonwealth of Virginia, relating to:

(1) The maintenance, operation, storage or transportation of any mechanical or electrical equipment, device or machinery which is used for any purpose in the mining of coal or other minerals, or substances extracted from beneath the surface of the earth or sea.

(2) Safety and health standards for the protection of the life, health and property of, and the prevention of injuries to persons involved in or likely to be affected by any mining operations which shall include but not be limited to the control of dust concentration levels, use of respiratory equipment and ventilating systems; development and maintenance of roof control systems; handling of combustible materials and rock dusting; installation, maintenance and use of electrical devices, equipment, cables and wires; fire protection, including equipment, emergency evacuation plans, emergency shelters, communication facilities; use and storage of explosives; and the establishment and maintenance of barriers around oil and gas wells.

(3) The storage or disposal of any matter or materials extracted or disturbed as the result of a mining operation or operations or used in the mining operation or for the refinement or preparation of the materials extracted from the mining operation so that such matter or material does not threaten the health or safety of the miners or the general public.

(4) Safety and health standards for the protection of life, health and property of, and the prevention of injuries to persons involved in or likely to be affected by the exploration for and the production and transmission of oil and gas; the location, drilling, redrilling, casing, completion, plugging and abandonment of wells.

In promulgating such standards , *rules and regulations* the Chief shall consider:

(i) Standards utilized and generally recognized by the industry; or

(ii) Standards established by recognized professional organizations and groups, including federal laws or regulations; or

(iii) Research, demonstrations, experiments and such other information that is available regarding the maintenance of the highest degree of safety protection, and shall include the latest

available scientific data in the field, the technical feasibility of the standards, and the experience gained under this and other safety statutes; or

(iv) Such other criteria as shall be necessary for the protection of safety and health of ~~miners~~ *workers* and persons or property likely to be affected by mines or mine-related operations . *or oil and gas production or related operations* .

(v) Recommendations of the appropriate ~~mine~~ safety advisory committee.

(c) The Chief shall be authorized to apply to any court of equity in the place where any violation of this title or of the rules and regulations promulgated hereunder occurs or is threatened, for an injunction.

2. That §§ 45.1-29 and 45.1-33.6 of the Code of Virginia are repealed.

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President of the Senate

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Speaker of the House of Delegates

Approved:

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Governor

CHAPTER 459

An Act to amend and reenact §§ 45.1-2, 45.1-21, 45.1-22, 45.1-23, 45.1-25 and 45.1-26 of the Code of Virginia, relating to licensure of coal mines.

[S 122]

Approved APR 1 1978

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-2, 45.1-21, 45.1-22, 45.1-23, 45.1-25 and 45.1-26 of the Code of Virginia are amended and reenacted as follows:

§ 45.1-2. Definitions.—As used in Chapters 1 to 14 (§§ 45.1-1 to 45.1-161) of this title, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning:

(1) "Commissioner" means the Commissioner of the Department of Labor and Industry or such other public officer, employee, board, commission, or other authority that may by law be assigned the duties and authority of the Commissioner of the Department of Labor and Industry.

(2) "Chief" means the Chief of the Division of Mines of the Department of Labor and Industry, or such other public officer, employee, board, commission or other authority that may in emergencies be acting in the stead, or by law be assigned the duties and authority of the Chief of the Division of Mines of the Department of Labor and Industry.

(3) "Mine inspector" means a public employee assigned by the Chief to make mine inspections as required by Chapters 1 to 14 of this title, and other laws from time to time in such cases made and provided.

(4) "Superintendent" means the person placed in overall charge of the operation of a coal mine or mines.

(5) "Operator" means the owner, part owner, operator, or lessee to whom the superintendent reports and is accountable for the operation. The operator may also be the superintendent.

(6) "Mine foreman" means a person holding a valid certificate of qualification duly issued by action of the Board of Examiners, and also including the person acting in the stead of a mine foreman appointed as provided hereunder when a certified mine foreman is unavailable.

(7) "Supervisor" may be used to designate a mine foreman, assistant mine foreman, section foreman, traffic man, maintenance foreman, etc., and is restricted herein to mean those persons employed by the operator or superintendent to manage all or a part of the mine operations.

(8) "Fire boss" means a person holding a valid certificate of qualification duly issued by action of the Board of Examiners, and also including the person acting in the stead of a fire boss appointed as provided hereunder when a certified fire boss is unavailable.

(9) "Approved competent person" is one who has had at least two years of practical experience, has knowledge of mine roof, timbering and ventilation, and who has demonstrated knowledge of mine gases and the use of permissible flame safety lamps, such

demonstration to be given and made of record in a manner prescribed by the Chief.

(10) "Abandoned workings" means excavations, either caved or sealed, that are deserted and in which further mining is not intended, and open workings which are not ventilated and inspected regularly.

(11) "Active workings" means all places in a mine that are ventilated and inspected regularly.

(12) "Approved" means a device, apparatus, equipment, condition, method or practice approved in writing by the Chief.

(13) "Armored cable" means a cable provided with a wrapping of metal, plastic or other approved material.

(14) "Blower fan" means a fan with tubing used to direct part of a particular circuit of air to a working face.

(15) "Booster fan" means an underground fan installed in conjunction with a main fan to increase the volume of air in one or more circuits.

(16) "Cable" means a stranded conductor (single-conductor cable) or a combination of conductors insulated from one another (multiple-conductor cable).

(17) "Circuit" means a conducting part or a system of conducting parts through which an electric current is intended to flow.

(18) "Circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

(19) "Main entry" means the principal entry or set of entries driven through the coal bed from which cross entries, room entries, or rooms are turned.

(20) "Room entry" means any entry or set of entries from which rooms are turned - a panel entry.

(21) "Cross entry" means any entry or set of entries, turned from main entries, from which room entries are turned.

(22) "Fuse" means an overcurrent protective device with a circuit-opening fusible member directly heated and destroyed by the passage of overcurrent through it.

(23) "Gassy or gaseous mine" means a mine in which the percentage of explosive gas exceeds one fourth of one per centum at the return of any one split, or in which methane has been detected by a flame safety lamp or one in which there is a record of methane having been ignited.

(24) "Nongassy mine" means any mine which is not classified gassy or gaseous.

(25) "Ground" means a conducting connection between an electric circuit or equipment and earth or to some conducting body which serves in place of earth.

(26) "Grounded" means connected to earth or to some connecting body which serves in place of the earth.

(27) "High-potential" shall conform to § 45.1-83 (e).

(28) "Interested persons" means members of the mine safety committee and other duly authorized representatives of the employees at the mine; federal and State coal-mine inspectors; and, to the extent required by the State mining law any other person.

(29) "Mine" means any open pit or any underground workings from which coal or other minerals are produced for sale, exchange,

or commercial use, and all shafts, slopes, drifts, or inclines leading thereto, and includes all buildings and equipment, above or below the surface of the ground, used in connection with such mine. Mines that are adjacent to each other and under the same management and which are administered as distinct units shall be considered as separate mines.

(30) "Intake air" means air that has not passed through the last working place of the split or by the unsealed entrances to abandoned workings and by analysis contains not less than nineteen and one-half per centum oxygen nor more than one half of one per centum of carbon dioxide, nor any dangerous quantities of flammable gas nor any harmful amounts of poisonous gas.

(31) "Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned, inaccessible or pillared workings. Area within a panel shall not be deemed abandoned until such panel is abandoned.

(32) "Permissible" means a device, process, or equipment or method heretofore or hereafter classified by such term by the United States Bureau of Mines, when such classification is adopted by the Chief, and includes, unless otherwise herein expressly stated, all requirements, restrictions, exceptions, limitations, and conditions attached to such classification by the said Bureau.

(33) "Shot firer" means a *certified* person *at a coal mine* employed or designated by the foreman to charge, stem and fire shots.

(34) "Substation" means an electrical installation containing generating or power-conversion equipment and associated electric equipment and parts, such as switchboards, switches, wiring, fuses, circuit breakers, compensators and transformers.

(35) "Working face" means those areas within a mine from which coal is being extracted or is to be extracted, including all of the area extending inby from the last open crosscut or cross entry to the coal face.

(36) "Working place" means any place within the mine where men are required to work or travel.

§ 45.1-21. Miscellaneous duties of owners, operators and their agents; procedure for reopening mine ordered cleared; reports and investigations of accidents; transfer of ownership.—(a) The operator, or his agent, of every mine shall furnish the Chief and mine inspectors proper facilities for entering such mine and making examinations or obtaining information and shall furnish any data or information not of a confidential nature requested by such inspector. The operator or his agent shall, when ordered to do so by the Chief or mine inspectors, promptly clear the mine or section thereof of all persons.

(b) The owner or operator of any mine or part thereof, so cleared of persons may apply to the circuit court in whose jurisdiction such mine is located, or the judge thereof in vacation, by petition, for an order directing said mine or part thereof, to be reopened, and such court, or judge, shall promptly hear and determine the matters arising upon such petition, and if, upon full hearing thereof, the court or the judge thereof in vacation, shall find that the mine, or the part thereof in question, is in a reasonably safe condition, the prayer of said petition shall be

granted. At least three days' notice of such hearing shall be given to the mine inspector appointed for, and acting in, that district, and to the Chief. In all such hearings the Attorney General, or the local Commonwealth's attorney, upon request of the Chief or his deputy, shall appear in behalf of the State. In the event of such appeal, the mine or section thereof affected shall remain idle until a full hearing has been held and a decision has been rendered.

(c) Each operator will report promptly to the Chief the occurrence at any mine of any accident involving serious personal injury or death to any person or persons, whether employed or not. The scene of the accident will not be disturbed pending an investigation, except to prevent suspension of use of a slope, entry or facility vital to the operation of a section or a mine. In cases where reasonable doubt exists as to whether to leave the scene unchanged, the operator will secure prior approval from the Chief before any changes are made. The Chief will go personally or dispatch one or more mine inspectors to the scene of the accident or accidents, investigate causes, and issue such orders as may be needed to insure safety of other persons. Representatives of the operator will render such assistance as may be needed and act in a consulting capacity in the investigation. An employee designated by the employees of the mine will be notified, and as many as three employees designated as representatives of the employees may be present at the investigation in a consulting capacity. The Division will render a complete report of circumstances and causes of each accident investigated, and make recommendations for the prevention of similar accidents. The Division will furnish one copy of the report to the operator, and one copy to the employee representative when he has been present at the investigation. The Chief will maintain a complete file of all accident reports, and may give such further publicity as may be ordered by the Commissioner in an effort to prevent mine accidents. Each employee shll promptly notify his supervisor of any injury received during the course of his employment.

(c1) Each operator shall keep on file a report of each accident including any accident which does not result in lost-time injury. Copies of such report shall be given to the employee involved and to the employee's safety committee prior to filing such report for the review of State or federal mine inspectors.

(d) The owner or operator of any mine shall employ only persons certified as required by the coal-mining laws of this State as mine foreman, assistant foreman, section foreman or fire boss.

(e) The owner or operator of any mine shall operate his mines in full conformity with the coal-mining laws of this State at all times.

(f) No operator, or his agent, of any mine worked by shaft, slope or incline shall place in charge of any engine or drum used for lowering or hoisting persons employed in such mine, any but competent and sober engineers or drum runners; and no engineer in charge of such machinery shall allow any person, except such as may be designated for such purpose by the operator, or his agent, to interfere with any part of the machinery; and no person shall interfere with or intimidate, the engineer or drum runner in the discharge of his duties.

(g) It shall be the duty of every operator or his agent to keep on hand at or within convenient distance, of each mine, at all times a sufficient quantity of all materials and supplies required to preserve the safety of the employees, as ordered by the mine foreman and required by Chapters 1 to 14 (§§ 45.1-1 to 45.1-161) of this title. If for any reason, the superintendent cannot procure the necessary materials or supplies as aforesaid, he shall at once notify the mine foreman, whose duty it shall be to withdraw the men from the mine, or the portion thereof affected until such material or supplies are received.

(h) The operator and superintendent shall cooperate with the mine foreman and other officials in the discharge of their duties as required by Chapters 1 to 14 of this title, and shall direct that the mine foreman and all other employees under his employment, comply with the law in all its provisions, especially when his attention is called, by the Chief or his deputies, to any violation of the laws.

(i) The operator or superintendent of every mine shall, at least ten days preceding, send to the Chief notices of the following occurrences: (1) when a mine is about to be abandoned; (2) when the working of a mine is to be resumed after the abandonment, or a discontinuance for a period exceeding thirty days (said mine shall be inspected and meet the approval of the Chief before operations begin); (3) when any change occurs in the name of a mine or in the name of the operation of a mine; (4) the opening of a new mine.

The name of mine, location of mine, name of operator and post office address must be given in all written notices.

(j) No person shall be placed in charge of a cutting, loading, drilling, continuous miner or timbering machine in any mine who is not a competent person capable of determining the safety of the roof and ribs of the working places; provided, however, that if such person be employed in gassy mines he shall also be capable of detecting the presence of explosive gas and shall be compelled to undergo examination by the mine inspector to determine his fitness to detect explosive gas before being permitted to have charge of machines in such mines, unless the required test has been made by a certified boss or by other persons having passed such examination.

(k) The operator, or his agent, of every coal mine and quarry shall annually, by the fifteenth day of February, mail or deliver to the Division of Mines a report for the preceding twelve months, ending with the thirty-first day of December. Such report shall state the names of the operators and officers of the mine, the quantity of coal or minerals mined and such other information, not of a private nature, as may, from time to time, be required by the Division of Mines on blank forms furnished by the Division of Mines. Whenever any person, company, or corporation operating a mine or quarry shall transfer the ownership of such mine *or quarry* to another person, company or corporation, the person, company or corporation transferring such ownership shall submit a report to the Division of Mines of such change and a statement of the tons of coal or minerals produced since the first of January previous to the date of such sale or transfer of such mine ~~or mines~~ *or quarry* . A license will not be issued covering such transfer of ownership until the

report is furnished.

§ 45.1-22. License required for operation of mines; term; not transferable; separate license for each mine; form; posting.–No person shall engage in the operation of any commercial mine as defined in § 45.1-2 within this State after ~~June twenty-seven~~ *July one* , nineteen hundred ~~sixty-six~~ *seventy-eight* , without first obtaining a license so to do from the Division of Mines which license shall be valid for a period of one year and shall not be transferable. Such license shall be obtained within forty-five days of January one, and shall be renewed each year thereafter during such period. Any person who desires to commence operation of any commercial mine after such forty-five day period has expired shall procure such license for the remainder of the year before operations are commenced. *A license shall be required prior to commencement of operations necessary to open a mine.* A separate license shall be secured for each commercial mine operated and shall be in such form as the Chief may prescribe. Such license shall be posted in a conspicuous place near the main entrance to the mine. Licenses issued by the Division of Mines and outstanding as of ~~June twenty-seven~~ *July one* , nineteen hundred ~~sixty-six~~ *seventy-eight* , shall remain effective during the period specified therein. Thereafter, such licenses shall be renewed as hereinabove provided.

§ 45.1-23. Fee to accompany request for license; disposition of fees.–Each request for a license shall be submitted to the Division of Mines, accompanied by a postal money order, cashier's check, or certified check drawn in favor of the State Treasurer in the amount of ~~twenty-five~~ *seventy-five* dollars; provided, however, that any person engaged in mining sand or gravel on an area of five acres or less, shall be required to pay a fee of ~~five~~ *twenty* dollars. All funds derived by this section shall be earmarked for the use of the Division of Mines. Expenditures from this fund may be made for safety equipment, safety education or for any expenditure to further the safety program in the mining and quarrying industry. All expenditures from this fund must be approved by the Commissioner of the Department of Labor and Industry and the Chief.

§ 45.1-25. Penalty for operating without license; powers of Chief.–*A. In addition to any other power conferred by law, the Chief, or his designated representative, shall have the authority to close any commercial mine which is operating without a license as is required by § 45.1-22.*

B. Any person operating a commercial mine within this State without first obtaining a license as provided herein shall , *upon conviction,* be guilty of a *Class 3* misdemeanor ~~and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred dollars, in the discretion of the court or jury trying the case~~ . Each day any person operates any commercial mine without first obtaining such license shall constitute a separate offense.

§ 45.1-26. Prohibited acts by miners, workmen or other persons; mine employees to comply with law.–(a) No miner, workman, or other person shall knowingly damage any shaft, lamp, instrument, air course, or brattice or obstruct airways, or carry therein any intoxicating liquors *or controlled drugs without the prescription of a licensed physician* , or disturb any part of the machinery or

appliances, or open a door used for directing ventilation and fail to close it again, or enter any part of a mine against caution, or disobey any order given in carrying out any of the provisions of Chapters 1 to 14 (§§ 45.1-1 to 45.1-161) of this title.

(b) The employees at any mine shall comply fully with the provisions of the mining laws of this State that pertain to their duties.

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President of the Senate

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Speaker of the House of Delegates

Approved:

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Governor

CHAPTER 119

An Act to amend and reenact §§ 45.1-106 and 45.1-108 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 45.1-115.1; and to repeal § 45.1-115 of the Code of Virginia, the amended, added, and repealed sections relating to the oil and gas laws of this Commonwealth.

[S 125]

Approved MAR 2 2 1978

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-106 and 45.1-108 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 45.1-115.1 as follows:

§ 45.1-106. Definitions.—As used in §§ 45.1-106 through 45.1-144 unless the context clearly indicates otherwise:

(a) "Casing" means a string or strings of pipe commonly placed in wells drilled for petroleum and natural gas;

(b) "Casing-head gas" means any gas or vapor, or both gas and vapor, indigenous to an oil stratum and produced from such stratum with oil;

(c) "Cement" means hydraulic cement properly mixed with water only;

(d) "Chief" means the Chief Mine Inspector *or his designated assistant unless the context indicates otherwise* ;

(e) "Coal operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;

(f) "Commissioner" means the Commissioner of the Department of Labor and Industry;

(g) "Division" means the Division of Mines;

(h) "Gas" means the natural gas including casing-head gas obtained from gas or combination wells regardless of its chemical analysis;

(i) "Log" or "well log" means the written record progressively describing all strata, water, oil or gas encountered in drilling, depth and thickness of each bed or seam of coal drilled through, quantity of oil, volumes of gas, pressures, rate of fill-up, fresh and salt water-bearing horizons and depths, cavings strata, casing records, etc., as is usually recorded in the normal procedure of drilling; also includes the electrical survey records or logs;

(j) "Mine" means an underground or surface excavation or development with or without any shafts, slopes, drifts or tunnels for the extraction of coal, minerals or nonmetallic materials, commonly designated as mineral resources (excluding petroleum and natural gas), containing the same with hoisting or haulage equipment and appliances for the extraction of the said mineral resources; and embraces any and all of the land or property of the mining plant, and the surface and underground, that is used or contributes directly or indirectly to the mining property, concentration or handling of said mineral resources;

(k) "Mine operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to

or does operate a mine;

(l) "Mud-laden fluid" means any approved mixture of water and clay or other material as the term is commonly used in the industry which will effectively seal the formation to which it is applied;

(m) "Natural gas" (See Gas);

(n) "Oil" means crude petroleum oil or petroleum;

(o) "Operator" means any person who, duly authorized, is in charge of the development of a lease, drilling activities or the operator of a producing well;

(p) "Person" means any natural person, firm, partnership, partnership association, association, company, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind;

(q) "Petroleum" means the natural untreated oil obtained from an oil well;

(r) "Pillar" means a solid block of coal or ore or other material, left unmined to support the overlying strata in a mine;

(s) "Pipeline" means any pipes above or below the ground used or to be used for the transportation of oil or gas;

(t) "Plat" or "map" means a map, drawing or print showing the location of a well or wells, mines, quarries;

(u) "Plug" means the stopping of the flow of water, gas or oil in connection with the abandoning of a producing or nonproductive well;

(v) "Porosity" means the state of or quality of being porous, the absorbent capacity of the material or the volume of liquid held by the pores;

(w) "Shot" or "shooting" means exploding nitroglycerine or other high explosive in a hole, to shatter the rock and increase the flow of oil or gas;

(x) "Tubing" means the conduit through which oil or gas is removed from a well;

(y) "Waste," in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the oil and gas industry;

(z) "Well" means a bore hole or excavation for the purpose of producing any liquid or gaseous substance from beneath the surface of the earth *but shall not include any water well* ;

(aa) "Well operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined;

(bb) "Workable coal bed" means a coal bed in fact being operated commercially, or which, in the judgment of the Chief, can, and that is reasonably to be expected will be so operated, and which, when operated, will require protection if wells are drilled through it.

§ 45.1-108. Powers and duties of Chief; rules, regulations and orders.— *A.* The Chief shall be charged with the enforcement of the laws of Virginia relating to exploration for and the production and transportation of oil and gas. He shall have power to require that the drilling, redrilling, deepening, casing, completion, plugging and abandonment of wells be done in such a manner as to prevent the escape of oil or gas out of one stratum to another and the unnecessary escape or waste of oil or gas; to prevent the intrusion

of water into an oil or gas stratum from a separate stratum; to prevent the pollution or contamination of freshwater supplies by oil, gas or salt water; to require reports, maps, well logs and other pertinent information on oil and gas wells; and generally to prevent waste as hereinafter set forth. He shall hold hearings and make rules and regulations necessary to carry out the provisions of Chapters 1 to 14 (§§ 45.1-1 to 45.1-161) of this title and shall have such further powers as are conferred upon him by Chapters 1 to 14 of this title.

B. Special and emergency rules, regulations and orders shall be issued when required and shall prevail as against general rules, regulations and orders if and when in conflict therewith. Special and emergency rules, regulations and orders shall apply to particular fields, districts, areas or subject matter.

C. In the event that the Chief finds the existence of an emergency which in his opinion requires the making, adoption, changing, modification, renewal or extension of a rule, regulation or order without first giving advance notice and having a public hearing on the same, such emergency rule, regulation or order shall have the same validity as if a public hearing with respect to the same had been held after due notice. Emergency rules, regulations and orders shall remain in force no longer than thirty days from their effective date. The Chief shall promptly, upon the adoption of any emergency rule, regulation or order, give notice thereof by publication and hold a public hearing to make permanent, modify, or repeal such emergency rule, regulation or order.

§ 45.1-115.1. Permit to drill required; fee; application; bond.—A. Before any such well is drilled, the operator shall secure from the Chief a permit to drill. The application for such permit shall be accompanied by a fee of twenty-five dollars and such operator shall, in addition, give bond, payable to the Commonwealth of Virginia, with surety acceptable to the Chief when in the opinion of the Chief such is considered necessary, to insure compliance with all laws and regulations relating to the drilling, redrilling, deepening, casing, plugging and abandonment of wells and for furnishing such reports and information as may be required by the Chief. The amount of the bond shall be set by the Chief in an amount not less than two thousand five hundred dollars nor more than ten thousand dollars for a well which is to be drilled three thousand feet or less; the bond shall be set in an amount not less than five thousand nor more than ten thousand dollars for a well which is to be drilled more than three thousand feet but less than six thousand feet; the bond shall be set in an amount not less than seven thousand five hundred dollars nor more than ten thousand dollars for a well which is to be drilled more than six thousand feet but less than nine thousand feet; and the bond shall be in the amount of ten thousand dollars for a well which is to be drilled more than nine thousand feet. Such bond shall remain in force until released by the Chief. The Chief may, at his discretion, release the bond at any time and shall release the same when he is satisfied that the well has been abandoned and plugged and reports and information furnished as required by Chapters 1 to 14 of this title. When such operator makes or has made application for permits to drill a number of wells, the Chief on request of such operator, may, in lieu

of requiring a separate bond for each well, require a blanket bond in such sum as he deems adequate, and the Chief may increase or reduce the amount of such bond from time to time as he may deem proper in view of the number of wells drilled by the particular well operator and the number of wells abandoned and plugged in the manner prescribed herein by such operator. On or after July one, nineteen hundred seventy-eight, all wells not covered by a bond shall be bonded in accordance with the provisions of this section.

B. The bonding requirements for oil and gas wells shall be limited to those set forth in this section and no additional bonding requirements contained within §§ 45.1-1 through 45.1-225 shall apply to oil and gas operations.

2. That § 45.1-115 of the Code of Virginia is repealed.

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President of the Senate

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Speaker of the House of Delegates

Approved:

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Governor

CHAPTER 118

An Act to amend and reenact §§ 45.1-27, 45.1-35, 45.1-41, 45.1-42, 45.1-81, 45.1-84, 45.1-85, 45.1-88, 45.1-89, 45.1-102, 45.1-103 and 45.1-105 of the Code of Virginia, relating to mine maps, lamps, roof supports, electrical wiring, shop equipment and fire prevention; penalty for violations.

[S 121]

Approved MAR 2 2 1978

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-27, 45.1-35, 45.1-41, 45.1-42, 45.1-81, 45.1-84, 45.1-85, 45.1-88, 45.1-89, 45.1-102, 45.1-103 and 45.1-105 of the Code of Virginia are amended and reenacted as follows:

§ 45.1-27. Maps of coal mines required to be made; contents; extension and preservation.—The operator of every mine, or his agent, shall make, or cause to be made, unless already made and filed, an accurate map or plan of such mine, on a scale to be stated thereon of one hundred to four hundred feet to the inch. Such map, or plan, shall show the openings or excavations, the shafts, slopes, entries and airways, with darts or arrows showing direction of air currents, headings, rooms, pillars and so forth, and such portions of such mine or mines as may have been abandoned, the general inclination of the coal strata, and so much of the property lines and the outcrop of the coal seam of the tract of land on which said mine is located, as may be within one thousand feet of any part of the workings of such mine. A true copy of such map or plan shall be delivered by such operator to the Chief, and the said map shall be filed and preserved among the records of the Division of Mines *and shall be made available at a reasonable cost to all persons owning, leasing, or residing on or having an equitable interest in surface areas or mineral interests within one thousand feet of such mining operation upon written proof satisfactory to the Chief and upon sworn affidavit that such person requesting a map has a proper legal or equitable interest; provided, however, that the Chief shall provide to the person requesting a map only that portion of the map which abuts or is contiguous to the property in which such requesting party has a legal or equitable interest and*~~; but~~ in no case shall any copy of the same be made for any other person without the consent of the operator or his agent. *The Chief shall forthwith deliver notice of such request to the operator of such mining operation.* The original map, or a true copy thereof, shall be kept by such operator at the mine, open at all reasonable times for the examination and use of the mine inspector; and such operator shall twice within every twelve months to wit, between the first day of December and the first day of February, and between the first day of June and the first day of August of each year, while the mine is in operation, cause such mine to be surveyed and the map thereof extended so as to accurately show the progress of the workings, the property lines and outcrop as before described, and shall forward the same to the Division of Mines, to be kept on record, subject to the conditions hereinbefore stated. The mine index number assigned to the mine by the Division of Mines must be

shown on the map at or near the portal.

§ 45.1-35. Lamp house and lamps.–(a) Naphtha or other flammable liquids in lamp houses shall be kept in safe containers and safe dispensers.

(b) All lamps used for portable illumination, flame safety lamps and methane detectors or indicators shall be of permissible type and maintained in permissible condition. Such lamps shall be properly cleaned, assembled, and checked by a qualified lamp attendant or other competent person before each period of use.

(c) It shall be unlawful for unauthorized persons to handle, use or assemble flame safety lamps which are provided for underground use. *At least one qualified person shall inspect the lamp to be certain that it is operating properly prior to going underground.*

45.1-41. Supplies of materials for supports; installation and removal of supports; correction of unsafe conditions.–(a) The operator shall provide at or near the working places an ample supply of suitable materials of proper size with which to secure all such working places in a safe manner. *Suitable supply materials shall provide for variations in seam height. In the event that such operator fails to provide such suitable materials, the foreman shall follow those procedures outlined in § 45.1-21 (g).*

(b) Safety posts, jacks or temporary crossbars shall be set close to the face before other operations are begun and as needed thereafter, if men go in by the last permanent roof support.

(c) Safety posts or jacks shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed, or when any other work is being performed that would reasonably require roof support to protect the workmen involved.

(d) All underground working places, travelways and haulageways shall be secured sufficiently to protect employees from falls of roof, face or rib. Loose roof and overhanging or loose faces and ribs shall be taken down or supported.

(e) Supports knocked out accidentally shall be replaced promptly. Supports in active workings shall not be removed deliberately unless equivalent protection is provided.

(f) No person shall advance under unsupported roof in any working places except those who are assigned to install supports ~~or to inspect the place~~ .

(g) If roof, face or rib conditions are found to be unsafe, they shall be corrected by taking down loose material or securely supporting the same before other work is started.

§ 45.1-42. Examination and testing; loose material.–(a) The operator shall instruct all workmen in the proper testing of roof, face and ribs.

(b) Persons exposed to danger from falls of roof, face and ribs shall examine and test the roof, face and ribs before starting work or before starting a machine and as frequently thereafter as may be necessary to insure safety. When dangerous conditions are found, they shall be corrected immediately by taking down the loose material or by proper timbering before work is continued or any other work is done, or the place shall be vacated.

(c) At least once each shift, or oftener if necessary, and during each visit, a certified official shall examine and test the roof, face

and ribs of each active working place while the men are working therein. Any place in which a dangerous condition is found by the foreman shall be made safe in his presence or under the direction of a competent person, or the workmen shall be withdrawn.

(d) At least once each day the mine is in operation, or more often if necessary, a certified official shall examine the roof and ribs of each passageway where men work or travel and the supports therein, and a record of such examination shall be made in an official record book of the mine which shall be open for inspection by interested persons. Any dangerous condition found shall be corrected promptly or traffic thereunder shall be discontinued until the danger has been removed. All unintentional roof and rib falls *which restrict travel or air flow* shall be reported promptly, including those which do not result in a lost-time injury. Such falls shall be marked on a map of the mine to indicate the specific location of the fall. Such reports shall be conspicuously posted near the main entrance of the mine, and shall also be kept on file for review by State or federal mine inspectors. Copies of such reports shall be furnished to the employee's safety committee.

(e) When there is danger of coal rolling on a person during or after cutting, it shall be spragged by placing blocks in the cut or by blocking with leaning posts.

(f) A bar of proper length shall be used to pull down loose material.

(g) Installed roof bolts shall be tested by qualified persons designated by the mine foreman.

§ 45.1-81. Communication systems.—(a) Telephone service or equivalent two-way communication facilities shall be provided between the top and each landing of main shafts and slopes. ~~Adequate communication systems shall be provided to other active sections of the mine.~~ *A telephone or equivalent two-way communication facility shall be located on the surface within five hundred feet of all main portals, and shall be installed either in a building or in a box-like structure designed to protect the facilities from damage by inclement weather. At least one of these communication facilities shall be at a location where a responsible person who is always on duty when men are underground can hear the facility and respond immediately in the event of an emergency.*

(b) Telephone lines, other than cables, shall be carried on insulators, installed on the opposite side from power or trolley wires, and where they cross power or trolley wires, they shall be insulated adequately.

(c) Lightning arrestors shall be provided at the points where telephone circuits enter the mine and at each telephone on the surface.

(d) If a communication system other than telephones is used and its operation depends entirely upon power from the mine electric system, means shall be provided to permit continued communication in event the mine electric power fails or is cut off.

§ 45.1-84. Trailing cables.—(a) Trailing cables purchased for or transferred to any mine after June twenty-seven, nineteen hundred sixty-six, for use underground shall be flame-resistant cables.

(b) Trailing cables shall be provided with suitable short-circuit protection and means of disconnecting power from the cable. In

gassy mines, power connections made in other than intake air shall be by means of permissible connectors.

(c) Temporary splices in trailing cables shall be made in a workmanlike manner, mechanically strong, and well insulated.

(d) The number of temporary, unvulcanized splices in a trailing cable shall be limited to ~~six, and to three in a hand cable~~ *one* .

(e) Permanent splices in trailing cables shall be made as follows:

(1) Mechanically strong with adequate electrical conductivity and flexibility.

(2) Effectively insulated and sealed so as to exclude moisture.

(3) The finished splice shall be vulcanized or otherwise treated with suitable materials to provide flame-resistant properties and good bonding to the outer jacket.

(f) Trailing cables shall be protected against mechanical injury.

§ 45.1-85. Inspection of electric equipment and wiring.– *A.* Electric equipment and wiring shall be inspected by a competent person at least once a ~~month~~ *week* and more often if necessary to assure safe operating conditions, and any defect found shall be corrected.

B. The Chief may require the operators of designated mines which liberate large volumes of gas to functionally check on a daily basis methane monitors on electrical face equipment to determine that such monitors are deenergizing the electrical face equipment properly. Such check shall be made on each production shift and shall be conducted by the equipment operator in the presence of a foreman, and shall be recorded in the on-shift report of the section foreman.

C. The Chief may require the operators of designated mines liberating large volumes of gas to perform weekly calibration tests on methane monitors on electrical face equipment to determine the accuracy and operation of such monitors.

§ 45.1-88. Shop and other equipment.–(a) The following shall be guarded *and maintained* adequately:

(1) Gears, sprockets, pulleys, fan blades or propellers, friction devices and couplings with protruding bolts or nuts.

(2) Shafting and projecting shaft ends that are within seven feet of floor or platform level.

(3) Belt, chain or rope drives that are within seven feet of floor or platform.

(4) Fly wheels. Where fly wheels extend more than seven feet above the floor, they shall be guarded to a height of at least seven feet.

(5) Circular and band saws and planers.

(6) Repair pits. Guards shall be kept in place when the pits are not in use.

(7) Counterweights.

(8) Mine fans. The approach shall be guarded.

(b) Machinery shall not be repaired or oiled while in motion; provided, however, that this shall not apply where safe remote oiling devices are used.

(c) A guard or safety device removed from any machine shall be replaced before the machine is put in operation.

(d) Mechanically operated grinding wheels shall be equipped

with:

(1) Safety washers and tool rests.

(2) Substantial retaining hoods, the hood opening of which shall not expose more than a ninety degree sector of the wheel. *Such hoods shall include a device to control and collect excess rock, metal or dust particles or equivalent protection shall be provided to the employees operating such machinery.*

(3) Eyeshields, unless goggles are worn by the operators.

§ 45.1-89. Fire-fighting equipment; duties in case of fire; fire prevention generally.—(a) Each mine shall be provided with suitable fire-fighting equipment, adequate for the size of the mine, such as supplies of rock dust at doors and at other strategic places, waterlines and hose, or water or chemical trucks, and fire extinguishers.

(b) Clean dry sand, rock dust, or fire extinguishers, suitable from a toxic and shock standpoint, shall be provided and placed at each electrical station, such as substations, transformer stations and permanent pump stations, so as to be out of the smoke in case of a fire in the station, and suitable fire extinguishers shall be provided on all self-propelled mobile equipment, at belt heads, and at the inby end of belts.

(c) An examination for fire shall be made after every blasting operation underground.

(d) Should a fire occur, the person discovering it and any person in the vicinity of the fire shall make a prompt effort to extinguish it.

(e) When a fire that may endanger the men underground cannot be extinguished immediately, the men shall be withdrawn promptly from the mine.

(f) Immediately upon knowledge of serious fire in or about a mine, the operator shall report by the quickest available means to the Chief, giving all information known to him. Based on the information, the Chief shall take prompt action to go in person or dispatch qualified subordinates to the scene of the fire for consultation, and assist in the extinguishing of the fire and the protection of exposed persons. In the event of a difference of opinion as to measures required, the decision of the Chief or his designated subordinate shall be final, but must be given to the operator in writing to have the force of an order.

(g) Underground storage places for oil, grease and flammable hydraulic fluid shall be of fireproof construction.

(h) Oil, grease and flammable hydraulic fluid kept underground for current use shall be in closed metal containers.

(i) Provisions shall be made to prevent accumulation of spilled oil or grease at the storage places or at the locations where such materials are used.

(j) Belt conveyors shall be equipped with control switches to automatically stop the driving motor in the event the belt is stopped by slipping on the driving pulley, by breakage or other accident.

(k) Except regular transportation equipment, no mining equipment shall be transported or trammed, other than daily sectional movement, unless by qualified personnel under the direction of a certified foreman.

(l) When equipment is being transported or trammed, no person

shall be permitted to be inby the equipment in the ventilating split that is passing over such equipment.

(2) To avoid accidental contact with power lines, the equipment being transported or trammed shall be insulated or assemblage removed, if necessary, if the clearance is six inches or less.

(3) Sufficient prior notice shall be given the Virginia Division of Mines so that a State inspector may travel the route of the move before the actual move is made, if he deems it necessary.

(4) The following minimum equipment must be immediately available:

(i) Water car (filled with water) provided with hose and pump.

(ii) At least three twenty pound dry chemical fire extinguishers.

(iii) Ten fifty pound bags of rock dust.

(iv) Bolt cutters which may be used to cut trolley wire in an emergency.

(v) One pair of rubber gloves to be used with bolt cutters when cutting trolley wire.

(vi) Two twenty pound sledge hammers.

(vii) Five hundred square feet of brattice cloth, nails and hammer.

(viii) Three Type N (Universal) gas masks, or equivalent protective device.

(5) In case of a fire, the next inby permanent stopping into the return air course is to be opened, as soon as possible. This will short-circuit the air and permit close access to the fire for extinguishment.

(l) A copy of a fire evacuation plan, approved by the Chief or his representative, shall be posted in a conspicuous manner and place within and without the mines, readily accessible to all mine employees.

§ 45.1-102. Consent required before working mine near land of another.—No owner or tenant of any land containing coal, sulphur or other minerals, within this Commonwealth, shall open or sink, dig, excavate or work in any mine or shaft on such land within five feet of the line dividing such land from that of another person, without the consent, in writing, of every person interested in or having title to such adjoining lands *or mineral rights* in possession, reversion or remainder, or of the guardian of any such person as may be an infant. If any person violates this section, he shall forfeit five hundred dollars to the party injured or to anyone whose consent is required but not obtained.

§ 45.1-103. Adjacent owner to be permitted to survey mine; proceedings to compel entry for survey.—(a) The owner, tenant, or occupant of any land *or minerals*, on *or in* which a coal or other mine is opened and worked, or his agent, shall permit any person interested in or having title to any land *or mineral rights* ~~conterminous~~ *coterminal* with that in which such mine is, if he has reason to believe his property is being trespassed, to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense, not oftener than once a month, for the purpose of ascertaining whether or not the preceding section (§ 45.1-102) has been violated. Every owner, tenant, occupant or agent who shall refuse such permission, exploration or survey, shall forfeit twenty dollars for each refusal, to the person so refused.

(b) The judge of the court not of record in the county in which such mine is, before whom complaint of such refusal shall be made, may issue a summons to such owner, tenant, occupant or agent, to answer such complaint. On the return of the summons executed, and proof that the complainant has right of entry, and that it has been refused without sufficient cause, the judge shall designate an early and convenient time for such entry to be made, and issue his warrant, commanding the sheriff of the county to attend and prevent obstructions and impediments to such entry, exploration and survey. The costs of such summons, and a fee of three dollars to the sheriff executing the warrant, shall be paid by the person whose refusal caused the complaint. But if the court dismiss the complaint, the costs shall be paid by the party making it.

§ 45.1-105. Penalties; duty of Commonwealth's Attorneys.—(a) Any operator, company or corporation, or any mine superintendent, inspector, engineer, mine foreman, agent or employee, who is charged with the making of maps or other data to be furnished as provided in Chapters 1 to 14 (§§ 45.1-1 to 45.1-161) of this title, and who does not correctly show, within the limits of error, the data required, or who knowingly makes any false statement or return in connection therewith, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than two hundred dollars, in the discretion of the court, or jury, trying the case.

(b) The Chief, or any inspector, or any operator, mine superintendent, mine foreman, or other employees of any mining company, or any other person, who shall willfully violate any of the provisions of Chapters 1 to 14 of this title, shall *, upon conviction,* be guilty of a *Class 1* misdemeanor ~~, and, upon conviction thereof, shall, unless a different penalty is expressly provided in Chapters 1 to 14 of this title, be fined not less than twenty-five dollars nor more than five hundred dollars, or be imprisoned in jail not less than ten days nor more than one year, in the discretion of the court, or jury, trying the case~~ .

(b1) It shall be unlawful and constitute a Class 1 misdemeanor for any owner, operator, superintendent, foreman, employee or other person to deny the Chief or his authorized representative entry to, upon, or through any mine for the purpose of conducting a lawful inspection pursuant to the provisions of § 45.1-5.

(c) It shall be the duty of the Commonwealth's Attorney of the appropriate county or city, upon the request of the Chief, or any of his deputies, to prosecute any violation of any law which it is the duty of the Chief to have enforced.

CHAPTER 94

An Act to amend and reenact §§ 45.1-101, 45.1-101.1, 45.1-101.2 and 54-276.9 of the Code of Virginia, relating to medical care and first aid training of coal miners.

[S 68]

Approved MAR 14 1978

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-101, 45.1-101.1, 45.1-101.2 and 54-276.9 of the Code of Virginia are amended and reenacted as follows:

§ 45.1-101. First aid equipment; medical care.—(a) Each mine shall have an adequate supply of first aid equipment as determined by the Chief, and such supplies shall be located on the surface, at the bottom of shafts and slopes, and at other strategic locations near the working faces. The first aid supplies shall be encased in suitable sanitary receptacles designed to be reasonably dust-tight and moisture-proof and shall be available for use of all persons employed in the mine. In addition to the material in the cases, blankets, splints, and properly constructed stretchers in good condition shall be provided. No first aid material shall be removed or diverted without authorization except in case of injury in or about the mine.

(b) When an injury occurs underground, the injured person shall be brought promptly to the surface. Prompt medical attention shall be provided in the event of injury, and adequate facilities shall be made available for transporting injured persons to a hospital where necessary.

(c) Safe transportation shall be provided to carry an injured person from the site where the injury occurred to the outside of the mine.

§ 45.1-101.1. Emergency medical care technicians.—On and after March thirty-one, nineteen hundred seventy-eight, at least one employee who is a working coal miner and who has been certified by the State Board of Health ~~, after consultation with the Division of Mines,~~ as possessing the qualifications of an emergency medical care ~~attendant as provided in § 32-310.4~~ *technician* shall be ~~on~~ *located so as to be available for* duty at each *coal* mine *when employees are working at that mine* ~~or mine development site on each shift when workers at such mine or mine development site are engaged in the production, extraction or preparation of coal or in the development of mine shafts or slopes~~ . Such emergency medical care ~~attendants~~ *technicians* shall be utilized in sufficient numbers to assure that workers in any mine location can be reached by them within ~~a~~ *such* reasonable time ~~, and~~ *as is determined by the Chief. Emergency medical care technicians* shall have available to them at all times the necessary equipment *, as specified by the Chief,* for prompt response to emergencies. *In the event that at any time there is at any mine an insufficient number of qualified employees volunteering to serve as emergency medical care technicians as provided for in this section, the operator may elect to utilize the services of first aid trainees as provided in paragraph A. of § 45.1-101.2, in such numbers as the Chief and the underground mine*

safety advisory committee determine to be appropriate. Telephone or equivalent facilities shall be installed to provide two-way voice communication between the emergency medical care ~~attendants~~ *technicians* and medical personnel outside the mine. The provisions of this section shall not apply to any surface mining operation.

§ 45.1-101.2. First aid training of coal miners.– ~~Every employer engaged in coal mining or mine construction work shall provide each new employee, who requests such training, with such first aid training as is prescribed by the Division of Mines, after consultation with the State Board of Health, the Mining Enforcement and Safety Administration of the United States Department of the Interior, and safety represenatives of the miners.~~

A. The Chief shall, by rules and regulations approved by the mine safety advisory committees, created pursuant to § 45.1-104, establish specifications for mine first aid and refresher training programs. Such specifications shall be no less than, but may exceed, the minimum requirements of such training programs which underground and surface mine operators are required to provide for their employees by applicable federal law. The Chief is authorized to utilize the Division's educational and training facilities in the conduct of such training programs and may require the cooperation of mine operators in making such programs available to their employees.

B. Each candidate for certification as a first class mine foreman shall complete the course or courses of instruction provided under paragraph A. and pass an examination approved by the Board of Mine Examiners, as a prerequisite for certification.

C. Each operator of a mine, upon request, shall make available to every miner employed in such mine the course of first aid training, including refresher training, as is required by paragraph A. of this section.

§ 54-276.9. Persons rendering emergency care exempt from liability.–(a) Any person who, in good faith, renders emergency care or assistance, without compensation, to any injured person at the scene of an accident, fire, or any life-threatening emergency, or en route therefrom to any hospital, medical clinic or doctor's office, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such care or assistance.

(b) Any emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health who in good faith renders emergency care or assistance, without compensation, to any injured or ill person, whether at the scene of an accident, fire or any other place, or while transporting such injured or ill person to, from or between any hospital, medical facility, medical clinic, doctor's office or other similar or related medical facility, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care, treatment or assistance.

(c) Any person having attended and successfully completed a course in cardiopulmonary resuscitation, which has been approved by the Board of Health, who in good faith and without compensation renders or administers emergency cardiopulmonary resuscitation, cardiac defibrillation or other emergency life-sustaining or resuscitative treatments or procedures which have been approved by

the State Board of Health to any sick or injured person, whether at the scene of a fire, an accident or any other place, or while transporting such person to or from any hospital, clinic, doctor's office or other medical facility, shall be deemed qualified to administer such emergency treatments and procedures; and such individual shall not be liable for acts or omissions resulting from the rendering of such emergency resuscitative treatments or procedures.

(d) Nothing contained in this section shall be construed to provide immunity from liability arising out of the operation of a motor vehicle.

(e) For the purposes of this section, the term "compensation" shall not be construed to include the salaries of police, fire or other public officials or emergency service personnel who render such emergency assistance , *nor the salaries or wages of employees of a coal producer engaging in emergency medical technician service or first aid service pursuant to the provisions of § 45.1-101.1 or § 45.1-101.2* .

2. That an emergency exists and this act is in force from its passage.

_____

President of the Senate

_____

Speaker of the House of Delegates

Approved:

_____

Governor

CHAPTER 63-1

An Act to amend the Code of Virginia by adding in Chapter 16 of Title 45.1 an article numbered 3, consisting of sections numbered 45.1-197.3 through 45.1-197.7, and an article numbered 4, consisting of sections numbered 45.1-197.8 through 45.1-197.18, the added sections relating to the reclamation of noncoal orphaned lands and the creation of the Minerals Reclamation Fund; allocation of funds.

[H 268]

Approved APR 7 - 1978

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 16 of Title 45.1 an article numbered 3, consisting of sections numbered 45.1-197.3 through 45.1-197.7, and an article numbered 4, consisting of sections numbered 45.1-197.8 through 45.1-197.18, as follows:

Article 3.

Orphaned Lands.

§ 45.1-197.3. Definition.—For the purpose of this article, the term "orphaned lands" shall mean lands disturbed by surface mining of minerals other than coal operations which were not required by law to be reclaimed or which have not been reclaimed.

§ 45.1-197.4. Survey; priorities for reclamation.—The Director shall cause a survey to be conducted to determine the extent of the orphaned lands in this Commonwealth and shall establish priorities for the reclamation thereof.

§ 45.1-197.5. Agreements with owners or lessees; reclamation by Director.—The Director is authorized to enter into agreements with owners or lessees of orphaned lands when the owners agree to the reclamation of such lands by the Division to the extent and in the manner deemed appropriate or reasonable by the Director. In no event shall the Director return orphaned land to other than the minimum potential use thereof which obtained prior to the initiation of mining operations unless the landowner or owners, lessee or lessees, agree to bind himself or themselves to the payment of the additional cost upon such terms as the Director deems reasonable. In entering into such agreements, the Director shall be guided by the priorities for reclamation established by him, but in no event shall the Director enter into such agreement unless funds are immediately available for the performance of the agreement by the Director as hereinafter provided.

§ 45.1-197.6. Contracts for reclamation.—The Director is authorized to contract with any State agency, federal agency, or private contractor through the Division for the purpose of reclaiming orphaned lands pursuant to the agreements herein specified.

§ 45.1-197.7. Acceptance of federal funds, gifts, etc.—The Director is authorized to accept federal funds or gifts or grants from any source for the purposes of this article and is further authorized to acquire by gift or purchase, but not by the exercise of the power of eminent domain, such orphaned lands as in his judgment is in the public interest and to utilize any such funds, gifts or grants for the

purposes of this article.

Article 4.

Minerals Reclamation Fund.

§ 45.1-197.8. Creation of fund.—There is hereby created in the State Treasurer's Office a special fund to be known as the Minerals Reclamation Fund, hereinafter referred to as the Fund, which shall be under the supervision of the Department. The Fund shall consist of all payments made into the Fund by operators in accordance with the provisions of this article.

§ 45.1-197.9. Membership in Fund; payments required.—Each operator who has had five years of satisfactory operation in the Commonwealth under Chapter 16 of Title 45.1 of the Code shall become a member of the Fund by making an initial payment to the Fund of fifty dollars for each acre estimated to be affected by mining operations during the next ensuing year. Thereafter, the member shall, within ten days following the anniversary date of each permit issued to the member, make a payment to the Fund of twelve dollars and fifty cents for each acre estimated to be affected by mining operations during the next ensuing year. Such payments shall continue to be made until the member has paid into the Fund a total of five hundred dollars for each acre, estimated to be affected under the permits issued to the member.

§ 45.1-197.10. Release of bonds and other securities.—When the size of the Fund shall have reached four hundred thousand dollars, the bonds and other securities previously posted, pursuant to § 45.1-183, by all members shall be released.

§ 45.1-197.11. Return of member payments.—Subject to the provisions of § 45.1-197.14, the Director shall return from the Fund to the member, the payments which the member has paid previously to the Fund, when the Director has determined that the member has completed satisfactory reclamation, in accordance with § 45.1-185. The payments returned shall be only those payments which the member has made for the acres which have been satisfactorily reclaimed. In lieu of a return, the member may request the Director to retain the payments in the Fund as payments for additional acres to be disturbed by the member's operations.

§ 45.1-197.12. Revocation of permits; reclamation work.—If a permit which has been issued to a member is revoked pursuant to § 45.1-186.1, then the payments which the member has made to the Fund, with respect to the permit so revoked, shall be forfeited to the Fund. The Director shall use the payments so forfeited or as much thereof as shall be necessary, for the reclamation of the mining operation to which the permit had applied. In the event that the cost of reclamation exceeds the amount of the forfeited payments, the Director shall also use the proceeds from the member's bond or other security also forfeited in conjunction with the revocation of the permit, in accordance with § 45.1-186.1, except that if all members' bonds and other securities have been released pursuant to § 45.1-197.10 then the Director shall draw upon the Fund for the entire cost of reclamation.

§ 45.1-197.13. Collection of debts.—The amount by which the cost of reclamation exceeds the amount of a member's forfeited payments and, if any, the member's bond or other security also

forfeited, shall constitute a debt of the member to the Commonwealth of Virginia. The Director is authorized to collect such debts together with the cost of collection, through appropriate legal action, or by declaring the forfeiture of other payments made by the member to the Fund. Monies collected through legal action, less the costs of collection, shall be deposited in the Fund.

§ 45.1-197.14. Decreases in the size of the Fund.—Whenever the size of the Fund shall decrease to less than two hundred fifty thousand dollars the Director shall suspend the return of payments pursuant to § 45.1-197.11 and shall assess all members an equal amount for each affected acre, for a total amount sufficient to raise the Fund to two hundred fifty thousand dollars. In lieu of such an assessment all members shall at the request of the Director post bonds or other securities, within six months after the Director so notifies the members. Failure to post bond or other surety or to pay the required assessment shall result in the revocation of the permit of the member and the forfeiture of the member's payments in accordance with § 45.1-197.12.

§ 45.1-197.15. Order of return of payments.—The return of payments to members shall be in the order in which the Director approves the completion of reclamation pursuant to § 45.1-185.

§ 45.1-197.16. Discontinuance of Fund.—In the event of the discontinuance of the Fund, any amounts remaining in the Fund shall be returned to the members in proportion to the amount that each member has paid.

§ 45.1-197.17. Miscellaneous.—Nothing in this article shall be construed as vesting in any member any right, title or interest in the Fund, or the disposition thereof. The Fund shall be used solely for reclamation of land pursuant to this chapter.

§ 45.1-197.18. Reclamation Funding.—An amount equal to the average interest rate earned for all funds in the State Treasury as applied to the Fund shall be paid annually to the Department of Conservation and Economic Development to be used only for the reclamation of orphaned lands pursuant to Article 3 of this chapter and is hereby allocated for such purposes.

CHAPTER 222

An Act to amend and reenact § 45.1-21 of the Code of Virginia, relating to monthly coal tonnage reports.

[H 624]

Approved MAR 2 3 1976

Be it enacted by the General Assembly of Virginia:

1. That § 45.1-21 of the Code of Virginia is amended and reenacted as follows:

§ 45.1-21. Miscellaneous duties of owners, operators and their agents; procedure for reopening mine ordered cleared; reports and investigations of accidents; transfer of ownership.—(a) The operator, or his agent, of every mine shall furnish the Chief and mine inspectors proper facilities for entering such mine and making examinations or obtaining information and shall furnish any data or information not of a confidential nature requested by such inspector. The operator or his agent shall, when ordered to do so by the Chief or mine inspectors, promptly clear the mine or section thereof of all persons.

(b) The owner or operator of any mine or part thereof, so cleared of persons may apply to the circuit court in whose jurisdiction such mine is located, or the judge thereof in vacation, by petition, for an order directing said mine or part thereof, to be reopened, and such court, or judge, shall promptly hear and determine the matters arising upon such petition, and if, upon full hearing thereof, the court or the judge thereof in vacation, shall find that the mine, or the part thereof in question, is in a reasonably safe condition, the prayer of said petition shall be granted. At least three days' notice of such hearing shall be given to the mine inspector appointed for, and acting in, that district, and to the Chief. In all such hearings the Attorney General, or the local Commonwealth's attorney, upon request of the Chief or his deputy, shall appear in behalf of the State. In the event of such appeal, the mine or section thereof affected shall remain idle until a full hearing has been held and a decision has been rendered.

(c) Each operator will report promptly to the Chief the occurrence at any mine of any accident involving serious personal injury or death to any person or persons, whether employed or not. The scene of the accident will not be disturbed pending an investigation, except to prevent suspension of use of a slope, entry or facility vital to the operation of a section or a mine. In cases where reasonable doubt exists as to whether to leave the scene unchanged, the operator will secure prior approval from the Chief before any changes are made. The Chief will go personally or dispatch one or more mine inspectors to the scene of the accident or accidents, investigate causes, and issue such orders as may be needed to insure safety of other persons. Representatives of the operator will render such assistance as may be needed and act in a consulting capacity in the investigation. An employee designated by the employees of the mine will be notified, and as many as three employees designated as representatives of the employees may be present at the investigation in a consulting capacity. The Division

will render a complete report of circumstances and causes of each accident investigated, and make recommendations for the prevention of similar accidents. The Division will furnish one copy of the report to the operator, and one copy to the employee representative when he has been present at the investigation. The Chief will maintain a complete file of all accident reports, and may give such further publicity as may be ordered by the Commissioner in an effort to prevent mine accidents. Each employee shall promptly notify his supervisor of any injury received during the course of his employment.

(c1) Each operator shall keep on file a report of each accident including any accident which does not result in lost-time injury. Copies of such report shall be given to the employee involved and to the employee's safety committee prior to filing such report for the review of State or federal mine inspectors.

(d) The owner or operator of any mine shall employ only persons certified as required by the coal-mining laws of this State as mine foreman, assistant foreman, section foreman or fire boss.

(e) The owner or operator of any mine shall operate his mines in full conformity with the coal-mining laws of this State at all times.

(f) No operator, or his agent, of any mine worked by shaft, slope or incline shall place in charge of any engine or drum used for lowering or hoisting persons employed in such mine, any but competent and sober engineers or drum runners; and no engineer in charge of such machinery shall allow any person, except such as may be designated for such purpose by the operator, or his agent, to interfere with any part of the machinery; and no person shall interfere with or intimidate, the engineer or drum runner in the discharge of his duties.

(g) It shall be the duty of every operator or his agent to keep on hand at or within convenient distance, of each mine, at all times a sufficient quantity of all materials and supplies required to preserve the safety of the employees, as ordered by the mine foreman and required by Chapters 1 to 14 (§§ 45.1-1 to 45.1-161) of this title. If for any reason, the superintendent cannot procure the necessary materials or supplies as aforesaid, he shall at once notify the mine foreman, whose duty it shall be to withdraw the men from the mine, or the portion thereof affected until such material or supplies are received.

(h) The operator and superintendent shall cooperate with the mine foreman and other officials in the discharge of their duties as required by Chapters 1 to 14 of this title, and shall direct that the mine foreman and all other employees under his employment, comply with the law in all its provisions, especially when his attention is called, by the Chief or his deputies, to any violation of the laws.

(i) The operator or superintendent of every mine shall, at least ten days preceding, send to the Chief notices of the following occurrences: (1) when a mine is about to be abandoned; (2) when the working of a mine is to be resumed after the abandonment, or a discontinuance for a period exceeding thirty days (said mine shall be inspected and meet the approval of the Chief before operations begin); (3) when any change occurs in the name of a mine or in

the name of the operation of a mine; (4) the opening of a new mine.

The name of mine, location of mine, name of operator and post office address must be given in all written notices.

(j) No person shall be placed in charge of a cutting, loading, drilling, continuous miner or timbering machine in any mine who is not a competent person capable of determining the safety of the roof and ribs of the working places; provided, however, that if such person be employed in gassy mines he shall also be capable of detecting the presence of explosive gas and shall be compelled to undergo examination by the mine inspector to determine his fitness to detect explosive gas before being permitted to have charge of machines in such mines, unless the required test has been made by a certified boss or by other persons having passed such examination.

(k) *The operator, or his agent, of every coal mining company or corporation shall, by the last day of each month, mail or deliver to the Division of Mines and to the local Commissioner of the Revenue of each county or city in which coal is produced a report for the preceding month stating the names of the operators, agents or assignees of the mine, the quantity of coal mined and such other information, not of a private nature, as may, from time to time, be required by the Division of Mines on blank forms furnished by the Division of Mines. In addition to the monthly report,* the operator, or his agent, of every coal mine and quarry shall annually, by the fifteenth day of February, mail or deliver to the Division of Mines a report for the preceding twelve months, ending with the thirty-first day of December. Such report shall state the names of the operators and officers of the mine, the quantity of coal or minerals mined and such other information, not of a private nature, as may, from time to time, be required by the Division of Mines on blank forms furnished by the Division of Mines. Whenever any person, company, or corporation operating a mine or quarry shall transfer the ownership of such mine to another person, company or corporation, the person, company or corporation transferring such ownership shall submit a report to the Division of Mines of such change and a statement of the tons of coal or minerals produced since the first of January previous to the date of such sale or transfer of such mine or mines. A license will not be issued covering such transfer of ownership until the report is furnished.

CHAPTER 92

An Act to amend and reenact § 45.1-213 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 17 of Title 45.1 an article numbered 4, consisting of sections numbered 45.1-220.1 through 45.1-220.5, the amended and added sections relating to the issuance of coal surface mining permits; compliance with interim regulatory procedures established by federal law; exemptions; fees; applicability of article to underground mines.

[H 400]

Approved MAR 1 - 1978

Be it enacted by the General Assembly of Virginia:

1. That § 45.1-213 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 17 of Title 45.1 an article numbered 4, consisting of sections numbered 45.1-220.1 through 45.1-220.5, as follows:

§ 45.1-213. Appeal de novo from decision of Board or hearings officer; right to have jury.—Any operator who is aggrieved by an opinion issued by the Board of Conservation and Economic Development or hearings officer shall have the right of appeal to the circuit court of the county or ~~corporation court of the~~ city in which the land or a major portion thereof which is involved in the opinion appealed from is located. Such appeal shall be filed within twenty-one days after the opinion of the Board or hearings officer is rendered. The filing of an appeal hereunder shall not automatically stay the effect of the opinion appealed from, but, if on application to the court, undue hardship is shown to result, the court in its discretion may suspend the execution thereof and fix the terms. *Appeals taken under the provisions of this section shall be heard de novo and, upon demand of either party, shall be heard in the presence of a jury.*

Article 4.
Initial Regulatory Program and Procedures.

§ 45.1-220.1. Findings and objectives.—A. The General Assembly finds that federal enforcement and administration of the initial regulatory program established by the Federal Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), would not be in the best interests of the Commonwealth. It is the objective of the General Assembly to preclude, or minimize the adverse effects of federal enforcement, and to allow the regulation of coal surface mining to remain within the powers of the Commonwealth, to the fullest extent possible.

B. It is the purpose of this article to encourage and allow the continued high production of coal by as many mining operations as possible under the federal initial regulatory program and to enable the Commonwealth through its own instrumentalities, to enforce and administer the provisions of the federal program, in order to lessen federal enforcement and administration thereof.

C. Nothing in this article, however, is intended, nor shall be construed, as expressing the Commonwealth's approval of or

satisfaction with the standards or provisions contained in the initial regulatory program of the federal act, so as to limit or affect any suit, action or other proceeding brought by the Commonwealth or any person to invalidate, set aside or modify, in whole or part, the federal act or regulations promulgated thereunder.

§ 45.1-220.2. Permits and enforcement.—A. The Director shall include in all permits issued on or after February three, nineteen hundred seventy-eight, terms which require the operator to comply with the provisions set out in § 502(c) of Public Law 95-87; except that such requirements shall not be included in permits which are issued for operations which are not subject to the provisions of the federal act, pursuant to § 528 thereof.

B. The Director is empowered to enforce the requirements included in permits pursuant to subsection A., and, on and after May three, nineteen hundred seventy-eight, the Director is empowered to enforce the requirements of § 502 (c) with respect to any operation which was issued a permit prior to February three, nineteen hundred seventy-eight, except to the extent that such operation is exempt from the requirements of the federal act. The means by which the Director is empowered to enforce such requirements shall be the same powers which have been conferred upon the Director pursuant to Article 1 and Article 2 of this chapter.

§ 45.1-220.3. Powers of Board and Director.—A. The Board is empowered to adopt such regulations which it deems appropriate as a result of the provisions of the initial regulatory program of the federal act, in accordance with the purpose of this article.

B. The Director is empowered to amend or require any operator to amend permits, operation plans, drainage plans, reclamation plans, and maps, and, to require any operator to submit reports, maps, samples, documents, and other material, as the Director determines necessary to administer any of the provisions of the initial regulatory program of the federal act, in accordance with compliance schedules established by the Director.

C. The Director is further empowered to conduct such public hearings, and to take such additional time therefor, prior to the issuance of permits, as may be appropriate under the provisions of the federal initial regulatory program.

§ 45.1-330.1. Permits; anniversary payment.—A. The term of all surface mining permits, including permits heretofore issued, is for the duration of the operation.

B. On and after the effective date of this act, an anniversary payment of six dollars per acre shall be payable each year on the anniversary date of the permit for the amount of the undisturbed land remaining on the permit, and the operators shall file such progress reports and maps and post such additional bond as required by the Director.

C. Nothing in this section shall be construed as renewing permits which have expired or have been revoked, or as affecting the power of the Director to revoke permits pursuant to the provisions of this chapter.

§ 45.1-220.5. Surface impacts incident to underground mines.—A. The Board is authorized to adopt regulations for the issuance of permits, the posting of bonds, and the submission of operations,

drainage and reclamation plans and other information as may be necessary, applicable to surface operations and surface impacts incident to underground coal mines. The fee for the issuance of such permits shall be twelve dollars per acre; and the anniversary fee shall be six dollars per acre for areas disturbed under the permit.

B. Nothing in this section shall be construed as limiting the power of the Chief of the Division of Mines and Quarries to issue licenses pursuant to Chapter 1 of this Title.

2. The provisions of this act are not intended to supercede any existing provision of Chapter 17 of Title 45.1 and the powers, duties and responsibilities conferred by this act shall be in addition and supplemental to the powers, duties and responsibilities already in existence pursuant to Chapter 17 of Title 45.1.

3. That the provisions of this act are severable, and if any part thereof shall be held invalid by a court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

4. That an emergency exists and this act is in force from its passage.

5. The Department of Conservation and Economic Development is authorized to make every effort and perform all acts necessary to obtain full reimbursement from the United States Department of the Interior for the costs of performing its duties pursuant to this Act.

6. That this act shall expire on June four, nineteen hundred eighty.

_____

President of the Senate

_____

Speaker of the House of Delegates

Approved:

_____

Governor

CHAPTER 474

An Act to amend the Code of Virginia by adding a section numbered 53-19.38:1, relating to sale or lease of gas, oil or minerals by the Director of the Department of Corrections.

[H 670]

Approved APR 1 1978

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 53-19.38:1 as follows:

§ 53-19.38:1. Sale or lease of gas, oil or minerals.—The Director, with the approval of the Board, is empowered to make and execute contracts, easements and leases in the name of the Commonwealth, for the removal or mining of gas, oil or any valuable minerals that may be found in any real estate, title of which is vested in the Board, whenever it shall be made to appear to the Board that it would be for the best interest of the Commonwealth to make such disposition of such gas, oil, or minerals; provided, however, before a contract, easement or lease is made, the same shall be approved by the Governor, and any contract, easement or lease shall be approved as to form by the Attorney General. Provided, further, that bids therefor shall be received after notice by publication once a week for four weeks in two newspapers of general circulation. The Director shall have the right to reject any or all bids and to readvertise for bids. The accepted bidder shall give bond with good and sufficient surety to the satisfaction of the Director and in such amount as he may fix for the faithful performance of all the conditions and covenants of such contract, easement or lease. Each such contract, easement or lease may be for a period not exceeding five years, may include the right to renew the same for an additional period not exceeding five years each and shall specify the rent royalties and other terms deemed expedient and proper. Such contracts, easements and leases may, in addition to any other rights, authorize the grantees and lessees to prospect for and take from the real estate oil, gas, and such other minerals as are therein specified; provided, however, that no such contract, easement or lease shall in any way affect or interfere with the orderly operation of any correctional institution or institution established pursuant to § 53-330. All rents or royalties collected from such contracts, easements or leases shall be paid into the State Treasury to the credit of the general fund. The Director shall make an annual report as of December one to the General Assembly, which report shall contain necessary information pertaining to contracts, leases or easements entered into pursuant to the provisions of this section.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 448

(MR. BROTHERTON, MR. PRESIDENT, and MR. GAINER, *original sponsors*)

[Passed March 11, 1978; in effect from passage.]

AN ACT to amend article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three-a, relating to authorizing the reclamation commission and the director of the department of natural resources to implement the provisions of section 515 of the federal Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87); expanding the rule-making authority of the director and reclamation commission of the department of natural resources with regard thereto; and providing for expiration of authority.

Be it enacted by the Legislature of West Virginia:

That article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-three-a, to read as follows:

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-23a. Implementing federal surface mining and control standards under Public Law 95-87 and expanding rule-making authority of the director and reclamation commission; expiration of authority.

The Legislature finds that the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), hereinafter cited as P. L. 95-87, and specifically subsection 502 (c) therein may prohibit the state from issuing surface-mining permits for coal after the third day of

February, one thousand nine hundred seventy-eight, unless such permits contain conditions requiring compliance with the provisions of said federal law. Because the inability of the state to issue permits after that date would prevent the operation of surface mines which are needed to supply coal to meet energy needs for the preservation of the public health, safety and welfare and, since authority to regulate the surface mining of coal in the state has already been vested in the department of natural resources and the reclamation commission, the Legislature does hereby intend to expand the authority of the department and the commission to issue permits in compliance with the federal law.

In addition to the other powers, duties, and authority of the reclamation commission provided elsewhere in this chapter and article two, chapter twenty-two of this code, the commission may promulgate rules and regulations necessary to require the surface mining of coal in this state to be in compliance and conformity with section 515, Title V of P. L. 95-87.

In addition to the other powers, duties, and authority of the director of the department of natural resources provided elsewhere in this chapter, the director may promulgate rules and regulations adequate to enforce the rules and regulations promulgated by the reclamation commission in accordance with the preceding paragraph.

The expanded rule-making authority above mentioned may include the promulgation and enforcement of rules and regulations as prescribed by section 515, Title V of P. L. 95-87 and such authority shall specifically include the authority to regulate and enforce rules and regulations regulating the surface effect of deep mining in this state in conformity with section 515, Title V of P. L. 95-87 and article two, chapter twenty-two of this code.

The director shall cause a copy of P. L. 95-87 to be filed in the office of the secretary of state for public inspection.

The expanded rule-making authority as expressed herein shall be of an interim and temporary effect in that such

expanded authority for both the director of natural resources and the reclamation commission and all such rules and regulations promulgated pursuant to the authority granted by this section shall expire and have no force and effect after the thirtieth day of August, one thousand nine hundred seventy-nine.

All rules and regulations promulgated pursuant to the authority granted under this section shall be subject to the provisions of chapter twenty-nine-a of the code: *Provided*, That this requirement shall in no way limit the application of said chapter twenty-nine-a to any other rules and regulations promulgated by the reclamation commission or the director of the department of natural resources.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within _____ this the _____

day of _____, 1978.

Governor

SENATE CONCURRENT RESOLUTION NO. 27

(Originating in the Committee on Natural Resources)

Same as HCR 46

Directing the Joint Committee on Government and Finance to conduct a study of requirements necessary for State adoption and implementation of the regulatory provisions of the federal Surface Mining Control and Reclamation Act of 1977.

Whereas, The federal Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) provides for the regulation and control of surface coal mining operations for the protection of the environment; and

Whereas, Section 503 of the Act requires that a state desiring to assume regulatory authority under the Act must submit to the Secretary of the Interior, by February 3, 1979, a program which demonstrates that such state has the capability of carrying out the provisions of the Act; and

Whereas, Although the surface mining control and reclamation laws of this State are in the forefront of states' laws nationally, substantial changes in those laws will be required in order to achieve compliance with the provisions of the Act, and the rules and regulations promulgated thereunder, and to ensure assumption by this State of the required regulatory program; and

Whereas, A legislative study of the necessary changes in this State's laws, in cooperation with the Department of Natural Resources, is absolutely essential to ensure proper development of this State's regulatory program in response to the February, 1979 deadline contained in the Act; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance conduct a study of require-

ments necessary for State adoption and implementation of the regulatory programs contained in the federal Surface Mining Control and Reclamation Act of 1977; and, be it

Resolved further, That the Joint Committee shall coordinate its efforts with the Department of Natural Resources and shall, if necessary, meet with officials of the Office of Surface Mining Reclamation and Enforcement of the U. S. Department of the Interior; and, be it

Resolved further, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 1977, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Resolved further, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

STATE OF WISCONSIN

1977 Assembly Bill 969 Date published*: June 6, 1978

CHAPTER 438, LAWS OF 1977

AN ACT to renumber 32.05 (2) and 32.06 (2); to amend 32.05 (2a), 32.06 (2a), 32.09 (6) (e) and 32.19 (4) (a) (intro.) and (b) (intro.); to repeal and recreate 32.02 (intro.), 32.05 (8) and 32.06 (9) (c); and to create 32.05 (2) (b), 32.06 (2) (b), 32.19 (2m) and (4) (bm) and 32.26 (6) of the statutes, relating to making various changes in the law on eminent domain.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 32.02 (intro.) of the statutes, as affected by chapter 29, laws of 1977, is repealed and recreated to read:

32.02 Who may condemn; purposes. (intro.) The following departments, municipalities, boards, commissions, public officers and corporations may acquire by condemnation any real estate and personal property appurtenant thereto or interest therein which they have power to acquire and hold or transfer to the state, for the purposes specified, in case such property cannot be acquired by gift or purchase at an agreed price:

SECTION 2. 32.05 (2) of the statutes is renumbered 32.05 (2) (a).

SECTION 3. 32.05 (2) (b) of the statutes is created to read:

32.05 (2) (b) The condemnor shall provide the owner with a full narrative appraisal upon which the jurisdictional offer is based and a copy of any other appraisal made under par. (a) and at the same time shall inform the owner of his or her right to obtain an appraisal under this paragraph. The owner may obtain an appraisal by a qualified appraiser of all property proposed to be acquired, and may submit the reasonable costs of the appraisal to the condemnor for payment. The owner shall submit a full narrative appraisal to the condemnor within 60 days after the owner receives the condemnor's appraisal. If the owner does not accept a negotiated offer under sub. (2a) or the jurisdictional offer under sub. (3), the owner may use an appraisal prepared under this paragraph in any subsequent appeal.

SECTION 4. 32.05 (2a) of the statutes is amended to read:

32.05 (2a) NEGOTIATION. Before making the jurisdictional offer provided in sub. (3), the condemnor shall attempt to negotiate personally with the owner or one of the owners or his ~~personal~~ or her representative of the property sought to be taken for the purchase of the same. In such negotiation the condemnor ~~is authorized to~~ shall consider the owner's appraisal under sub. (2) (b) and may contract to pay the items of compensation enumerated in ss. 32.09 and 32.19 as may be applicable to the property in one or more instalments on such conditions as the condemnor and property owners may agree. Before attempting to negotiate under this paragraph, the condemnor shall provide the owner or his or her representative with copies of applicable pamphlets prepared under s. 32.26 (6). When negotiating under this subsection, the condemnor shall provide the owner or his or her representative with the names of at least 10 neighboring landowners to whom offers are being made, or a list of all offerees if less than 10 owners are affected, together with a map showing all property affected by the project. Upon request by an owner or his or her representative, the condemnor shall provide the name of the owner of any other property which may be taken for the project. The owner or his or her representative shall also have the right, upon request, to examine any maps in the possession of the condemnor showing property affected by the project. The owner or his or her representative may obtain copies of such maps by tendering the reasonable and necessary costs of preparing copies.

* Section 990.05, *1975 Wisconsin Statutes*: **Laws and acts; time of going into force.** "Every law or act which does not expressly prescribe the time it takes effect shall take effect on the day after its publication."

SECTION 5. 32.05 (8) of the statutes is repealed and recreated to read:

32.05 (8) OCCUPANCY; WRIT OF ASSISTANCE; WASTE. The condemnor shall allow any person occupying the property on the date that title vests in the condemnor to continue to occupy the property for at least one month after that date. The condemnor may not charge rent for any property occupied after the date that title vests in the condemnor by a person who occupied the property on that date. Any person occupying the property after the date that title vests in the condemnor shall be liable to the condemnor for all waste committed or allowed by the occupant on the lands condemned during the occupancy. The condemnor shall have the right to possession when the persons who occupied the property on the date that title vests in the condemnor vacate, or one month after the date that title vests in the condemnor, whichever is sooner. This time period may be extended by the circuit court, if the court deems it reasonable under the circumstances. If the condemnor is denied the right of possession, the condemnor may, upon 48 hours' notice to the occupant, apply to the circuit court where the property is located for a writ of assistance to be put in possession. The circuit court shall grant the writ of assistance if all jurisdictional requirements have been complied with and if the award has been paid or tendered as required.

SECTION 6. 32.06 (2) of the statutes is renumbered 32.06 (2) (a).

SECTION 7. 32.06 (2) (b) of the statutes is created to read:

32.06 (2) (b) The condemnor shall provide the owner with a full narrative appraisal upon which the jurisdictional offer is based and a copy of any appraisal made under par. (a) and at the same time shall inform the owner of his or her right to obtain an appraisal under this paragraph. The owner may obtain an appraisal by a qualified appraiser of all property proposed to be acquired, and submit the reasonable costs of the appraisal to the condemnor for payment. The owner shall submit a full narrative appraisal to the condemnor within 60 days after the owner receives the condemnor's appraisal. If the owner does not accept a negotiated offer under sub. (2a) or the jurisdictional offer under sub. (3), the owner may use an appraisal prepared under this paragraph in any subsequent appeal.

SECTION 8. 32.06 (2a) of the statutes is amended to read:

32.06 (2a) AGREED PRICE. Before making the jurisdictional offer provided in sub. (3) the condemnor shall attempt to negotiate personally with the owner or one of the owners or his ~~personal~~ or her representative of the property sought to be taken for the purchase of the same. In such negotiation the condemnor shall consider the owner's appraisal under sub. (2) (b) and may contract to pay the items of compensation enumerated in ss. 32.09 and 32.19 where shown to exist. Before attempting to negotiate under this paragraph, the condemnor shall provide the owner or his or her representative with copies of applicable pamphlets prepared under s. 32.26 (6). When negotiating under this subsection, the condemnor shall provide the owner or his or her representative with the names of at least 10 neighboring landowners to whom offers are being made, or a list of all offerees if less than 10 owners are affected, together with a map showing all property affected by the project. Upon request by an owner or his or her representative, the condemnor shall provide the name of the owner of any other property which may be taken for the project. The owner or his or her representative shall also have the right, upon request, to examine any maps in the possession of the condemnor showing property affected by the project. The owner or his or her representative may obtain copies of such maps by tendering the reasonable and necessary costs of preparing copies.

SECTION 9. 32.06 (9) (c) of the statutes is repealed and recreated to read:

32.06 (9) (c) Upon application to the circuit court, any person occupying the property on the date that title vests in the condemnor may continue to occupy the property for a period not to exceed 4 months after that date, if the circuit court determines that such continued occupancy by the person is reasonably necessary under the circumstances. The condemnor may not charge rent for any property occupied after the date that title vests in the condemnor by a person who occupied the property on that date. Any person occupying the property after the date that title vests in the condemnor shall be liable to the condemnor for all waste committed or allowed by the occupant on the lands condemned during the occupancy. The condemnor shall have the right to possession when the persons who occupied the property on the date that title vests in the condemnor vacate, or 4 months after the date that title vests in the condemnor, whichever is sooner. This time period may be extended by the circuit court, if the court deems it reasonably necessary under the circumstances. If the condemnor is denied the right of possession, the condemnor may, upon 48 hours' notice to the occupant, apply to the circuit court where the property is located for a writ of assistance to be put in possession. The circuit court shall grant the writ of assistance if all jurisdictional requirements have been complied with and if the award has been paid or tendered as required.

SECTION 10. 32.09 (6) (e) of the statutes is amended to read:

32.09 (6) (e) Damages resulting from actual severance of land including damages resulting from severance of improvements or fixtures and proximity damage to improvements remaining on condemnee's land. In determining severance damages under this paragraph, the condemnor may consider damages which may arise during construction of the public improvement, including damages from noise, dirt, temporary interference with vehicular or pedestrian access to the property and limitations on use of the property. The condemnor may also consider costs of extra travel made necessary by the public improvement based on the increased distance after construction of the public improvement necessary to reach any point on the property from any other point on the property.

SECTION 11. 32.19 (2m) of the statutes is created to read:

32.19 (2m) INFORMATION ON PAYMENTS. Before initiating negotiations to acquire the property under s. 32.05 (2a), 32.06 (2a) or chapter 275, laws of 1931, as amended (Kline Law), the condemnor shall provide displaced persons with copies of applicable pamphlets prepared under s. 32.26 (6).

SECTION 12. 32.19 (4) (a) (intro.) and (b) (intro.) of the statutes are amended to read:

32.19 (4) (a) (intro.) *Owner-occupants.* In addition to amounts otherwise authorized by this chapter, the condemnor shall make a payment, not to exceed $15,000, to any displaced person who is displaced from a dwelling actually owned and occupied, or from a mobile home site actually owned or occupied, by the displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. For the purposes of this paragraph, a nonprofit corporation organized under ch. 181 may, if otherwise eligible, be considered a displaced owner. A displaced owner may elect to receive the payment under par. (b) in lieu of the payment under this paragraph. Such payment includes only the following:

(b) (intro.) *Tenants and certain others.* In addition to amounts otherwise authorized by this chapter, the condemnor shall make a payment to any individual or family displaced from any dwelling ~~not eligible to receive a payment under par. (a) which dwelling~~ which was actually and lawfully occupied by such individual or family for not less than 90 days prior to the initiation of the attempt to purchase such property. For purposes of this paragraph, a nonprofit corporation organized under ch. 181 may, if otherwise eligible, be considered a displaced tenant. Such payment shall be either:

SECTION 13. 32.19 (4) (bm) of the statutes is created to read:

32.19 (4) (bm) *Additional payment.* If a comparable dwelling is not available within the monetary limits established in par. (a) or (b), the condemnor may exceed the monetary limits and make payments necessary to provide replacement housing comparable to that occupied by the displaced person at the initiation of negotiations for the acquisition of the property.

SECTION 14. 32.26 (6) of the statutes is created to read:

32.26 (6) The department of local affairs and development, with the cooperation of the attorney general, shall prepare pamphlets in simple language and in readable format describing the eminent domain laws of this state, including the reasons for condemnation, the procedures followed by condemnors, how citizens may influence the condemnation process and the rights of property owners and citizens affected by condemnation. The department shall make copies of the pamphlets available to all condemnors, who may be charged a price for the pamphlets sufficient to recover the costs of production.

SECTION 15. **Program responsibilities.** In the list of program responsibilities specified for the department of justice in section 15.251 (intro.) of the statutes, insert reference to section "32.26 (6)".

1977 Assembly Bill 1220

SECTION 674b. 168.05 (1) of the statutes, as affected by chapter 21, laws of 1977, is amended to read:

168.05 (1) No petroleum product imported into and received in this state or received from a manufacturer or refiner or from a marine or pipeline terminal within this state may be unloaded from its original container except as provided under sub. (5), sold, offered for sale or used until a true sample of not less than 8 ounces is taken as provided in this chapter~~; however, this~~. This subsection does not apply if the department has previously inspected the petroleum product at the refinery, marine or pipeline terminal. Each person importing or receiving a petroleum product which has not been previously inspected shall notify the inspector in the person's district of the receipt thereof, and the inspector shall take a sample of the petroleum product. This subsection does not apply if the user receiving the petroleum product is exempted from departmental inspection under s. 168.07 (3).

SECTION 674g. 168.07 (3) of the statutes is created to read:

168.07 (3) The department shall establish procedures for exempting from departmental inspection any petroleum product user which has inspection procedures certified by the department and which does not receive its petroleum product from a pipeline terminal, marine terminal, pipeline tank farm or bulk plant in this state or a pipeline terminal, marine terminal, pipeline tank farm or bulk plant in Michigan, Minnesota, Iowa or Illinois that is inspected by the department.

SECTION 674m. 168.12 (6) of the statutes is created to read:

168.12 (6) The department may establish and collect a fee from a petroleum product user for certifying its petroleum product inspection procedures under s. 168.07 (3).

Each Probate Judge, Sheriff, and the Clerk and Register of the Circuit Court is required by law to preserve this slip or pamphlet in a book kept in his office until the Act is published in permanent form.

ALABAMA LAW

(Regular Session, 1978)

Act No. 849 S. 487—Fine

AN ACT

To regulate the practice of design, construction, or installation of heating and air conditioning equipment, and roofing and sheet metal; to create a regulatory board for such purpose; to provide for the officers, membership, duties, authority, meetings and terms of the board; to vest rule-making and examining authority and the power to levy fines in the board; to provide for certification fees and their disposition; to require contractors in the regulated trades to be certified and bonded; to exempt certain persons from certain provisions hereof; and to provide penalties for violation of this act.

Be It Enacted by the Legislature of Alabama:

Section 1. For the purposes of this Act, the following terms shall have the meanings herein ascribed to them:

"(A) "Regulated Contractor" shall mean any individual or any regularly employed person for any partnership or corporation who for hire is engaged in the design of heating and air conditioning systems or the installation of heating or air conditioning equipment, roofing or sheet metal material, provided however, that nothing in this Act shall apply to retail sellers of air conditioning, heating or roofing systems who do not install said systems themselves; employees of licensed general contractors; contractors involved in the installation of residential and commercial roofing and related sheet metal materials."

(b) "Board" shall mean the State Board of Heating, Air Conditioning, Roofing and Sheet metal Contractors.

Section 2. A State Board of Heating, Air Conditioning, Roofing and Sheet metal Contractors is hereby created to determine the fitness of heating, air conditioning, roofing and sheet metal contractors to engage in said vocations in order to safeguard home and other property owners and tenants against faulty, inadequate, inefficient or unsafe heating and air conditioning design and installation and roofing and sheet metal installation, and to protect the life, health and property of said owners and

tenants.

Section 3. All regulated contractors in this state desiring to qualify in accordance with the provisions of this Act shal be required to stand for an examination before the board. Any applicant failing to pass his first examination for a certificate shall be entitled to take any subsequent examination held within six months from the date of his first examination without payment of any additional fee. Any person regularly engaged in a vocation termed as regulated or regularly employed by a regulated contractor upon passage of this act shall be exempted, as hereinafter provided, from the necessity of standing for examination and shall be certified upon payment of the certification fee and posting of such bond as the board may require.

Section 4. Examinations shall be made up by the board in such manner as to test the knowledge, skill and efficiency of the applicants. Examinations shall be held at such time and place as may be fixed by the board at least quarterly. Written notice of the time and place of examinations shall be mailed to all persons who have filed current applications for the examinations with the board.

Section 5. Within six months after the effective date hereof, any individual, partnership or corporation desiring to qualify as a certified regulated contractor shall make application to stand for the examination herein provided for, or within the same period, shall furnish satisfactory evidence to the board that such individual has, or that such partnership or corporation has a partner, firm member or regular employee who has, successfully and efficiently engaged in said vocation for a period of at least two consecutive years prior to the effective date hereof. The decision of the board as to the qualifications of applicants taking the required examination shall, in the absence of fraud, be conclusive. All individuals, partnerships or corporations desiring to engage in a vocation herein regulated as a regulated contractor after the expiration of six months after the effective date hereof shall qualify hereunder before engaging in said vocation or business.

Section 6. The board may, in its discretion, when needed to assure financial stability require applicants for certification to post bond for the purpose of insuring faithful and complete performance by the regulated contractor of any contract agreement into which he may enter. There shall be no discrimination between contractors similarly situated, and each classification of regulated contractors for bonding purposes must be reasonable in light of the purpose of the bond.

Section 7. The board shall consist of seven members, as follows: One member, who shall be appointed by the governor for an initial term of one year, must be a mechanical engineer; one member, who shall be appointed by the governor for an initial term of four years, must be a representative of a manufacturer of items related to the vocations herein regulated; one member, who shall be appointed by the lieutenant governor for an initial term of two years, must be a heating and air conditioning contractor; one member, who shall be appointed by the lieutenant governor for an initial term of three years, must be a roofing contractor; one member, who shall be appointed by the speaker of the house of representatives for an initial term of two years, must be a licensed architect; and one member, who shall be appointed by the speaker of the house of representatives for an initial term of three years, must be a sheetmetal contractor; and one member who shall be selected from organized labor and who shall be appointed by the Lieutenant Governor for an initial term of three years. Their successors, who shall be appointed by the same respective appointing authorities, and must possess the same respective occupational qualifications, shall each serve four year terms and until their successors are appointed and qualified.

Section 8. Each of the members of the board shall take an oath before a judge of the circuit court of the county of his residence that he will faithfully perform the duties of his office. The board shall elect from among its members a chairman and a secretary. The chairman shall preside over meetings of the board or designate another member to preside in his absence. He shall have the power to cast a tie-breaking vote in addition to his regular vote in case of a tie vote in the course of board business.

The secretary shall keep the minutes, books and other records and files of the board. He shall issue all certificates in the name of the board and shall send out all notices and attend to all correspondence under the direction of the board. He shall receive and deposit in the name of the board, in a depository to be designated by the board all fees and perform such other duties as are incidental to his office as may be required by the board. He shall give bond payable to the governor in the penal sum of $5,000 for the faithful performance of his duties and the premium therefor shall be paid from the fees of the board. The board may in its discretion provide for such extra remuneration for the services of the secretary as it may deem proper to be paid from said fees. No monies shall be withdrawn from the funds of the board except by direction of the board which shall be by check signed by the

chairman and counter-signed by the secretary. A majority of the board shall constitute a quorum for the transaction of all busines.

Section 9. For the purpose of defraying the expenses in carrying out the provisions of this act, the board may fix fees to be paid by applicants for certificates, but in no event shall the charges fixed by said board exceed $75. All fees fixed by the board must accompany the applications for examination and no part of said fees shall be refunded. Said fees shall be received by the board and held by it solely for the purpose of paying the expenses of carrying out the provisions of this Act. All fines collected by the board shall be used in the same manner and for the same purposes as fees.

Section 10. Except as otherwise provided herein, members of the board shall receive no compensation for their services, but shall be entitled to mileage expense for board-related travel within the state at the same rate as state employees, to be paid from fees collected.

Section 11. All certificates provided for herein shall be renewed annually, not later than 90 days after the first day of January of each year, and all holders of certificates shall be entitled to renewal thereof upon payment of a renewal fee of not more than $25 per annum.

Section 12. No partnership or corporation shall do business as a regulated contractor or perform the function of a regulated contractor unless there is regularly connected with such partnership or corporation a person or persons actually engaged in the performance of such business, who holds a certificate of qualification issued to him as provided for in this Act.

No person shall do business as a regulated contractor or perform the function of a regulated contractor unless such person holds a certification of qualification issued to him as provided for in this Act.

No official charged with the duty of issuing licenses to any individual, partnership or corporation to carry on a business as a regulated contractor or to perform the function of a regulated contractor shall issue such license unless there is presented for his inspection a certificate of qualification as provided for herein issued by the board to the individual, or to some person regularly connected with the partnership or corporation who is actually engaged in the performance of the business of the partnership or corporation as a regulated contractor.

Section 13. It shall be the duty of all partnerships and

corporations qualified under this Act to immediately notify the secretary of the board of the severance of connection of any person or persons upon whom such qualification rested with such partnership or corporation. No reissuance or certification shall be needed as a result of such severance.

All applicants for examinations and certificates and all applicants for renewal certificate shall be required to fill out a form which shall be provided by the board which form shall show whether or not the applicant is an individual, partnership or corporation, and if a partnership or corporation the names and addresses of partners or the names and addresses of the officers, when and where formed or incorporated and such other information as the board may require. All forms of applications for renewal certificates shall also show whether or not the applicant, if it is a partnership or corporation, still has connected with it a duly qualified person holding a certificate issued by said board.

Section 14. The board shall meet in regular session to perform its lawful duties at least once in each calendar month.

Section 15. The boad shall publish annually a list of names and addresses of all individuals holding certificates of qualification under this Act, and shall mail a copy of said list to all qualified individuals.

Section 16. Any person engaged in business as a regulated contractor or performing the functions of a regulated contractor in violation of this Act shall be guilty of a Class A misdemeanor, as defined in Act No. 607, S. 33, 1977 Regular Session.

Section 17. The provisions of this Act are severable. If any part of the Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Section 18. All laws or parts of laws which conflict with this Act are hereby repealed.

Section 19. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved May 4, 1978

Time: 2:00 P.M.

I hereby certify that the foregoing copy of an Act of the Legislature of Alabama has been compared with the enrolled Act and it is a true and correct copy thereof.

Given under my hand this 5th day of May, 1978.

McDOWELL LEE
Secretary of Senate

LAWS OF ALASKA

1978

Source

SCS CSHB 190

Chapter No.

63

AN ACT

Relating to municipal air pollution control programs; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 46.03.220(a) is amended to read:

(a) If a municipality or district authorized to establish or participate in an air pollution control program under sec. 210(a) or (d) of this chapter fails to establish a program within the time specified, or if the department has reason to believe that an air pollution control program in force under that section is inadequate to prevent and control air pollution in the jurisdiction to which the program applies, or that the program is being administered in a manner inconsistent with the requirements of this chapter, the department shall, within 45 days after giving written notice setting out its reasons, conduct a hearing on the matter.

* Sec. 2. AS 46.03.220(b) is repealed and re-enacted to read:

(b) If, after the hearing, the department determines that any of the deficiencies enumerated in (a) of this section exist, it shall provide the municipality or district a written statement setting out the nature of the deficiencies and describing the necessary action to be taken. The determination of the department shall be provided to the municipality or district within 45 days of the hearing, and the municipality or district shall have a reasonable period of time to initiate corrective action.

* Sec. 3. AS 46.03.220(c) is amended to read:

(c) If the municipality or the district set up under

sec. 210(a) or (d) of this chapter remedies the deficiencies described in the statement provided by the department under (b) of this section, the department shall immediately approve the program. If the municipality or district partially remedies the deficiencies described in the statement provided by the department, the department shall grant partial approval of the program to the extent of correction or remedy of the deficiencies. If the municipality or the district fails to take the necessary corrective action within 180 days after receipt of the statement provided by the department under (b) of this section, the department shall administer in the municipality or district all of the regulatory provisions of this chapter. The department shall, during the 180 days specified, work actively with the municipality or district, furnishing financial, technical and manpower resources to assist in correcting any of the deficiencies identified in the statement provided by the department under (b) of this section.

* Sec. 4. AS 46.03.220 is amended by adding new subsections to read:

(g) The provisions of (a) - (h) of this section are applicable to an application for program approval submitted by a municipality or district under sec. 210(a)(4) of this chapter.

(h) If action by the department is unlawfully withheld or unreasonably withheld under this section, the superior court may compel the department to initiate action.

* Sec. 5. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.225. SINGLE PERMIT REQUIRED. No air contaminant source may be required to obtain a permit to operate from the department if

(1) the contaminant source for which a permit may be required is located within a municipality or district having an air pollution control program approved by the department under sec. 210(a) - (d) of this chapter;

(2) the requirements of the air pollution control program of the municipality or district are equal to or more stringent than requirements imposed by regulation of the department applicable to the air contaminant source; and

(3) the municipality or district has issued a permit to operate the air contaminant source.

* Sec. 6. AS 46.03.220(f) is repealed.

* Sec. 7. The department shall review applications for approval of an air pollution control program submitted by a municipality or district and pending on the effective date of this Act. It shall, within 45 days of the effective date of this Act, provide written notice to the municipality or district of the deficiencies in the application submitted. The provisions of AS 46.03.220 are applicable to review of applications sub-

mitted and subject to review by the department under this section.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.10.070(c).

Approved by the Governor: June 12, 1978
Actual Effective Date: June 13, 1978

State of Arizona
Senate
Thirty-third Legislature
Second Regular Session
1978

CHAPTER 52

SENATE BILL 1307

AN ACT

RELATING TO PUBLIC LANDS; CREATING A RESOURCES DIVISION OF THE STATE LAND DEPARTMENT; PROVIDING FOR ADMINISTRATOR AND EMPLOYEES; PROVIDING COMPENSATION; PRESCRIBING POWERS AND DUTIES; MAKING CONFORMING CHANGES; AMENDING TITLE 37, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 1.2, AND AMENDING SECTIONS 42-123 AND 42-123.01, ARIZONA REVISED STATUTES.

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

Section 1. Title 37, Arizona Revised Statutes, is amended by adding chapter 1.2, to read:

CHAPTER 1.2

RESOURCES DIVISION

ARTICLE 1. GENERAL PROVISIONS

37-171. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ADMINISTRATOR" MEANS THE ADMINISTRATOR OF THE RESOURCES DIVISION.

2. "REMOTE SENSING" MEANS THE MEASUREMENT AND INTERPRETATION OF BOTH CONVENTIONAL PHOTOGRAPHY AND IMAGERY OBTAINED BY SENSOR SYSTEMS THAT INTERACT THE ELECTROMAGNETIC RADIATION WITH SOLID, LIQUID AND GASEOUS MATTER AND THE INSTRUMENTS AND THEIR PLATFORMS USED TO OBTAIN REMOTE SENSING DATA.

3. "REMOVE SENSING TECHNIQUES" MEANS THE PROCESSING OF DATA TO ALLOW THE INTERPRETER TO OBTAIN THE MAXIMUM INFORMATION FROM REMOTE SENSING DEVICES.

4. "RESOURCES DIVISION" OR "DIVISION" MEANS THE RESOURCES DIVISION OF THE STATE LAND DEPARTMENT.

37-172. Resources division; administrator; employees; compensation

A. THERE IS ESTABLISHED WITHIN THE STATE LAND DEPARTMENT THE RESOURCES DIVISION.

B. THE STATE LAND COMMISSIONER SHALL APPOINT AN ADMINISTRATOR OF THE DIVISION.

C. THE ADMINISTRATOR SHALL BE RESPONSIBLE FOR THE ADMINISTRATIVE FUNCTIONS OF THE RESOURCES DIVISION.

D. THE ADMINISTRATOR MAY EMPLOY, WITH THE APPROVAL OF THE COMMISSIONER, THE EMPLOYEES NECESSARY TO CARRY OUT THE PROVISIONS OF THIS CHAPTER.

E. COMPENSATION FOR THE ADMINISTRATOR AND OTHER EMPLOYEES OF THE RESOURCES DIVISION SHALL BE ESTABLISHED PURSUANT TO SECTION 38-611.

37-173. Duties

THE RESOURCES DIVISION SHALL:

1. PROVIDE AN INFORMATION DATA BANK FOR THE STATE LAND DEPARTMENT BY COMPUTER COMPOSITING THE DATA FROM REMOTE SENSING TECHNOLOGY WITH OTHER TECHNICAL INFORMATION AND THE GEOGRAPHICAL BASE RESULTING FROM THE ARIZONA ORTHOPHOTOQUAD PROGRAM. PROVIDE CURRENT INFORMATION REGARDING REVENUE PRODUCING ACTIVITIES AND MONITOR CHANGES OVER TIME BY REMOTE SENSING TECHNIQUES.

2. PRODUCE MAPS AND INVENTORIES AT STANDARD SCALES FOR ANY AREA DEFINED BY ITS DESIGNATED GEOGRAPHICAL, GOVERNMENTAL OR JURISDICTIONAL BOUNDARIES TO INCLUDE COMBINATIONS OF DATA ELEMENTS.

3. PROVIDE MAPS, AERIAL PHOTOGRAPHS AND OTHER REMOTE SENSING TECHNIQUES RELATED TO STATE TRUST LANDS TO ASSIST IN THE VALUATION PROCESS BY DETERMING LOCATION AND DESCRIPTION OF THE FOLLOWING CLASSES OF PROPERTY:

(a) PRODUCING MINES, PERSONAL PROPERTY USED IN SUCH MINES, IMPROVEMENTS TO SUCH MINES AND MILLS AND SMELTERS OPERATED IN CONJUNCTION WITH SUCH MINES.

(b) PRODUCING OIL, GAS AND GEOTHERMAL RESOURCE INTERESTS.

(c) GAS, WATER AND ELECTRIC UTILITIES AND PIPELINES.

(d) COMMUNITY ANTENNA TELEVISION SYSTEMS AND MICROWAVE SERVICES.

(e) FORESTRY MANAGEMENT LANDS REQUIRING BURN PERMITS.

(f) REAL AND PERSONAL PROPERTY OF RAILROAD COMPANIES.

(g) STANDING TIMBER.

(h) WATER DITCHES CONSTRUCTED FOR MINING, MANUFACTURING OR IRRIGATING PURPOSES.

(i) IMPROVEMENTS ON UNPATENTED LAND, MINING CLAIMS OR STATE LAND.

4. FUNCTION AS THE ARIZONA AFFILIATE OFFICE FOR THE NATIONAL CARTOGRAPHIC INFORMATION CENTER, WITH SUPPORT FROM THE UNITED STATES GEOLOGICAL SURVEY, TO ACCESS ARCHIVED MAPS AND IMAGERY DATA SOURCES TO ASSIST THE MAPPING, INVENTORYING AND DATA HANDLING SEGMENTS OF THE DIVISION.

5. COORDINATE THOSE ACTIVITIES OF STATE GOVERNMENT AGENCIES AND STATE POLITICAL SUBDIVISIONS WITH RESPECT TO ANY UTILIZATION BY THEM OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, EARTH RESOURCES SATELLITE PROGRAM, LANDSAT, IN DISCHARGING THEIR RESPONSIBILITIES IN THE FIELDS OF AGRICULTURE, WILDLIFE, FORESTRY, LAND, MINERAL, WATER AND OTHER RESOURCE MANAGEMENT.

37-174. Powers

THE RESOURCES DIVISION MAY:

1. ESTABLISH A LIAISON RELATIONSHIP FOR PURPOSES OF COLLECTING, COMPILING, PROCESSING AND MAKING AVAILABLE RESOURCE INFORMATION WITH POLITICAL SUBDIVISIONS OF THIS STATE.

2. APPLY FOR AND ACCEPT GRANTS, CONTRIBUTIONS AND APPROPRIATIONS FOR CARRYING OUT THE FUNCTIONS OF THE DIVISION.

3. CONTRACT FOR PROFESSIONAL SERVICES IF SUCH WORK OR SERVICES CANNOT BE SATISFACTORILY PERFORMED BY ITS EMPLOYEES OR BY ANY OTHER STATE AGENCY.

4. REQUEST AND UTILIZE THE ADVICE AND SERVICES OF ALL FEDERAL, STATE, LOCAL AND REGIONAL AGENCIES.

5. CORRESPOND, CONFER AND REPRESENT ITS OWN INTEREST OR THE INTEREST OF ANY POLITICAL SUBDIVISION UPON REQUEST.

37-175. Information; cost

THE RESOURCES DIVISION SHALL MAKE INFORMATION AVAILABLE TO ANY PERSON REQUESTING SUCH INFORMATION AT A UNIFORM RATE ADEQUATE TO COVER THE COST OF PROVIDING SUCH INFORMATION.

37-176. Deposit of monies; claims

A. MONIES RECEIVED FROM ANY SOURCE BY THE RESOURCES DIVISION SHALL BE PROMPTLY PAID BY THE ADMINISTRATOR TO THE STATE TREASURER AND SHALL BE DEPOSITED TO THE CREDIT OF THE STATE LAND DEPARTMENT.

B. CLAIMS FOR EXPENSES SHALL BE APPROVED BY THE ADMINISTRATOR.

Sec. 2. Section 42-123, Arizona Revised Statutes, is amended to read:

42-123. Powers and duties of department

A. The department shall:

1. Exercise general supervision over county assessors in the administration of the state property tax laws of the state for the purpose of insuring that all property is uniformly valued for state property tax purposes.

2. Prescribe rules and regulations relating to the enforcement of the powers and duties of the department under the provisions of this title.

3. Require the use by the county assessors of prescribed forms for the listing and valuing of property for tax purposes, the reporting of changes in valuations and for such other purposes as may be required by the department under the provisions of this title.

4. Require county assessors to maintain uniform maps and records.

5. Adopt standard appraisal methods and techniques for use by the department and county assessors in determining the valuation of property, and prepare and maintain manuals and other necessary guidelines reflecting such methods and techniques in order to perpetuate a current inventory of all property subject to taxation and the valuation thereof. In the standard appraisal methods and techniques adopted current usage shall be included in the formula for reaching a determination of full cash value and when the methods and techniques adopted prescribe the use of market data as an indication of market value, the price paid for future anticipated property value increments shall be excluded.

6. Require the county assessors to meet with the director at the state capitol, or at a place designated by him, at least twice a year for

the purpose of considering matters relating to property taxation. The traveling expenses of assessors in attending such meetings shall be paid by the respective counties.

7. Investigate property valuations and any matters relating to property taxes and require the production of any private or public record relating to such valuations or property taxes. The director or his agent may enter upon and examine any and all property within the state for the purpose of determining its full cash value and require any officer whose duties relate to the assessment or collection of taxes to report to him at such time and in such manner as he prescribes. In the event the owner or possessor of property refuses entrance to the director or his agents, the valuation of such property may be estimated by the director.

8. Require the use by county assessors of such a data processing system as the department may prescribe, provided that any county assessor having a data processing system compatible with the system prescribed by the department may continue to use his own system as long as it is coordinated with the system prescribed by the department.

9. Authorize the counties to enter into contracts with private suppliers or other political subdivisions for equipment or services necessary to meet the requirements of the department, provided that the data processing systems used are compatible with the system prescribed by the department and are coordinated with the system prescribed by the department.

10. Contract with the counties to furnish electronic data processing equipment in instances where the counties do not own, lease or contract for the equipment or services necessary to meet the requirements of the department.

11. Furnish assistance to the county assessors in order to implement placement on the rolls of the valuations determined under article 2.1 of this chapter and to assure a uniform valuation of all property throughout the state for property tax purposes, including but not limited to the providing of services of department personnel to the counties, provided that subsequent to June 30, 1968 the cost of providing the services of department personnel to the counties shall be charged to the county served.

12. Furnish the state board with such information as it may request.

~~13. At such time as the state acquires from the national aeronautics and space administration orthophoto base maps for use by all departments of Arizona state government and others in need of such maps, charge for duplication and sale of these maps and deposit such revenues in the state general fund.~~

~~14.~~ 13. Authorize counties, upon application by the board of supervisors, to prepare their own property tax rolls and assessment abstracts, provided that the data processing systems used by such counties in the preparation of tax rolls and assessment abstracts are compatible with the system prescribed by the department and are coordinated with the system prescribed by the department.

B. The department may:

1. Examine into all alleged violations of the provisions of this title relating to the valuation of property and the assessment and collection of taxes and request the attorney general or the county attorney in their respective ~~counties to commence and prosecute actions and proceedings or to represent~~ counties to commence and prosecute actions and proceedings or to represent the department in litigation to enforce the laws relating to taxation and orders, or the rules and regulations of the department. When in the opinion of the director and in the opinion of the attorney general or the county attorney of the county in which the public official serves, a public official, who performs valuing, taxing or equalizing functions, is guilty of official misconduct or neglect of duty, the director shall take whatever steps are necessary to insure that complaints are filed and prosecutions commenced against such officials for their removal from office. A complaint by the director charging official misconduct or neglect of duty of a public officer shall be delivered to the county attorney or to the attorney general who shall file the original with the superior court in the county in which the public official serves and cause a copy thereof to be served upon such public official. Proceedings upon such complaints shall be in accordance with the provisions of subsections B and C of section 38-342, and sections 38-343 and 38-345.

2. Study the tax systems of other states.

3. Employ technical experts and assistants and make contracts for services as may be required to carry out its duties.

4. Appoint advisory committees representative of various classes of property.

5. Request the attorney general to initiate a mandamus action if any assessor fails to follow any regulation, rule, order or direction of the director or the department or if the director determines that an assessor, or a county board of equalization has practiced discrimination in the valuation of property. For the purposes of this section, county boards of equalization and the county assessors are state officers within the meaning of article 6, section 5 of the Constitution of Arizona.

6. Contest any proposed valuation or classification or any proposed change in valuations or classifications before any county board of equalization or before the state board of tax appeals. If any decision of any county board of equalization or of the state board of tax appeals is, in the opinion of the director, erroneous, the director may appeal such decision to the superior court in the manner provided in section 42-151, on or before the final date a taxpayer may file an appeal from the valuation or classification of his property.

~~7. Sell contact prints of any national aeronautics and space administration orthophoto base maps acquired by the department and deposit such revenues in the state general fund.~~

Sec. 3. Section 42-123.01, Arizona Revised Statutes, is amended to read:

42-123.01. Alternate powers and duties of department

A. Notwithstanding the provisions of section 42-123 and until December 31, 1984, the department shall:

1. Exercise general supervision over county assessors in the administration of the state property tax laws of the state for the purpose of insuring that all property is uniformly valued for state property tax purposes.

2. Prescribe rules and regulations relating to the enforcement of the powers and duties of the department under the provisions of this title.

3. Require the use by the county assessors of prescribed forms for the listing and valuing of property for tax purposes, the reporting of changes in valuations and for such other purposes as may be required by the department under the provisions of this title.

4. Require county assessors to maintain uniform maps and records.

5. Adopt standard appraisal methods and techniques for use by the department and county assessors in determining the valuation of property, and prepare and maintain manuals and other necessary guidelines reflecting such methods and techniques in order to perpetuate a current inventory of all property subject to taxation and the valuation thereof. In the standard appraisal methods and techniques adopted current usage shall be included in the formula for reaching a determination of full cash value and when the methods and techniques adopted prescribe the use of market data as an indication of market value, the price paid for future anticipated property value increments and any solar energy device, as defined in section 43-123.37, shall be excluded.

6. Require the county assessors to meet with the director at the state capitol, or at a place designated by him, at least twice a year for the purpose of considering matters relating to property taxation. The traveling expenses of assessors in attending such meetings shall be paid by the respective counties.

7. Investigate property valuations and any matters relating to property taxes and require the production of any private or public record relating to such valuations or property taxes. The director or his agent may enter upon and examine any and all property within the state for the purpose of determining its full cash value and require any officer whose duties relate to the assessment or collection of taxes to report to him at such time and in such manner as he prescribes. In the event the owner or possessor of property refuses entrance to the director or his agents, the valuation of such property may be estimated by the director.

8. Require the use by county assessors of such a data processing system as the department may prescribe, provided that any county assessor having a data processing system compatible with the system prescribed by the department may continue to use his own system as long as it is coordinated with the system prescribed by the department.

9. Contract with the counties to furnish electronic data processing equipment in instances where the counties do not have the equipment necessary to meet the requirements of the department.

10. Furnish assistance to the county assessors in order to implement placement on the rolls of the valuations determined under article 2.1 of this chapter and to assure a uniform valuation of all property throughout the state for property tax purposes, including but not limited to the

providing of services of department personnel to the counties, provided that subsequent to June 30, 1968 the cost of providing the services of department personnel to the counties shall be charged to the county served.

11. Furnish the state board with such information as it may request.

~~12. At such time as the state acquires from the national aeronautics and space administration orthophoto base maps for use by all departments of Arizona state government and others in need of such maps, charge for duplication and sale of these maps and deposit such revenues in the state general fund.~~

B. The department may:

1. Examine into all alleged violations of the provisions of this title relating to the valuation of property and the assessment and collection of taxes and request the attorney general or the county attorney in their respective counties to commence and prosecute actions and proceedings or to represent the department in litigation to enforce the laws relating to taxation and orders, or the rules and regulations of the department. When in the opinion of the director and in the opinion of the attorney general or the county attorney in which the public official serves, a public official, who performs valuing, taxing or equalizing functions, is guilty of official misconduct or neglect of duty, the director shall take whatever steps are necessary to insure that complaints are filed and prosecutions commenced against such officials for their removal from office. A complaint by the director charging official misconduct or neglect of duty of a public officer shall be delivered to the county attorney or to the attorney general who shall file the original with the superior court in the county in which the public official serves and cause a copy thereof to be served upon such public official. Proceedings upon such complaints shall be in accordance with the provisions of subsections B and C of section 38-342, and sections 38-343 and 38-345.

2. Study the tax systems of other states.

3. Employ technical experts and assistants and make contracts for services as may be required to carry out its duties.

4. Appoint advisory committees representative of various classes of property.

5. Request the attorney general to initiate a mandamus action if any assessor fails to follow any regulation, rule, order or direction of the director or the department or if the director determines that an assessor, or a county board of equalization has practiced discrimination in the valuation of property. For the purposes of this section, county boards of equalization and the county assessors are state officers within the meaning of article 6, section 5 of the Constitution of Arizona.

6. Contest any proposed valuation or classification or any proposed change in valuations or classifications before any county board of equalization or before the state board of tax appeals. If any decision of any county board of equalization or of the state board of tax appeals is, in the opinion of the director, erroneous, the director may appeal such decision to the superior court in the manner provided in section 42-151, on or before the final date a taxpayer may file an appeal from the valuation or classification of his property.

~~7.--Sell contact prints of any national aeronautics and space administration orthophoto base maps acquired by the department and deposit such revenues in the state general fund.~~

Sec. 4. Transfer of personnel, equipment and funds

There are transferred to the state land department on the effective date of this act all personnel, records, equipment and unexpended and unencumbered funds of the Arizona resource information system.

Sec. 5. Expiration

The provisions of section 3 of this act shall expire with the taxable year beginning from and after December 31, 1984.

Sec. 6. Emergency

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor - May 18, 1978

Filed in the Office of the Secretary of State - May 18, 1978

State of Arizona
Senate
Thirty-third Legislature
Second Regular Session
1978

CHAPTER 180

SENATE BILL 1296

AN ACT

RELATING TO STATE GOVERNMENT; PROVIDING FOR AN ARIZONA PURCHASING REVIEW BOARD; PRESCRIBING POWERS AND DUTIES; PROVIDING FOR A STANDARDS ADVISORY COMMITTEE; PRESCRIBING MEMBERSHIP; PRESCRIBING DUTY OF EXECUTIVE DIRECTOR IN DEVELOPING NONMANDATORY ENERGY CONSERVATION GUIDELINES AND CRITERIA FOR BUILDINGS; PRESCRIBING ADDITIONAL DUTIES AND STANDARDS; PROVIDING DEFINITIONS; PROVIDING THAT THE BASIS OF SETTLEMENT IN SALE, OFFER, DELIVERY OR CONSIGNMENT OF GASOLINE IN QUANTITIES OF FIVE THOUSAND GALLONS OR MORE SHALL BE SIXTY DEGREES FAHRENHEIT OR FIFTEEN AND SIX-TENTHS DEGREES CENTIGRADE; PROVIDING FORMULAS FOR ADJUSTMENT IN CONTRACT PRICE; PROVIDING FOR ESTABLISHMENT OF AN OFFICE OF TOURISM; PROVIDING FOR A DIRECTOR, ASSISTANT DIRECTOR AND ADVISORY COUNCIL; PRESCRIBING POWERS AND DUTIES; PROVIDING INTERIM GUIDELINES; PRESCRIBING TRANSFER OF DUTIES, RESPONSIBILITIES, PERSONNEL, RECORDS, FURNISHINGS, EQUIPMENT AND FUNDS FROM THE OFFICE OF ECONOMIC PLANNING AND DEVELOPMENT TO THE OFFICE OF TOURISM; AMENDING TITLE 41, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 5; AMENDING SECTIONS 41-501 AND 41-503, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 5.1; AMENDING TITLE 41, CHAPTER 15, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-2082, AND AMENDING TITLE 41, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 18.

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

Section 1. Purpose

The legislature finds that, in view of Arizona's energy situation and this state's growing dependence upon external energy resources, there is a need for energy conservation. It is the purpose of section 2 of this act to establish an Arizona purchasing review board, which will prescribe minimum energy efficiency performance standards for selected products purchased by this state or political subdivisions of this state.

Sec. 2. Title 41, chapter 3, Arizona Revised Statutes, is amended by adding article 5, to read:

ARTICLE 5. ARIZONA PURCHASING REVIEW BOARD

41-551. Arizona purchasing review board; membership; terms; vacancies

A. THERE IS ESTABLISHED AN ARIZONA PURCHASING REVIEW BOARD TO CONSIST OF NOT LESS THAN FIFTEEN MEMBERS EXPERIENCED IN THE FIELD OF PURCHASING. MEMBERS OF THE BOARD SHALL INCLUDE THE FOLLOWING:

1. THREE CITIZENS REPRESENTING THE PUBLIC, TWO OF WHOM ARE TO BE SELECTED ON THE BASIS OF THEIR EMPLOYMENT AND EXPERIENCE IN THE AREA OF ENERGY CONSERVATION PURCHASING.

2. A REPRESENTATIVE OF THE DEPARTMENT OF ADMINISTRATION DIVISION OF FINANCE, PURCHASING OFFICE.

3. A REPRESENTATIVE OF A COUNTY PURCHASING OFFICE.

4. A REPRESENTATIVE OF A CITY PURCHASING OFFICE.

5. A REPRESENTATIVE OF A SCHOOL DISTRICT PURCHASING OFFICE.

6. A REPRESENTATIVE OF A UNIVERSITY OR COMMUNITY COLLEGE DISTRICT PURCHASING OFFICE.

7. A PURCHASING AGENT REPRESENTING THE MANUFACTURING INDUSTRY.

8. A PURCHASING AGENT REPRESENTING THE AGRICULTURAL INDUSTRY.

9. A PURCHASING AGENT REPRESENTING THE MINING INDUSTRY.

10. A PURCHASING AGENT REPRESENTING THE TRANSPORTATION INDUSTRY.

11. THE GOVERNOR, OR HIS DESIGNEE, WHO SHALL SERVE AS AN EX OFFICIO MEMBER.

12. THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, OR HIS DESIGNEE, WHO SHALL SERVE AS AN EX OFFICIO MEMBER.

13. THE PRESIDENT OF THE SENATE, OR HIS DESIGNEE, WHO SHALL SERVE AS AN EX OFFICIO MEMBER.

B. MEMBERS OF THE BOARD SHALL BE APPOINTED FOR A TERM OF ONE YEAR BY THE GOVERNOR AND MAY BE REAPPOINTED. MEMBERS OF THE BOARD SHALL SERVE AT THE PLEASURE OF THE GOVERNOR AND WITHOUT COMPENSATION.

C. VACANCIES IN BOARD MEMBERSHIP SHALL BE FILLED FOR THE BALANCE OF THE UNEXPIRED TERM IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.

41-552. Powers and duties

A. THE ARIZONA PURCHASING REVIEW BOARD SHALL ADOPT RULES AND REGULATIONS ESTABLISHING MINIMUM STANDARDS FOR THE PROCUREMENT OF ENERGY CONSUMPTIVE PRODUCTS BY THIS STATE AND POLITICAL SUBDIVISIONS OF THIS STATE.

B. STANDARDS ADOPTED PURSUANT TO SUBSECTION A SHALL BE BASED UPON CONSIDERATIONS OF ENERGY CONSERVATION AND OF LIFE CYCLE COST TO INSURE ADEQUATE AND FAIR PRICE COMPETITION.

Sec. 3. Section 41-501, Arizona Revised Statutes, is amended to read:

41-501. Office of economic planning and development; divisions; responsibilities; assistant directors

A. There is in the governor's office the office of economic planning and development.

B. The office shall include a planning division and a development division. The planning division shall, in addition to other functions

assigned by the executive director, be responsible for economic planning, economic research and scientific and technological planning. The development division shall, in addition to other functions assigned by the executive director, be responsible for industrial ~~and tourism~~ development, advertising and publications.

C. The executive director shall appoint an assistant director of the planning division and an assistant director of the development division.

Sec. 4. Section 41-503, Arizona Revised Statutes, is amended to read:

41-503. Powers and duties

A. The office of economic planning and development may:

1. Employ, determine the conditions of employment and specify the duties of administrative, secretarial and clerical assistants, and contract for the services of outside advisors, consultants and aides reasonably necessary or desirable to enable it adequately to perform its duties. The compensation of such assistants shall be as determined pursuant to section 38-611.

2. Make contracts and incur obligations reasonably necessary or desirable within the general scope of its activities and operations to enable it adequately to perform its duties.

3. Utilize any and all media of communication, publication and exhibition in the dissemination of information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt rules and regulations it deems necessary or desirable to govern its procedures and business.

5. Contract with other agencies in furtherance of its program.

6. Use its funds, facilities and services to provide matching contributions under federal or other programs which further the objectives and programs of the office.

7. Accept grants, matching funds and direct payments from public or private agencies for the conduct of programs which are consistent with the general purposes and objectives of this article.

B. The office of economic planning and development shall:

1. Formulate policies, plans and programs designed to effectuate the purposes of this article.

2. Stimulate and encourage all local, state, regional and federal governmental agencies, and all private persons and enterprises which have similar and related objectives and purposes, and cooperate with such agencies, persons and enterprises and correlate its plans, programs and operations with those of such agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies, pertaining to any of its objectives.

4. Provide information and advice on request by local, state and federal agencies and by private citizens and business enterprises on matters within the scope of its activities.

5. Advise with and make recommendations to the governor and the legislature on all matters concerning its objectives.

6. Make annual reports to the governor and the legislature on its activities, its finances and the scope of its operations.

7. Undertake a comprehensive research program designed to:

(a) Establish the office as the central repository and clearing house for all data relating to Arizona's economy and resources as they relate to economic planning and development.

(b) Maintain a current inventory of the resources of the state.

(c) Investigate potential opportunities for the development of industry, ~~tourism~~ and other commerce throughout the state.

Sec. 5. Title 41, chapter 3, Arizona Revised Statutes, is amended by adding article 5.1, to read:

ARTICLE 5.1. STANDARDS ADVISORY COMMITTEE

41-561. Building energy conservation guidelines

A. THE EXECUTIVE DIRECTOR SHALL, IN CONSULTATION WITH THE BUILDINGS STANDARDS ADVISORY COMMITTEE, DEVELOP GUIDELINES AND ESTABLISH ENERGY CONSERVATION MINIMUM PERFORMANCE CRITERIA FOR EXISTING PUBLIC BUILDINGS OVER TEN THOUSAND GROSS SQUARE FEET AND FOR ALL NEW BUILDINGS EXCEPT THAT NO GUIDELINES SHALL BECOME MANDATORY FOR ANY PUBLIC BUILDINGS OR ANY PRIVATE BUILDINGS WITHOUT FURTHER IMPLEMENTING LEGISLATION. THE GUIDELINES SHALL SPECIFY METHODS FOR MEASURING AND REDUCING TOTAL ENERGY CONSUMPTION AND PROVIDE FLEXIBLE METHODS FOR ACHIEVING SAVINGS AND SHALL BE NO LESS STRINGENT THAN THE UNIFORM BUILDING CODE, CHAPTER 53, AMERICAN SOCIETY OF HEATING, REFRIGERATING, AND AIR CONDITIONING ENGINEERS, 90 AND 100. SUCH STANDARDS SHALL TAKE INTO ACCOUNT:

1. THE CLIMATIC CONDITIONS OF THE AREA IN WHICH A PARTICULAR BUILDING IS LOCATED.

2. THE FOLLOWING BASIC SYSTEMS COMPRISING A FUNCTIONING BUILDING:

(a) ENERGIZED SYSTEMS SUCH AS THOSE REQUIRED FOR HEATING, COOLING, LIGHTING, VENTILATION, CONVEYANCE AND BUSINESS EQUIPMENT OPERATION.

(b) NONENERGIZED SYSTEMS SUCH AS FLOORS, CEILINGS, WALLS, ROOFS AND WINDOWS.

(c) HUMAN SYSTEMS SUCH AS MAINTENANCE, OPERATING AND MANAGEMENT PERSONNEL, TENANTS AND OTHER USERS.

B. IN ESTABLISHING THE GUIDELINES THE EXECUTIVE DIRECTOR SHALL CONSULT WITH OTHER STATE AGENCIES, LOCAL GOVERNMENTS AND THE PRIVATE SECTOR.

C. THE EXECUTIVE DIRECTOR SHALL, WITHIN EIGHTEEN MONTHS OF THE EFFECTIVE DATE OF THIS ARTICLE, SUBMIT A REPORT TO THE LEGISLATURE AND THE GOVERNOR PROPOSING PERMANENT GUIDELINES.

D. THE EXECUTIVE DIRECTOR SHALL PROVIDE THE PUBLIC AND PRIVATE SECTORS WITH GUIDANCE FOR ENERGY CONSERVATION AND SHALL ADOPT A PROGRAM FOR VOLUNTARY COMPLIANCE INCLUDING GOALS FOR ENERGY SAVINGS.

E. "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE OFFICE OF ECONOMIC PLANNING AND DEVELOPMENT.

F. IN THIS SECTION, "PUBLIC BUILDING" MEANS ANY BUILDING WHICH IS OPEN TO THE PUBLIC DURING NORMAL BUSINESS HOURS THAT IS OVER TEN THOUSAND GROSS SQUARE FEET EXCEPT THOSE BUILDINGS EXEMPTED BY THE EXECUTIVE DIRECTOR.

41-562. Buildings standards advisory committee

A. THERE IS ESTABLISHED A BUILDINGS STANDARDS ADVISORY COMMITTEE WHICH SHALL ASSIST THE EXECUTIVE DIRECTOR IN THE PERFORMANCE OF HIS DUTIES PURSUANT TO SECTION 41-557.

B. THE STANDARDS ADVISORY COMMITTEE SHALL CONSIST OF THE FOLLOWING:

1. ONE REPRESENTATIVE OF COUNTIES.

2. ONE REPRESENTATIVE OF MUNICIPALITIES.

3. TWO ARCHITECTS IN PRIVATE PRACTICE.

4. THREE REGISTERED PROFESSIONAL ENGINEERS, ONE FROM EACH OF THE FOLLOWING ENERGY CONSERVATION FIELDS:

(a) THERMAL DESIGN.

(b) HEATING, VENTILATION AND AIR CONDITIONING.

(c) LIGHTING SYSTEMS.

5. TWO REPRESENTATIVES OF THE BUILDING CONSTRUCTION INDUSTRY.

6. ONE REPRESENTATIVE OF THE BUILDING OPERATIONS COMMUNITY.

7. ONE REPRESENTATIVE OF THE ELECTRIC UTILITY INDUSTRY.

8. ONE AT LARGE REPRESENTATIVE.

9. ONE MEMBER OF THE HOUSE OF REPRESENTATIVES APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND ONE MEMBER OF THE SENATE APPOINTED BY THE PRESIDENT OF THE SENATE.

C. MEMBERS OF THE BUILDINGS STANDARDS ADVISORY COMMITTEE, OTHER THAN LEGISLATIVE MEMBERS, SHALL BE APPOINTED BY THE GOVERNOR PURSUANT TO SECTION 38-211. SUCH MEMBERS SHALL BE ENTITLED TO COMPENSATION PURSUANT TO SECTION 38-611 FOR THEIR SERVICE PURSUANT TO THIS ARTICLE. THE TERMS OF THE LEGISLATIVE MEMBERS SHALL BE CONCURRENT WITH THEIR ELECTIVE TERMS AS LEGISLATORS. MEMBERS OTHER THAN LEGISLATIVE MEMBERS SHALL BE APPOINTED TO A TERM OF TWO YEARS.

Sec. 6. Title 41, chapter 15, article 3, Arizona Revised Statutes, is amended by adding section 41-2082, to read:

41-2082. Basis for settlement in selling or consigning gasoline; formula

A. ANY SALE, OFFER TO SELL, DELIVERY OR CONSIGNMENT OF GASOLINE IN A VOLUME OF NOT LESS THAN FIVE THOUSAND GALLONS, OR ITS METRIC EQUIVALENT, SHALL BE ENTERED INTO ON THE ASSUMPTION THAT THE TEMPERATURE OF SUCH GASOLINE IS SIXTY DEGREES FAHRENHEIT OR FIFTEEN AND SIX-TENTHS DEGREES CENTIGRADE.

B. FOR EACH ONE DEGREE FAHRENHEIT THAT THE TEMPERATURE OF GASOLINE TAKEN AT THE TIME OF LOADING FOR SALE OR CONSIGNMENT DIFFERS FROM SIXTY DEGREES FAHRENHEIT, AN ADJUSTMENT IN THE CONTRACT PRICE SHALL BE MADE EQUAL TO THE STIPULATED VALUE OF SIX-HUNDREDTHS OF ONE PER CENT OF THE TOTAL VOLUME DELIVERED.

C. FOR EACH FIVE HUNDRED FIFTY-FIVE THOUSANDTHS OF A DEGREE CELSIUS THAT THE TEMPERATURE OF GASOLINE TAKEN AT THE TIME OF LOADING FOR SALE OR CONSIGNMENT DIFFERS FROM FIFTEEN AND SIX-TENTHS DEGREES CELSIUS, AN ADJUSTMENT IN THE CONTRACT PRICE SHALL BE MADE EQUAL TO THE STIPULATED VALUE OF SIXTY-ONE THOUSANDTHS OF A PER CENT OF THE TOTAL VOLUME DELIVERED.

Sec. 7. Title 41, Arizona Revised Statutes, is amended by adding chapter 18, to read:

CHAPTER 18

OFFICE OF TOURISM

ARTICLE 1. GENERAL PROVISIONS

41-2251. Office of tourism

THERE IS ESTABLISHED AN OFFICE OF TOURISM.

41-2252. Director

A. THE DIRECTOR OF THE OFFICE SHALL BE RESPONSIBLE FOR PROMOTING AND DEVELOPING TOURISM BUSINESS AND PLANNING, AND DEVELOPING A CAMPAIGN OF INFORMATION, ADVERTISING, PROMOTION, EXHIBITION AND PUBLICITY RELATING TO TOURISM BUSINESS, INCLUDING THE RECREATIONAL, SCENIC AND HISTORICAL ATTRACTIONS OF THIS STATE AND ALL COMMUNITIES AND REGIONS OF THIS STATE, AND DISSEMINATING SUCH INFORMATION TO THE PUBLIC THROUGH VARIOUS STATE, NATIONAL AND INTERNATIONAL MEDIA.

B. THE DIRECTOR IS ELIGIBLE TO RECEIVE COMPENSATION DETERMINED PURSUANT TO SECTION 38-611.

41-2253. Appointment of director

THE DIRECTOR SHALL BE APPOINTED BY THE GOVERNOR PURSUANT TO SECTION 38-211.

41-2254. Assistant director of tourism

A. THE DIRECTOR SHALL APPOINT AN ASSISTANT DIRECTOR OF TOURISM SUBJECT TO APPROVAL BY THE GOVERNOR.

B. IN THE ABSENCE OF THE DIRECTOR, THE ASSISTANT DIRECTOR SHALL PERFORM THE DUTIES OF THE DIRECTOR OF TOURISM.

41-2255. Advisory council; representation; duties

A. THE GOVERNOR SHALL APPOINT A TOURISM ADVISORY COUNCIL WHICH SHALL BE COMPOSED OF FIFTEEN MEMBERS WHO SHALL SERVE AT THE PLEASURE OF THE GOVERNOR.

B. MEMBERS OF THE TOURISM ADVISORY COUNCIL SHALL INCLUDE REPRESENTATIVES FROM RECREATIONAL AND TOURIST ATTRACTIONS, LODGING, RESTAURANT OR FOOD AND TRANSPORTATION INDUSTRIES, OTHER TOURISM BUSINESSES AND THE GENERAL PUBLIC. THE COUNCIL SHALL INCLUDE ONE MEMBER FROM EACH OF THE SIX GEOGRAPHICAL PLANNING AREAS OF THIS STATE. THE RESPECTIVE AREAS SHALL CONSIST OF THE NOTED COUNTIES AS FOLLOWS:

1. AREA 1 MARICOPA.
2. AREA 2 PIMA.
3. AREA 3 APACHE, COCONINO, NAVAJO AND YAVAPAI.
4. AREA 4 MOHAVE AND YUMA.
5. AREA 5 GILA AND PINAL.
6. AREA 6 GRAHAM, GREENLEE, COCHISE AND SANTA CRUZ.

C. OF THE MEMBERS FIRST APPOINTED, THREE SHALL BE APPOINTED FOR A TERM ENDING JUNE 30, 1979 AND THREE EACH FOR TERMS ENDING ONE, TWO, THREE AND FOUR YEARS THEREAFTER. SUBSEQUENT APPOINTMENTS SHALL BE FOR TERMS OF FIVE YEARS, EXCEPT FOR AN APPOINTMENT TO FILL AN UNEXPIRED TERM WHICH SHALL BE FOR THE REMAINDER OF THE TERM.

D. THE COUNCIL SHALL ASSIST AND ADVISE THE DIRECTOR IN PREPARATION OF THE BUDGET AND IN ESTABLISHMENT OF POLICIES AND PROGRAMS WHICH PROMOTE AND DEVELOP TOURISM IN THIS STATE.

41-2256. Powers and duties

A. IN ADDITION TO OTHER DUTIES PRESCRIBED BY LAW, THE OFFICE OF TOURISM SHALL:

1. STIMULATE AND ENCOURAGE ALL LOCAL, STATE, REGIONAL AND FEDERAL GOVERNMENTAL AGENCIES AND ALL PRIVATE PERSONS AND ENTERPRISES TO PARTICIPATE AND COOPERATE IN THE PROMOTION OF TOURISM AND TOURISM DEVELOPMENT IN THIS STATE.

2. UNDERTAKE A COMPREHENSIVE RESEARCH PROGRAM DESIGNED TO ESTABLISH THE OFFICE AS THE CENTRAL REPOSITORY AND CLEARINGHOUSE FOR ALL DATA WHICH RELATES TO TOURISM.

3. PERFORM RESEARCH NECESSARY TO DETERMINE A LONG-RANGE TOURISM DEVELOPMENT PLAN FOR THIS STATE.

4. CONDUCT RESEARCH AT THE REQUEST OF THE GOVERNOR, THE LEGISLATURE OR STATE OR LOCAL AGENCIES, PERTAINING TO ANY OF ITS OBJECTIVES.

5. FORMULATE POLICIES, PLANS AND PROGRAMS DESIGNED TO PROMOTE TOURISM IN THIS STATE.

6. PROVIDE INFORMATION AND ADVICE ON REQUEST BY LOCAL, STATE AND FEDERAL AGENCIES AND BY PRIVATE CITIZENS AND BUSINESS ENTERPRISES ON ALL

MATTERS CONCERNING ITS OBJECTIVES. THE OFFICE MAY PROVIDE INFORMATION AND LITERATURE IN THE SAME MANNER AS DESCRIBED IN SUBSECTION A OF SECTION 11-259.

7. ADVISE WITH AND MAKE RECOMMENDATIONS TO THE GOVERNOR AND THE LEGISLATURE ON ALL MATTERS CONCERNING TOURISM.

8. MAKE AN ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE ON ITS ACTIVITIES, FINANCES AND THE SCOPE OF ITS OPERATIONS.

9. CONDUCT AN ANNUAL STATEWIDE TOURISM SYMPOSIUM TO DISCUSS TOURISM PROMOTION EFFORTS, PROBLEMS AND MATTERS OF INTEREST TO THE TOURISM INDUSTRY.

B. THE OFFICE MAY:

1. EMPLOY, DETERMINE THE CONDITIONS OF EMPLOYMENT AND SPECIFY THE DUTIES OF ADMINISTRATIVE, SECRETARIAL AND CLERICAL ASSISTANTS AND CONTRACT FOR THE SERVICES OF OUTSIDE ADVISORS, CONSULTANTS AND AIDES REASONABLY NECESSARY OR DESIRABLE TO ENABLE IT ADEQUATELY TO PERFORM ITS DUTIES. THE COMPENSATION OF SUCH ASSISTANTS SHALL BE AS DETERMINED PURSUANT TO SECTION 38-611. THE POSITIONS OF THE DIRECTOR, THE ASSISTANT DIRECTOR AND ALL EMPLOYEES OF THE OFFICE OF TOURISM SHALL BE EXEMPT POSITIONS OF TITLE 41, CHAPTER 4, ARTICLES 5 AND 6.

2. MAKE CONTRACTS AND INCUR OBLIGATIONS REASONABLY NECESSARY OR DESIRABLE WITHIN THE GENERAL SCOPE OF ITS ACTIVITIES AND OPERATIONS TO ENABLE IT ADEQUATELY TO PERFORM ITS DUTIES.

3. UTILIZE ANY AND ALL MEDIA OF COMMUNICATION, PUBLICATION AND EXHIBITION IN THE DISSEMINATION OF INFORMATION, ADVERTISING AND PUBLICITY IN ANY FIELD RELATING TO ITS PURPOSES, OBJECTIVES OR DUTIES.

4. USE ITS FUNDS, FACILITIES AND SERVICES TO PROVIDE MATCHING CONTRIBUTIONS UNDER FEDERAL OR OTHER PROGRAMS WHICH FURTHER THE OBJECTIVES AND PROGRAMS OF THE OFFICE.

5. ADOPT RULES AND REGULATIONS IT DEEMS NECESSARY OR DESIRABLE TO GOVERN ITS PROCEDURES AND BUSINESS.

6. ACCEPT GIFTS, GRANTS, MATCHING FUNDS AND DIRECT PAYMENTS FROM PUBLIC OR PRIVATE AGENCIES OR PERSONS FOR THE CONDUCT OF PROGRAMS WHICH ARE CONSISTENT WITH THE GENERAL PURPOSES AND OBJECTIVES OF THIS CHAPTER.

7. CONDUCT TOURISM EDUCATION AND DISCUSSION SEMINARS AND WORKSHOPS TO DISCUSS TOURISM PROMOTION EFFORTS, PROBLEMS AND MATTERS OF INTEREST TO THE TOURISM INDUSTRY.

8. DESIGNATE, ESTABLISH AND OPERATE STATE VISITOR OR TOURIST INFORMATION CENTERS IN THE STATE WHICH FURNISH TOURIST INFORMATION AND LITERATURE, SUBJECT TO LEGISLATIVE APPROPRIATION.

9. CONDUCT RESEARCH PERTAINING TO ANY OF ITS OBJECTIVES.

10. ESTABLISH A REPORTING SYSTEM FOR PUBLIC AGENCIES AND PRIVATE PERSONS OR ENTERPRISES IN ORDER TO MONITOR STATE TOURISM.

Sec. 8. Interim guidelines

The executive director shall immediately adopt thermal and lighting energy conservation minimum performance criteria to serve as interim guidelines pursuant to section 41-561, Arizona Revised Statutes, as added by this act. Such interim guidelines shall be consistent with the uniform building code, chapter 53, and ASHRAE 90 and 100, as modified and approved by the executive director taking into consideration specific

Arizona climatic conditions, building materials and other specific conditions within this state. Such interim guidelines shall be submitted to the legislature for approval no later than six months from the effective date of this act.

Sec. 9. Transfer of duties

All duties and responsibilities for tourism programs shall be transferred from the office of economic planning and development division of development in the governor's office to the office of tourism.

Sec. 10. Transfer of personnel, equipment and funds

A. There are transferred to the office of tourism all persons employed on the effective date of this act in the office of economic planning and development division of development whose duties pertain solely to tourist development.

B. There are transferred to the office of tourism by the assistant director for the division of development within the office of economic planning and development all records, furnishings, equipment and unexpended and unencumbered funds of the division which pertain solely to the development of tourism.

Sec. 11. Retroactive effective date

The provisions of section 6 of this act shall become effective retroactively to July 1, 1978.

Sec. 12. Expiration date

The provisions of section 7 of this act shall expire from and after June 30, 1985.

Approved by the Governor - June 7, 1978

Filed in the Office of the Secretary of State - June 8, 1978

Substitute House Bill No. 5797

PUBLIC ACT NO. 78-314

AN ACT CONCERNING INCLUSION OF ENERGY CONSIDERATIONS IN LOCAL PLANNING AND ZONING FUNCTIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 8-2 of the general statutes, as amended by section 1 of public act 77-509, is repealed and the following is substituted in lieu thereof:

The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes, and the height, size and location of advertising signs and billboards. Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district, and may provide that certain classes or kinds of buildings, structures or use of land are permitted only after obtaining a special permit or special exception from a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, whichever commission or board the regulations may, notwithstanding any special act to the contrary, designate, subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. Such regulations shall be made in accordance with a comprehensive plan and shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue

concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. Zoning regulations may be made with reasonable consideration for the protection of historic factors and may provide that proper provision be made for sedimentation control, and the control of erosion caused by wind or water. SUCH REGULATIONS MAY ALSO ENCOURAGE ENERGY-EFFICIENT PATTERNS OF DEVELOPMENT, THE USE OF SOLAR AND OTHER RENEWABLE FORMS OF ENERGY, AND ENERGY CONSERVATION. Such regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations. Any city, town or borough which adopts the provisions of this chapter may, by vote of its legislative body, exempt municipal property from the regulations prescribed by the zoning commission of such city, town or borough; but unless it is so voted municipal property shall be subject to such regulations.

Sec. 2. Subsection (b) of section 8-13d of the 1977 court reorganization supplement to the general statutes is repealed and the following is substituted in lieu thereof:

(b) Such regulations shall establish standards governing the density, or intensity of land use, in a planned unit development. Such standards shall (1) take into account that the density, or intensity of land use, otherwise allowable on the site under existing zoning regulations enacted pursuant to chapter 124, may not be appropriate for a planned unit development; (2) may vary the density, or intensity of land use, otherwise applicable to the land within the planned unit development in consideration of (A) the amount, location and proposed use of common open space; (B) the location and physical characteristics of the site of the proposed planned development [and] ; (C) the location, design and type of dwelling units; AND (D) THE OBJECTIVES OF AN ENERGY-EFFICIENT PATTERN OF DEVELOPMENT, THE USE OF SOLAR AND OTHER RENEWABLE FORMS OF ENERGY, AND ENERGY CONSERVATION; and (3)

may, in the case of a planned unit development proposed to be develcped over a period of years, authorize a deviation in each section to be developed from the density, or intensity of use, established for the entire planned unit development. Such regulations may require that the approval by the commission of a greater concentration of density or intensity of land use for any section to be developed shall be offset by a smaller concentration in any completed prior stage or by an appropriate reservation of common open space on the remaining land by a grant of easement or by covenant in favor of the municipality, provided such reservation shall, as far as practicable, defer the precise location of such ccmmon open space until an application for final approval is filed.

Sec. 3. Section 8-23 of the general statutes is repealed and the following is substituted in lieu thereof:

The commission shall prepare, adopt and amend a plan of development for the municipality. Such plan shall show the commission's recommendation for the most desirable use of land within the municipality for residential, recreational, commercial, industrial and other purposes and for the most desirable density of pcpulation in the several parts of the municipality. Such plan may alsc show the commission's recommendation for a system of principal thoroughfares, parkways, bridges, streets and other public ways; for airports, parks, playgrounds and other public grounds; for general location, relocation and improvement of public buildings; for the general location and extent of public utilities and terminals, whether publicly or privately owned, for water, sewerage, light, power, transit and other purposes; and for the extent and location of public housing projects. Such other recommendations may be made by the commission and included in the plan as will, in its judgment, be beneficial to the municipality. The plan of development shall be a statement of policies, goals and standards for the physical and economic development of the municipality, and may include all necessary and related maps, explanatory material, photographs, charts or other pertinent data and information relative to the past, present and future trends of the municipality, and may include recommended programs for the implementation of the plan, including a schedule

and budget for public capital projects, and a program for enactment and enforcement of zoning and subdivision controls, building and housing codes and safety regulations. In preparing such plan the commission shall consider the community development action plan of the municipality, if any, and may consider physical, social, economic and governmental conditions and trends, including, but not limited to, local, regional and state studies of the human resource, education, health, housing, recreation, social services, public utilities, public protection, transportation and circulation, cultural and inter-personal communications needs of the municipality, AND THE OBJECTIVES OF ENERGY-EFFICIENT PATTERNS OF DEVELOPMENT, THE USE OF SOLAR AND OTHER RENEWABLE FORMS OF ENERGY, AND ENERGY CONSERVATION. The plan shall be designed to promote with the greatest efficiency and economy the coordinated development of the municipality and the general welfare and prosperity of its people. The commission may prepare and adopt plans for the redevelopment and improvement of districts or neighborhoods which, in its judgment, contain special problems or show a trend toward lower land values. The commission may adopt the plan of development by a single resolution or may, by successive resolutions, adopt parts of the plan, whether geographical or functional, and amendments thereto. Prior to adopting the development plan or any part thereof or amendment thereto, the commission shall file in the office of the town clerk a copy of such plan or part thereof or amendment thereto but, in the case of a district commission, such commission shall file such information in the offices of both the district clerk and the town clerk, and shall hold at least one public hearing thereon, notice of the time and place of which shall be published in a newspaper having general circulation in the municipality at least twice at intervals of not less than two days, the first not more than fifteen days, nor less than ten days, and the last not less than two days prior to the date of each such hearing, which notice shall make reference to the filing of such records in the office of the town clerk, or both the district clerk and the town clerk, as the case may be. Any plan or part thereof or amendment thereto shall, upon adoption by the commission, be filed in the office of the town clerk, but, if it is a district plan or amendment, it shall be filed

municipality at least twice, at intervals of not less than two days, the first not more than fifteen days nor less than ten days, and the last not less than two days prior to the date of such hearing. Such regulations shall provide that the land to be subdivided shall be of such character that it can be used for building purposes without danger to health or the public safety, that proper provision shall be made for water, drainage and sewerage and, in areas contiguous to brooks, rivers or other bodies of water subject to flooding, including tidal flooding, that proper provision shall be made for protective flood control measures and that the proposed streets are in harmony with existing or proposed principal thoroughfares shown in the plan of development as described in section 8-23, especially in regard to safe intersections with such thoroughfares, and so arranged and of such width, as to provide an adequate and convenient system for present and prospective traffic needs. Such regulations shall also provide that the commission may provide open spaces for parks and playgrounds when, and in places, deemed proper by the planning commission, which open spaces for parks and playgrounds shall be shown on the subdivision plan. Such regulations may provide that proper provision be made for sedimentation control, and the control of erosion caused by wind or water. SUCH REGULATIONS MAY ALSO ENCOURAGE ENERGY-EFFICIENT PATTERNS OF DEVELOPMENT, THE USE OF SOLAR AND OTHER RENEWABLE FORMS OF ENERGY, AND ENERGY CONSERVATION. The commission may also prescribe the extent to which and the manner in which streets shall be graded and improved and public utilities and services provided and, in lieu of the completion of such work and installations previous to the final approval of a plan, the commission may accept a bond in an amount and with surety and conditions satisfactory to it securing to the municipality the actual construction and installation of such improvements and utilities within a period specified in the bond. Such regulations may provide, in lieu of the completion of the work and installations above referred to, previous to the final approval of a plan, for an assessment or other method whereby the municipality is put in an assured position to do such work and make such installations at the expense of the owners of the property within the subdivision.

in the offices of both the district and town clerk, and shall become effective at a time established by the commission, provided notice thereof shall be published in a newspaper having general circulation in the municipality prior to such effective date.

Sec. 4. Section 8-25 of the general statutes, as amended by section 2 of public act 77-545, is repealed and the following is substituted in lieu thereof:

No subdivision of land shall be made until a plan for such subdivision has been approved by the commission. Any person, firm or corporation making any subdivision of land without the approval of the commission shall be fined not more than two hundred dollars for each lot sold or offered for sale or so subdivided. Any plan for subdivision shall, upon approval, or when taken as approved by reason of the failure of the commission to act, be filed or recorded by the applicant in the office of the town clerk within ninety days of the date such plan is delivered to the applicant, but, if it is a plan for subdivision wholly or partially within a district, it shall be filed in the offices of both the district clerk and the town clerk, and any plan, not so filed or recorded within the prescribed time shall become null and void, except that the commission may extend the time for such filing for two additional periods of ninety days and the plan shall remain valid until the expiration of such extended time. All such plans shall be delivered to the applicant for filing or recording promptly after the time for taking an appeal from the action of the commission has elapsed, and in the event of an appeal, promptly upon the termination of such appeal by dismissal, withdrawal or judgment in favor of the applicant. No such plan shall be recorded or filed by the town clerk or district clerk or other officer authorized to record or file plans until its approval has been endorsed thereon by the chairman or secretary of the commission, and the filing or recording of a subdivision plan without such approval shall be void. Before exercising the powers granted in this section, the commission shall adopt regulations covering the subdivision of land. No such regulations shall become effective until after a public hearing, notice of the time, place and purpose of which shall be given by publication in a newspaper of general circulation in the

Sec. 5. Section 8-35a of the general statutes, as amended by section 19 of public act 77-614, is repealed and the following is substituted in lieu thereof:

Each regional planning agency shall make a plan of development for its area of operation, showing its recommendations for the general use of the area including land use, principal highways and freeways, bridges, airports, parks, playgrounds, recreational areas, schools, public institutions, public utilities and such other matters as, in the opinion of the agency, will be beneficial to the area. Any regional plan so developed shall be based on studies of physical, social, economic and governmental conditions and trends and shall be designed to promote with the greatest efficiency and economy the coordinated development of its area of operation and the general welfare and prosperity of its people. SUCH PLAN MAY ENCOURAGE ENERGY-EFFICIENT PATTERNS OF DEVELOPMENT, THE USE OF SOLAR AND OTHER RENEWABLE FORMS OF ENERGY, AND ENERGY CONSERVATION. Before adopting the regional plan of development or any part thereof or amendment thereto the agency shall hold at least one public hearing thereon, notice of the time, place and subject of which shall be given in writing to the chief executive officer and planning commission, where one exists, of each member town, city or borough, and to the secretary of the office of policy and management, or his designee. Notice of the time, place and subject of such hearing shall be published once in a newspaper having a substantial circulation in the region. Such notices shall be given not more than twenty days nor less than ten days before such hearing. Adoption of the plan or part thereof or amendment thereto shall be made by the affirmative vote of not less than a majority of the representatives on the agency. A copy of the plan or of any amendments thereto, signed by the chairman of the agency, shall be transmitted to the chief executive officers, the town, city or borough clerks, as the case may be, and to planning commissions, if any, in member towns, cities or boroughs, and to the secretary of the office of policy and management, or his designee. The regional planning agency shall assist municipalities within its region and state agencies and may assist other public and private agencies in developing and carrying out any

regional plan or plans of such regional planning agency. The regional planning agency may provide technical assistance to municipalities within its region and other public agencies under such terms as it may determine, provided, prior to entering into an agreement for assistance to any municipality or other public agency, the regional planning agency shall have adopted a policy governing such assistance. The regional planning agency may be compensated by the municipality or other public agency with which an agreement for assistance has been made for all or part of the cost of such assistance.

Certified as correct by

_____
Legislative Commissioner.

_____
Clerk of the Senate.

_____
Clerk of the House.

Approved _____, 1978

_____
Governor.

ENROLLED

A bill to be entitled

An act relating to land use management; adding s. 23.0112(5), Florida Statutes, defining the state comprehensive plan as the goals, objectives, and policies contained in the plan; amending s. 23.0114, Florida Statutes; providing for the preparation and revision of the plan; amending s. 23.043, Florida Statutes; providing that specific goals, objectives, and policies contained in the plan may only be implemented or enforced through specific acts of the Legislature; providing that nothing in the plan or revisions thereto will have the force and effect of law except as specifically authorized by law; providing Legislative intent; repealing s. 2, chapter 77-306, Laws of Florida, relating to the effective date of the plan; repealing s. 23.048, Florida Statutes, relating to the authority of the Department of Administration to establish a schedule for adoption of certain plans; creating the Florida Coastal Management Act of 1978; directing the Department of Environmental Regulation to submit an application for federal funds pursuant to Section 306 of the Federal Coastal Zone Management Act of 1972; restricting the program application to existing state law; designating the Department of Environmental Regulation as the lead agency and providing for certain powers and duties; providing for federal consistency review; providing for local

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government eligibility for technical and financial assistance; providing an express rejection of certain previously submitted plans; providing severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) is added to section 23.0112, Florida Statutes, to read:

23.0112 Definitions.--As used in this part:

(5) "State comprehensive plan" means the goals, objectives, and policies contained within the state comprehensive plan prepared by the division.

Section 2. Section 23.0114, Florida Statutes, is amended to read:

23.0114 State comprehensive plan, preparation, revision.--

~~(1) Preparation and revision of the state comprehensive plan shall be a continuing process. Such process shall, to the extent feasible, consider studies, reports, and plans of every department, agency, and institution of state and local governments, regional planning agencies, and the federal government and shall take into account the existing and prospective resources, capabilities, and needs of state and local levels of government.~~ The state comprehensive plan shall be advisory only, except as specifically authorized by law, and shall be based on the best available data, and shall provide long-range guidance for the orderly social, economic, and physical growth of the state by setting forth goals, objectives, and policies. To the extent

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feasible, the division shall utilize the services and plans of local governments and regional planning agencies when preparing and revising the provisions of the state comprehensive plan.

(2) In preparing and revising the state comprehensive plan, the division shall, to the extent feasible, consider studies, reports, and plans of each department, agency, and institution of state and local government, each regional planning agency, and the Federal Government and shall take into account the existing and prospective resources, capabilities, and needs of state and local levels of government.

(3) The revision of the state comprehensive plan shall be a continuing process. Each section of the plan shall be reviewed and analyzed yearly by division personnel in conjunction with the planning officers of other state agencies significantly affected by the provisions of the particular section under review.

(4)~~(2)~~(a) The Legislature finds that the coastal zone is rich in variety of natural, commercial, recreational, ecological, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the residents of this state which will be irretrievably lost or damaged if not properly managed. Participation by Florida citizens will be an important factor in developing a plan for management of the coastal zone, and management of the state's coastal zone will require a highly coordinated effort among state, regional, and local officials and agencies.

(b) The state coastal zone management plan shall be a part of the state comprehensive plan. It shall contain a boundary, policies, goals, and programs necessary to comply

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with the requirements of the Federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451-1464), specifically delineating the role of state, regional, and local agencies in implementing the plan, and it shall provide that the appeal of any regulatory decision, other than those provided for by existing law, shall be to the Governor and Cabinet.

Section 3. Section 23.013, Florida Statutes, is amended to read:

23.013 Adoption of state comprehensive plan.--

(1) The proposed state comprehensive plan or parts or revisions thereof shall be transmitted to the Governor for his consideration and action. The plan or parts or revisions thereof, when approved by the Governor, shall be transmitted to the secretary of the Senate and the Clerk of the House of Representatives no later than 90 days prior to the beginning of the next regular ~~any legislative session for presentation to the next regular session of the Legislature for its approval by legislative act.~~ Copies shall also be transmitted to each state department, regional planning agency, county, municipality, and to any other governmental agency requesting a copy of the plan ~~federal agency affected by or having an interest in the plan.~~

(2) Except as specifically authorized by law, no part of the state comprehensive plan, or the policies set forth therein, or any revision thereto shall be implemented or enforced by any executive agency; provided that the chief planning officer may, from time to time, in bill form, present to the Legislature specific proposals to implement goals, objectives, and policies of the state comprehensive plan. Nothing contained in the plan or parts or revisions thereof shall have the force or effect of law or authorize the

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implementation of any programs not otherwise authorized pursuant to law. It is the further intent of the Legislature that enactment of this legislation shall not amend existing statutes other than as provided herein or provide additional regulatory authority. ~~Any part of the plan not otherwise authorized by law shall be subject to review and approval by the Legislature as expressed through its acts, both through substantive law and emphasis as contained in appropriations acts.~~

~~(3) Upon action as contained in subsection (1) of this section and upon completion of any legislative action necessary as contained in subsection (2), the provisions of the plan shall become effective as state policy. State department or agency budgets shall be prepared and executed based upon and consistent with law and the state comprehensive plan.~~

~~(4) Subsequent to legislative action as provided in subsection (2), the secretary shall transmit copies of such action to the head of each governmental agency affected.~~

Section 4. Section 2 of chapter 77-306, Laws of Florida, and section 23.018, Florida Statutes, are hereby repealed.

Section 5. Short title.--Sections 6 through 10 of this act may be cited as the "Florida Coastal Management Act of 1978."

Section 6. Legislative intent.--

(1) The Legislature finds that:

(a) The coast is rich in a variety of natural, commercial, recreational, ecological, industrial, and aesthetic resources, including, but not limited to, energy facil[illegible]s as that term is defined in Section 304(5) of the

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Federal Coastal Zone Management Act of 1972, of immediate potential value to the present and future well-being of the residents of this state.

(b) It is in the state and national interest to protect, maintain and develop these resources through coordinated management.

(c) State land and water management policies should, to the maximum possible extent, be implemented by local governments through existing processes for the guidance of growth and development.

(2) The Legislature therefore grants authorization for the Department of Environmental Regulation to compile a program based on existing statutes and existing rules and submit an application to the appropriate federal agency as a basis for receiving administrative funds under the Federal Coastal Zone Management Act of 1972. It is the further intent of the Legislature that enactment of this legislation shall not amend existing statutes or provide additional regulatory authority to any governmental body except as otherwise provided by section 8. The enactment of this legislation shall not in any other way affect any existing statutory or regulatory authority.

Section 7. Lead agency authority and duties.--

(1) The Department of Environmental Regulation shall be the lead agency pursuant to 16 U.S.C. 1451 et. seq., and shall compile and submit to the appropriate federal agency an application to receive funds pursuant to Section 306 of the Federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451-1464). The application for federal approval of the state's program shall include program policies that only reference existing statutes and existing implementing

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administrative rules. In the event the application or the program submitted pursuant to this subsection is rejected by the appropriate federal agency, because of failure of this act, the existing statutes, or the existing implementing administrative rules to comply with the requirements of the Federal Coastal Zone Management Act of 1972, as amended, no state coastal management program shall become effective without prior legislative approval. The coastal management application or program may be amended from time to time to include changes in statutes and rules adopted pursuant to statutory authority other than this act.

(2) The Department of Environmental Regulation shall also have authority to:

(a) Establish advisory councils with sufficient geographic balance to insure statewide representation.

(b) Coordinate central files and clearinghouse procedures for coastal resource data information and encourage the use of compatible information and standards.

(c) Provide to the extent practicable financial, technical, research, and legal assistance to effectuate the purposes of this act.

(d) Review rules of other affected agencies to determine consistency with the program and to report any inconsistencies to the Legislature.

(3) The Secretary of Environmental Regulation shall adopt by rule a specific formula for allocation of federal funds for the administration of the program.

Section 8. Federal consistency.--

(1) When an activity requires a permit or license subject to federal consistency review, the issuance or renewal of a state license shall automatically constitute the state's

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concurrence that the licensed activity or use, as licensed, is consistent with the federally approved program. When an activity requires a permit or license subject to federal consistency review, the denial of a state license shall automatically constitute the state's finding that the proposed activity or use is not consistent with the state's federally approved program, unless the United States Secretary of Commerce determines that such activity or use is in the national interest as provided in the Federal Coastal Zone Management Act of 1972.

(2) Where federal licenses, permits, activities and projects listed in subsection (3) are subject to federal consistency review and are seaward of the jurisdiction of the state, or there is no state agency with sole jurisdiction, the Department of Environmental Regulation shall be responsible for the consistency review and determination, provided that the department shall not make a determination that the license, permit, activity or project is consistent if any other state agency with significant analogous responsibility makes a determination of inconsistency. All decisions and determinations under this subsection shall be appealable to the Governor and Cabinet.

(3) Consistency review shall be limited to review of the following activities, uses and projects to ensure that such activities and uses are conducted in accordance with the state's coastal management program:

(a) Federal development projects and activities of federal agencies which significantly affect coastal waters and the adjacent shorelands of the state.

(b) Federal assistance projects which significantly affect coastal waters and the adjacent shorelands of the state

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and which are reviewed as part of the review process developed pursuant to OMB Circular A-95.

(c) Federally licensed or permitted activities affecting land or water uses when such activities are in or seaward of the jurisdiction of local governments required to develop a coastal zone protection element as provided in section 9 and when such activities involve:

1. Permits required under sections 10 and 11 of the Rivers and Harbors Act of 1899, as amended.

2. Permits required under section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

3. Permits required under sections 201, 402, 403, 404, and 405 of the Federal Water Pollution Control Act of 1972, as amended, unless such permitting activities pursuant to such sections have been delegated to the state pursuant to said act.

4. Permits required under the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401, 1402, 1411-1421, and 1441-1444.

5. Permits for the construction of bridges and causeways in navigable waters required pursuant to 33 U.S.C. 401, as amended.

6. Permits relating to the transportation of hazardous substance materials or transportation and dumping which are issued pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. 1801-1812, as amended or 33 U.S.C. 419, as amended.

7. Permits and licenses required under 43 U.S.C. 717 for construction and operation of interstate gas pipelines and storage facilities.

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8. Permits required under 15 U.S.C. 717, as amended, for construction and operation of facilities needed to import and export natural gas.

9. Permits and licenses required for the siting and construction of any new electrical power plants as defined in s. 403.503(7), Florida Statutes, as amended.

10. Permits and licenses required for drilling and mining on public lands.

11. Permits for areas leased under the OCS Lands Act, as amended, including leases and approvals under 43 U.S.C. 1331, as amended, of exploration, development and production plans.

12. Permits for pipeline rights of way for oil and gas transmissions.

13. Permits and licenses required for deep-water ports under 33 U.S.C. 1503, as amended.

(4) The department shall by rule adopt procedures for the expeditious handling of emergency repairs to existing facilities for which consistency review is required pursuant to subsections (1), (2 , and (3).

(5) In any coastal management program submitted to the appropriate federal agency for its approval pursuant to this act, the department shall specifically waive its right to determine the consistency with the coastal management program of all federally licensed or permitted activities not specifically listed in subsection (3).

(6) Agencies shall not review for federal consistency purposes an application for a federally licensed or permitted activity if the activity is vested, exempted or excepted under its own regulatory authority.

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(7) The department shall review the items listed in subsection (3) to determine if in certain circumstances such items would constitute minor permit activities. If the department determines that the list contains minor permit activities, it may by rule establish a program of general concurrence pursuant to federal regulation which shall allow similar minor activities, in the same geographic area, to proceed without prior department review for federal consistency.

(8) This section shall not apply to the review of federally licensed or permitted activities for which permit applications are filed with the appropriate federal agency prior to approval of the state coastal management program by the appropriate federal agency pursuant to 16 U.S.C. 1451, et. seq.

Section 9. Local government participation.--Units of local government abutting the Gulf of Mexico or the Atlantic Ocean, or which include or are contiguous to waters of the state where marine species of vegetation listed by rule pursuant to s. 403.817, Florida Statutes, constitute the dominant plant community, shall develop a coastal zone protection element pursuant to s. 163.3177, Florida Statutes. Such units of local government shall be eligible to receive technical assistance from the state in preparing coastal zone protection elements and shall be the only units of local government eligible to apply to the department for available financial assistance. Local government participation in the coastal management program authorized by this act shall be voluntary.

Section 10. The legislative draft of the coastal management program submitted to the Legislature by the

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department dated March 1, 1978, and the previously prepared coastal zone atlases are expressly rejected as the state's coastal management program. The department shall not divide areas of the state into vital, conservation and development areas.

Section 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 12. This act shall take effect July 1, 1978.

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H. B. No. 1465 (AS PASSED HOUSE AND SENATE)
By: Representatives Lambert of the 112th, Carlisle of the 71st, Battle of the 124th, Gignilliat of the 122nd, Triplett of the 128th, Scott of the 123rd, Chance of the 129th, Greene of the 138th, Taggart of the 125th, Hill of the 127th and Auten of the 154th

A BILL TO BE ENTITLED

AN ACT

To provide for certain matters relative to coastal zone management; to provide a short title; to provide for definitions; to provide for the creation, composition, appointment, renewal, compensation and expenses of the Georgia Coastal Management Board; to provide for filling vacancies on the Board; to provide for officers, meetings, a quorum, and an administrative agent for the Board; to provide powers and duties of the Department; to provide powers and duties of the Board; to provide for other agencies to cooperate and to administer their regulatory programs in the coastal zone in a certain manner; to provide that local governments cannot unreasonably restrict or exclude uses of regional benefit under certain circumstances; to provide for the Attorney General, at the request of the Board, to institute proceedings to challenge such restrictions or exclusions; to provide for severability; to provide an effective date; to provide for other matters relative to the foregoing; to repeal conflicting laws; and for other purposes.

WHEREAS, Georgia's coastal zone is composed of unique and valuable cultural, economic and natural resources which, when developed in harmony, provide unmatched opportunities for the present and future well-being of all the citizens of this State, and which have in the past and will continue to significantly contribute to the economic and cultural growth of the coastal zone; and

WHEREAS, the land where fresh water mixes with the sea and is influenced by tidal forces creates an environment where fertile marshes help produce an abundant coastal

fishery; and

WHEREAS, Georgia's golden isles, an integral part of the coastal zone, evolved as a result of the relationship between inland sediment flows and the coastal sand-sharing system, which system continues to protect and provide island resources; and

WHEREAS, much of coastal Georgia's industrial development is dependent on vast supplies of fresh water, either from ground or surface flows, which have been available at this interface between the land and the sea; and

WHEREAS, overuse of fresh-water resources has caused and can cause additional undesirable and potentially irreversible effects on future industrial growth and vital coastal resources; and

WHEREAS, the increasing competing demands, resulting from population growth and intensive economic development, placed on the lands and waters of Georgia's coastal zone have caused damage to or loss of Georgia's vital coastal resources; and

WHEREAS, these coastal resources are essential to maintain the health, safety and welfare of all citizens of this State and, to ensure that effective management results in appropriate protection and the wise and beneficial use of these resources, they are properly a matter for regulation under the police power of the State; and

WHEREAS, it is a policy of this State to preserve, protect and, when possible, to restore and enhance Georgia's coastal resources for the present and future use of citizens of this State; and

WHEREAS, improved cooperation among federal, State and local governmental agencies is essential to improve the ability of these agencies to enhance the well-being of all the State's citizens through their actions in the coastal

zone; and

WHEREAS, such a partnership of governmental interest requires that they work together to effectively plan for the appropriate protection and wise use of coastal resources, and such a degree of cooperation cannot take place without additional funding and technical assistance; and

WHEREAS, it is a policy of this State to encourage and assist State and local governments jointly to exercise their responsibilities in the coastal zone to achieve the wise use of the land and water resources of that zone while giving full consideration to the natural, cultural and aesthetic values as well as to other needs; and

WHEREAS, all State agencies engaged in programs affecting the coastal zone should cooperate with each other and with local governments to effectuate the purposes and requirements of this Act and operate in conformity with the State's approved coastal zone management program; and

WHEREAS, within the coastal zone, certain geographic areas, because of their characteristics which are of areawide, Statewide, or of regional significance, require special management policies and authority in order to achieve beneficial use and the appropriate level of protection; and

WHEREAS, certain land and water uses within the coastal zone are of regional benefit and should not be unreasonably restricted or excluded from the coastal zone; and

WHEREAS, certain geographic areas within the coastal zone which require special management policies and authorities should be so designated.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

Section 1. Short title. This Act shall be known and may be cited as the "Coastal Management Act of 1978".

Section 2. Definitions. The following words or phrases as used in this Act shall, unless the context requires otherwise, have the following meanings:

(a) "Agency" means any of the authorities, boards, offices, bureaus, institutions, departments, commissions or other agencies of the State.

(b) "Approved program" means the management program for the coastal zone prepared in accordance with the requirements of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.) and subsequently approved by the Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(c) "Board" means the Georgia Coastal Management Board.

(d) "Coastal waters" means open marine waters extending seaward to the jurisdictional limit of this State, coastal beaches and offshore sand bars, estuarine waters, including coastal rivers and streams to the inland extent that adjacent wetlands support marsh as defined by the Coastal Marshlands Protection Act of 1970 (Ga. Laws 1970, p. 939), as amended, island sloughs and ponds, and coastal marshlands as defined by the Coastal Marshlands Protection Act of 1970.

(e) "Coastal zone" means all lands and waters bounded on the east by the seaward jurisdictional limit of this State; on the south by the Georgia-Florida state boundary; on the west by a line running northerly from the Georgia-Florida state boundary and located 1000 meters west of the centerline of the right-of-way of the Seaboard Coast Line Railroad to the McIntosh-Liberty County line, thence in

an easterly direction along the McIntosh-Liberty County line to the centerline of Interstate Highway 95, and running thence in a northerly direction along the centerline of the right of way of Interstate Highway 95 to the Liberty-Bryan County line, thence in a westerly direction along the Liberty-Bryan County line to a point located 1000 meters west of the centerline of the right-of-way of the Seaboard Coastline Railroad, thence following a line located 1000 meters west of the centerline of the Seaboard Coastline Railroad to the intersection of said railroad and Interstate Highway 95, thence 1000 meters west of the centerline of the right-of-way of Interstate Highway 95 to the Chatham-Effingham County line, and thence along the Chatham-Effingham County line to the Georgia-South Carolina state boundary; and on the north by the Georgia-South Carolina state boundary to the seaward jurisdictional limit of this State. All areas defined as coastal waters above shall be deemed to be included in the coastal zone regardless of their location with respect to the inland boundary defined in this subsection.

(f) "Coastal zone counties" means the following counties: Camden, Glynn, McIntosh, Liberty, Bryan, and Chatham.

(g) "Department" means the Department of Natural Resources.

(h) "Geographic areas of particular concern" means those areas whose environmental, economic, recreational or cultural characteristics are of areawide, Statewide or regional significance and therefore require special management.

(i) "Local government" means any county or municipality or combination thereof, which is located in whole or in part in the coastal zone.

(j) "Person" means any municipal corporation,

county, or combination thereof, individual, corporation, partnership, association, public or private authority, and includes the State of Georgia, its boards, bureaus, commissions, authorities or other agencies.

(x) "Use of regional benefit" means the following land and water uses: transmission lines, power plants, public port developments, regional airports, sewage treatment plants, regional solid waste disposal facilities, and energy exploration and production facilities.

Section 3. Georgia Coastal Management Board Created; Members; Appointment; Terms; Compensation; Expenses; Organization; Meetings. To effectuate the provisions of this Act, there is hereby created the Georgia Coastal Management Board. The Board shall be composed of eleven (11) persons to be appointed by the Governor. Of the eleven members appointed by the Governor, there shall be at least one member who is a resident of each coastal zone county. Said members shall serve for three-year terms; provided, however, of the first appointments, four shall be appointed for one year, four shall be appointed for two years, and three shall be appointed for three years. The Governor may fill any vacancy in the appointed membership of the Board and may remove any appointed member for cause.

Each member of the Board shall receive the sum of $36 per diem for each day such member is in attendance at a meeting of the Board, plus reimbursement for actual transportation costs while traveling by public carrier, or the legal mileage rate for the use of a personal automobile in connection with such attendance.

At the first meeting of the Board and annually thereafter, the members shall select one of its members to serve as chairman and one of its members to serve as vice-chairman. The Commissioner of Natural Resources shall

act as the Board's administrative agent.

The Board shall meet at such times and at such designated places as it may determine. A majority of the members of the Board shall constitute a quorum for the transaction of any and all business.

Section 4. Powers and Duties of the Department. The Department shall have the following powers and duties to carry out the provisions of this Act:

(a) To apply for, accept, grant and expend, in accordance with Board policy, financial assistance from public and private sources to carry out the provisions of this Act and the Federal Coastal Zone Management Act of 1972, P.L. 92-583, as amended; such grants may include, but shall not be limited to, grants made to local governments to carry out the provisions of this Act.

(b) To administer and enforce the provisions of this Act.

(c) To hold public hearings, receive comments and afford all interested persons an opportunity to participate in the development of policies to be administered pursuant to this Act.

(d) To study and recommend to the Board geographic areas of particular concern and methods of special management for such areas.

(e) To perform any and all acts necessary to carry out the provisions of this Act.

Section 5. Powers and Duties of the Board. In carrying out the provisions of this Act, the Board shall have the following powers and duties:

(a) To establish criteria for and to approve grants to carry out the provisions of this Act and the Federal Coastal Zone Management Act of 1972, P.L. 92-583, as

amended.

(b) To make those policies necessary to carry out the provisions of this Act.

(c) To recommend to local governments standards and guidelines designed to achieve wise use of the land and water resources of the coastal zone.

(d) To designate geographic areas of particular concern and, when necessary, recommend legislation for special management of such areas.

(e) To institute or cause to be instituted, in accordance with Section 7, legal proceedings to insure that uses of regional benefit are not unreasonably restricted or excluded from the coastal zone.

Section 6. Other Agencies to Cooperate. All agencies shall cooperate with the Board and the Department in the administration and enforcement of this Act. All agencies currently exercising regulatory authority in the coastal zone shall administer such authority in conformity with the provisions of this Act.

Section 7. Uses of Regional Benefit. Local governments shall not unreasonably restrict or exclude uses of regional benefit from the coastal zone when such uses cannot be feasibly sited outside the coastal zone. Upon request of the Board, the Attorney General shall, in the interest of the State of Georgia as parens patriae, institute or cause to be instituted, in the superior court in which such local government is located, legal proceedings to challenge such restrictions or exclusions by local governments. In determining whether there has been an unreasonable restriction or exclusion from the Coastal zone, the court shall determine whether there has been a manifest abuse of discretion by the local government. The court may

affirm or remand the decision of the local government.

Section 8. Severability. In the event any section, subsection, sentence, clause or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

Section 9. Effective Date. This Act shall become effective upon its approval by the Governor or upon its becoming law without his approval.

Section 10. Repealer. All laws and parts of laws in conflict with this Act are hereby repealed.

To be made one and ten copies.

HOUSE OF REPRESENTATIVES
NINTH LEGISLATURE, 1978
STATE OF HAWAII

H.B. NO. 2166-78
H.D. 2
S.D. 1
C.D. 1

A BILL FOR AN ACT

Act 136-

RELATING TO ENERGY RESOURCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 196-3, Hawaii Revised Statutes, is amended to read:

"Sec. 196-3 [Establishment of energy resources coordinator. The position of energy resources coordinator is established in the office of the governor. The governor shall appoint and remove the coordinator, who shall not be subject to chapters 76 and 77. The salary of the coordinator shall be set by the governor and shall not be more than the salaries of department heads as prescribed in section 26-52(3)., The coordinator shall be included in any benefit program generally applicable to the officers and employees of the State.] Energy resources coordinator. The director of planning and economic development shall serve as energy resources coordinator."

SECTION 2. Section 196-4, Hawaii Revised Statutes, is amended to read:

"Sec. 196-4 Powers and duties. Subject to the approval of the governor, the coordinator shall:

(1) Formulate plans, including objectives, criteria to measure accomplishment of objectives, programs through which the objectives are to be attained, and financial requirements for the optimum development of Hawaii's energy resources;

(2) Conduct systematic analysis of existing and proposed energy resource programs, evaluate the analysis conducted by government agencies and other organizations and recommend to the governor and to the legislature programs which represent the most effective allocation of resources for the development of energy sources;

(3) Formulate and recommend specific proposals, as necessary, for conserving energy and fuel, including the allocation and distribution thereof, to the governor and to the legislature;

(4) Assist public and private agencies in implementing energy conservation and related measures;

(5) Coordinate the State's energy conservation and allocation programs with that of the federal government, other state governments, governments

of nations with interest in common energy resources, and the political subdivisions of the State;

(6) Develop programs to encourage private and public exploration and research of alternative energy resources which will benefit the State;

(7) Conduct public education programs to inform the public of the energy situation as may exist from time to time and of the government actions taken thereto;

(8) Serve as consultant to the governor, public agencies and private industry on matters related to the acquisition, utilization and conservation of energy resources;

(9) Contract for services when required for implementation of this chapter;

(10) Review proposed state actions which he finds to have significant effect on energy consumption and report to the governor their effect on the energy conservation program, and perform such other services as may be required by the governor and the legislature; [and]

(11) Prepare and submit an annual report and such other reports as may be requested to the governor and to

the legislature on the implementation of this chapter and all matters related to energy resources [.]; and

(12) Adopt rules for the administration of this chapter pursuant to Chapter 91, provided that the rules shall be submitted to the legislature for review."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring.

SECTION 4. This Act shall take effect upon its approval.

Ramon

Senate Substitute for HOUSE BILL No. 2973

AN ACT establishing the Kansas energy office as an independent agency; affecting the powers, duties and functions of said office and the director thereof; amending K.S.A. 1977 Supp. 74-6802 to 74-6805, inclusive, 74-6808 and 74-6809 and repealing the existing sections.

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

Section 1. K.S.A. 1977 Supp. 74-6802 is hereby amended to read as follows: 74-6802. There is hereby created the Kansas energy office, which shall be administered under the direction and supervision of the director of the Kansas energy office. The director of the Kansas energy office shall be appointed by the governor, with the advice and consent of the senate, and shall serve at the pleasure of the governor. The director shall receive an annual salary to be fixed by the governor ~~with the approval of the state finance council. The Kansas energy office is hereby attached to the governor's office or a division designated by the governor~~.

New Sec. 2. (a) The Kansas energy office created by K.S.A. 1977 Supp. 74-6802, is hereby transferred out of the governor's office and established as an independent agency within the executive branch of state government.

(b) All budgeting, purchasing and related management functions of the Kansas energy office shall be administered under the direction and supervision of the director of the Kansas energy office.

(c) All vouchers for expenditures from appropriations to or for the Kansas energy office shall be approved by the director of the Kansas energy office or a person or persons designated by said director for such purpose.

(d) All records of and appropriations for the Kansas energy office shall be transferred to the Kansas energy office on the effective date of this act.

(e) The Kansas energy office created by K.S.A. 1977 Supp. 74-6802 is hereby specifically continued in existence, and it shall have the same powers, functions and duties as were vested by law in it immediately prior to the effective date of this act, except as is herein otherwise specifically provided.

Sec. 3. K.S.A. 1977 Supp. 74-6803 is hereby amended to read as follows: 74-6803. (a) There is hereby ~~created a governor's~~ *established within and as a part of the Kansas energy office an* energy advisory council ~~the membership of which shall be appointed by the governor. Said members shall serve at the pleasure of the governor~~. *The energy advisory council shall be composed of ten (10) members as follows: (1) The governor shall appoint four members, of whom one shall be representative of energy consumers, one shall be representative of public utilities, one shall be representative of energy producers, and one shall be representative of environmentalists; (2) the speaker of the house of representatives shall appoint two members from the house of representatives of whom one shall be a member of the majority party and one shall be a member of the minority party; (3) the president of the senate shall appoint two members from the senate of whom one shall be a member of the majority party and one shall be a member of the minority party; (4) the chairperson of the Kansas corporation commission, or a member of the commission designated by said chairperson; and (5) the state geologist of Kansas, or a person designated by said state geologist. Members appointed by the governor shall serve at the pleasure of the governor. Terms for (2), (3) and (4) shall expire concurrently with their terms as state officers. The term for (5) shall expire concurrently with the term as state geologist.*

(b) All budgeting, purchasing and related management functions of the advisory council shall be administered under the direction of the director. All vouchers for expenditures and all payrolls of the advisory council shall be approved by the chairperson of the advisory council and the director. The council shall serve in an advisory capacity to the director on all matters relating to energy resources and the allocation thereof.

~~(b)~~ *(c) The energy advisory council shall provide for its organization and operating procedure including the selection of a chairperson and such other officers as deemed necessary. The council shall meet at least four (4) times a year or as often as the chairperson of the council or the director deems necessary, or upon written request of six (6) members of the council, but in any case, the council shall not meet more than twelve (12) times in any one year.* Members of the ~~governor's~~ energy advisory council attending meetings of such council, or attending a subcommittee meeting thereof authorized by such council, shall be paid ~~subsistence allowances, mileage and other expenses~~ *amounts* as provided in K.S.A. ~~1975 Supp.~~ 75-3223, *and amendments thereto.*

(d) On July 1, 1978, the governor's energy advisory council created by this section prior to its amendment by this act shall be and is hereby abolished, and on said date, except as otherwise provided in this act, all of the powers, duties and functions of said council shall be and are hereby transferred to and conferred and imposed upon the energy advisory council established by this section. Except as otherwise provided in this act, the energy advisory council established by this section shall be the successor in every way to the powers, duties and functions of the governor's energy advisory council in which the same were vested prior to July 1, 1978. The energy advisory council established by this section shall be a continuation of the governor's energy advisory council, and every act performed under the authority of the energy advisory council established by this section shall be deemed to have the same force and effect as if performed by the governor's energy advisory council, in which the authority to perform such act was vested prior to July 1, 1978. Except as otherwise provided in this act, on and after July 1, 1978, whenever the governor's energy advisory council, or words of like effect, is referred to or designated by statute, contract or other document, such reference or designation shall be deemed to apply to the energy advisory council established by this section.

Sec. 4. K.S.A. 1977 Supp. 74-6804 is hereby amended to read as follows: 74-6804. In addition to other powers and duties provided in this act, the director of the Kansas energy office shall:

(a) Adopt rules and regulations necessary for the administration of this act;

~~(a)~~ *(b)* Serve as the special coordinator and administrator for federal mandatory fuel allocation programs in this state and for other programs of the federal *department of* energy ~~administration~~ and similar federal agencies relating to the allocation, supply or consumption of energy resources in this state including cooperation in the implementation of any emergency energy rationing program which may be effected by the federal government;

~~(b)~~ *(c)* develop ~~and promote educational programs for~~ *a comprehensive state* energy ~~resource~~ conservation ~~for consumers of energy resources in this state~~ *plan and the procedures for implementing the plan;*

(d) prepare an energy emergency preparedness plan for adoption during any energy emergency as proclaimed by the governor pursuant to K.S.A. 1977 Supp. 74-6806, and amendments thereto;

(e) establish energy research and development priorities for this state;

(f) serve as the central repository within state government for the collection, maintenance and analysis of data and information regarding all forms of energy supplies, demand and consumption. Such data and information shall include, but is not limited to: (1) Continuing assessments of trends in the consumption of all forms of energy and analyses of the social, environmental and economic consequences of such trends, (2) data analyses relating to present and future demands and reserves of energy sources, and (3) evaluation of policies regulating the establishment of rates and prices for energy;

~~(e)~~ *(g)* provide for continuing liaison between other state agencies, counties, cities and other political subdivisions, private industry, the public and the federal government in relation to all matters affecting sources and uses of energy;

~~(d)~~ *(h)* make requests for and accept federal funds and other assistance from federal agencies for energy resource development, energy conservation and other energy-related activities in this state. Any funds so received shall be deposited in the state treasury. Expenditures from funds so received may be made, in accordance with appropriation acts therefor, to effectuate any provision of this act and shall be made upon warrants of the director of accounts and reports pursuant to vouchers approved by the director;

~~(e)~~ *(i)* upon request therefor, assist other state agencies and local units of government in making requests for federal funds for energy resource development, energy conservation and other energy related activities;

~~(f) upon request of two or more political subdivisions, mediate the allocation of federal funds among such political subdivisions; and~~

~~(g) fully utilize existing information depositories and information gathering and processing systems available in other state agencies to collect information relating to identification of energy resources and the energy resource consumption patterns and trends in this state.~~

(j) review, study and monitor the efficiency of energy utilization in state governmental operations;

(k) determine those persons which qualify for the awarding of research and development moneys provided for by this act;

(l) make and enter into all contracts and agreements necessary or incidental to the performance of duties and the execution of powers under this act;

(m) develop and implement independent programs in the following areas: (1) Conservation, (2) planning and policy development, (3) information and education, and (4) research and development;

(n) inform and educate the public about the sources and uses of energy and the ways in which persons can conserve energy through various programs including but not limited to the following: (1) Establishment of an energy information center within the Kansas energy office which shall maintain a toll free telephone information service and disseminate printed materials on all forms of energy conservation topics and renewable energy sources; and

(2) establishment of a computer reinsulation program and solar computer program which calculates the benefits of both to residents of the state.

(o) formulate in cooperation with the state board of education a statewide energy conservation curriculum that will assist in the development of a conservation ethic among the residents of Kansas. The interdisciplinary program shall cover the areas of energy sources, uses, conservation, and management; and

(p) do all acts and things necessary to carry out the powers expressly granted in this act.

Sec. 5. K.S.A. 1977 Supp. 74-6805 is hereby amended to read as follows: 74-6805. Upon the written request of the director of the Kansas energy office, ~~the division of computer services of the department of administration and~~ all ~~other~~ state agencies shall make available the information gathering and data processing services of such agencies, to the Kansas energy office at such times and for such periods as may be specified in such request, in order to assist the Kansas energy office in performing its responsibilities under this act, notwithstanding any provision of article 47 of chapter 75 of the Kansas Statutes Annotated, to the contrary.

Sec. 6. K.S.A. 1977 Supp. 74-6808 is hereby amended to read as follows: 74-6808. (a) The director may continuously monitor and forecast the supply and demand situation of energy resources in the state and shall provide information to the governor as required.

(b) On December 1, 1979, and subsequently every two years, the director shall submit to the governor and the legislature a comprehensive report designed to identify emerging trends related to energy supply, demand, conservation, energy resource development, environmental, health, and safety factors. The report shall include but not be limited to the following:

(1) A report on the accuracy and acceptability of the method being utilized for the collection, maintenance and analysis of energy data;

(2) an estimate of the statewide and geographical area energy need for the forthcoming five, ten and twenty year periods for short and long range action;

(3) the identification of potential adverse social, economic, or environmental effects caused by a continuation of the present energy demand trends;

(4) an assessment of the state's energy resources, including examination of the availability of commercially developable fuels;

(5) the estimated reduction in annual energy consumption resulting from various energy conservation measures;

(6) the status of ongoing studies being conducted by the director;

(7) a description of the emergency allocation program;

(8) a summary of all energy research and developmental projects funded through the director; and

(9) recommendations to the governor and the legislature for future administrative and legislative actions to accomplish the purposes of the programs of the Kansas energy office.

Sec. 7. K.S.A. 1977 Supp. 74-6809 is hereby amended to read as follows: 74-6809. The director of the Kansas energy office may hold hearings and receive evidence for the purposes of any inquiry relating to the supply and demand situation of any energy resources in the state, including agricultural fertilizers, or the enforcement of any rules or regulations adopted pursuant to ~~K.S.A. 1975 Supp. 74-6807~~ *this act.* Reasonable notice, as determined by the director, shall be given to all persons interested in such hearings.

New Sec. 8. (a) Whenever any moneys are granted or given by any person, firm, corporation or association, or by the United States or any department, instrumentality or agency thereof, to the Kansas energy office, which moneys are granted or given for a specific use or purpose, the director, on behalf of the Kansas energy office or the state, may accept or reject any such grant or gift and may enter into contracts or agreements necessary or expedient to the acceptance, management or accountability of such grant or gift. Any grant or gift so accepted and the program therefor shall be known as a special project.

(b) The director shall remit all moneys received for any special project to the state treasurer at least monthly. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. The entire amount of any such deposit shall be credited to the energy special projects fund, which fund is hereby created. All expenditures from such fund shall be made in accordance with appropriation acts and any applicable contract or agreement upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director, or by a person or persons designated by the director.

(c) The director may employ such personnel as may be necessary, in the judgment of the director, to effect any special project. All persons having professional, technical or unusual qualifications employed for any special project, including the director of each special project, shall be in the unclassified service of the Kansas civil service act and shall receive salaries fixed by the director, with the approval of the governor. All persons employed for any other special project, or where conditions of the grant, contract, agreement or gift so stipulate, shall be in the classified service of the Kansas civil service act.

New Sec. 9. (a) On and after January 1, 1979, the Kansas energy office shall be the single state agency for receiving, allocating and disbursing federal funds made available under federal law for energy related programs.

(b) The director shall be responsible for the allocation and distribution of state and federal funds, in accordance with appropriation acts and the statutes of this state, to qualified persons for energy research and development projects which are based on priorities established by the director. No other state funds shall be expended for energy research and development. The director shall determine those persons which qualify for grants under this section on the basis of competitive proposals and within the following guidelines: (1) Projects are in accordance with established research and development priorities; (2) research and development projects are consistent in improving the economic, social, environment, health, safety, and general well-being of the citizens of Kansas; (3) research indicates that demonstration projects may achieve a net energy gain.

(c) The director shall develop and implement a system whereby state agencies shall annually report to said director any type of energy research and development project being conducted with public or private funds at any state institution.

New Sec. 10. (a) On and after July 1, 1978, the director may create and establish offices, divisions and administrative units as necessary for the efficient administration and operation of the Kansas energy office and may assign functions, powers and duties to the several offices, divisions and administrative units in said office.

(b) Except as otherwise provided in this act, and subject to the Kansas civil service act, the director shall appoint all subordinate officers and employees of the Kansas energy office and all such subordinate officers and employees shall be within the classified service under the Kansas civil service act. Personnel of the Kansas energy office shall perform such duties and exercise such powers as the director may prescribe and such duties and powers as are designated by law.

New Sec. 11. The provisions of sections 2, 8, 9, 10 and 11 of this act shall be a part of and supplemental to the provisions of article 68 of chapter 74 of the Kansas Statutes Annotated and acts amendatory thereof or supplemental thereto.

Sec. 12. K.S.A. 1977 Supp. 74-6802 to 74-6805, inclusive, 74-6808 and 74-6809 are hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE and passed that body.

_____

HOUSE concurred in
SENATE amendments _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE
as amended _____

_____
President of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.

HOUSE BILL No. 3274

AN ACT concerning the Kansas energy office; amending section 9 of Senate Substitute for House Bill No. 2973 as enacted by the legislature during the 1978 regular session and repealing the existing section.

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

Section 1. Section 9 of Senate Substitute for House Bill No. 2973 as enacted by the legislature during the 1978 regular session is hereby amended to read as follows:

Sec. 9. (a) ~~On and after January 1, 1979, the Kansas energy office shall be the single state agency for receiving, allocating and disbursing federal funds made available under federal law for energy related programs.~~

~~(b)~~ The director shall be responsible for the allocation and distribution of state and federal funds, *except for those federal funds which are mandated by federal law or rule and regulation to be received directly by a state educational institution*, in accordance with appropriation acts and the statutes of this state, to qualified persons for energy research and development projects which are based on priorities established by the director. No other state funds shall be expended for energy research and development. The director shall determine those persons which qualify for grants under this section on the basis of competitive proposals and within the following guidelines: (1) Projects are in accordance with established research and development priorities; (2) research and development projects are consistent in improving the economic, social, environment, health, safety, and general well-being of the citizens of Kansas; (3) research indicates that demonstration projects may achieve a net energy gain.

~~(c)~~ *(b)* The director shall develop and implement a system whereby state agencies shall annually report to said director any type of energy research and development project being conducted with public or private funds at any state institution.

Sec. 2. Section 9 of Senate Substitute for House Bill No. 2973 as enacted by the legislature during the 1978 regular session is hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body.

_____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE _____

_____
President of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.

CHAPTER 186

(S.B. 307)

AN ACT relating to energy.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

(1) There is hereby established a department of state government to be known as the department of energy (hereinafter referred to in this chapter as the "department"). The department shall be headed by a secretary of the department of energy (hereinafter referred to in this chapter as the "secretary"). The secretary shall be appointed by and directly responsible to the governor in accordance with KRS 12.040. The secretary shall be bonded as provided in KRS 62.160 in the minimum amount of one hundred thousand dollars ($100,000).

(2) The deputy secretary shall be appointed by and directly responsible to the secretary in accordance with KRS 12.050. The deputy secretary shall assume all responsibility and authority vested in the secretary upon the absence of the secretary. The deputy secretary will have specific responsibility for intergovernmental, institutional, and industrial liaison and other such responsibilities as are assigned by the secretary.

(3) All functions, powers and duties now vested in the department of energy and the Kentucky center for energy research are hereby transferred and vested in the department. With the transfer of all functions, powers, and duties the following organizational units are hereby transferred to the department of energy:

(a) Department of energy as created by KRS Chapter 152A to department of energy;

(b) Kentucky center for energy research as created by KRS Chapter 152A to department of energy.

SECTION 2. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

There is established within the department a bureau of energy research and a bureau of production and distribution. Each bureau shall be headed by a commissioner appointed by and directly responsible to the secretary in accordance with KRS 12.050. The commissioners shall perform such functions, powers, duties as provided by law and as the secretary may prescribe.

SECTION 3. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

The department of energy, in addition to the bureaus set forth in Section 2 of this Act shall consist of the following organizational units which are hereby created:

(1) Office of the secretary;

(2) Advisory council for energy and natural resources;

(3) Energy research board;

(4) Office of energy planning and evaluation;

(5) Office of administration.

SECTION 4. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

The advisory council for energy and natural resources shall advise the secretary of energy and the secretary of natural resources and environmental protection on matters of mutual concern and potentially conflicting interest to both departments. The governor shall appoint seven (7) members representing environmental, consumer, energy, industry and other concerns. The term of office for council members shall be four (4) years except on the first council appointed, two (2) members shall be appointed for a term of two (2) years, two (2) for a term of three (3) years, and three (3) for a term of four (4) years. The council shall elect one (1) of its members as chairman, and one (1) of its members as secretary for a term of one (1) year. If a vacancy occurs on the council, the governor shall appoint a replacement for the remainder of the term.

SECTION 5. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

(1) The energy research board shall be attached to the office of the secretary. The energy research board shall consist of fifteen (15) members. The term of office for eight (8) members representing the private sector shall be four (4) years, except on the first board appointed, three (3) members shall be appointed for a term of two (2) years, two (2) for a term of three (3) years, and three (3) for a term of four (4) years. In addition to the above, other members of the board shall be the secretary of the development cabinet, the secretary of transportation, the secretary for natural resources and environmental protection, the secretary of the executive department for finance and administration, the secretary of the public protection and regulation cabinet and a representative of the Kentucky general assembly as appointed by the governor. The secretary of energy or his designee shall serve as the chairman.

(2) The board shall meet at least once each calendar quarter or more often on the call of the chairman, or with the chairman's approval, at the call of the vice chairman.

(3) The board shall be responsible for approving demonstration projects to be supported by the energy development and demonstration trust fund.

(4) The board is authorized to solicit, receive and administer federal or state agency funds in relation to federal or state programs of long-range energy planning research and demonstration projects.

(5) The secretary and the staff of the department shall serve as staff for the board. The board shall also advise the secretary in establishing long-range goals and objectives for the department. Members of the board shall not be otherwise compensated but shall be reimbursed for expenses incurred in connection with the exercise of their duties at the department.

SECTION 6. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

The office of energy planning and evaluation shall be headed by an executive director who shall be appointed by and be directly responsible to the secretary in accordance with KRS 12.050. The office of energy planning and evaluation shall assume responsibility for coordinating departmental policies and programs; reviewing state, regional and national energy policies; and other functions and responsibilities that may be delegated by the secretary.

SECTION 7. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

The office of administration shall be headed by an executive director who shall be appointed by and be directly responsible to the secretary in accordance with KRS 12.050. The office of administration shall have responsibility with regard to personnel, purchasing, accounts and facilities management and other such responsibilities as are assigned by the secretary.

SECTION 8. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

The bureau of energy research shall be headed by a commissioner, appointed by and be directly responsible to the secretary in accordance with KRS 12.050. The bureau of energy research shall be responsible for conducting and coordinating energy related research and development activities in Kentucky concerning coal, other fossil fuels and other organic fuels as well as solar and other renewable energy resources. The bureau shall have the responsibility for encouraging demonstration projects of promising technologies and processes for the direct utilization of coal, as well as for converting coal into environmentally acceptable fuels in

liquid, gaseous, and solid forms. The bureau shall have responsibility for providing technical assistance to encourage the commercial application of new energy technologies by industries and others in Kentucky. The bureau of energy research shall have additional responsibility as assigned by the secretary. The bureau of energy research shall consist of the following organizational units which are hereby created:

(1) Division of technical assistance. The division of technical assistance within the bureau of energy research shall be headed by a director, appointed by the secretary upon recommendation from the commissioner. The division of technical assistance shall work with the federal, state and local governmental agencies and private industry in order to facilitate the commercial application of technologies and processes related to energy.

(2) Division of demonstration projects. The division of demonstration projects within the bureau of energy research shall be headed by a director, appointed by the secretary upon recommendation from the commissioner. The division of demonstration projects shall advise the commissioner of the bureau of energy research and the energy research board on all matters relative to the energy research and demonstration trust fund.

SECTION 9. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

The bureau of energy research shall execute a research program designed to develop new and more effective an environmentally acceptable uses for coal and improve existing uses for Kentucky's fossil fuels and other natural resources. The department of energy may enter into contractural relationships with the institute of mines and minerals research at the university of Kentucky and such other research organizations as deemed appropriate to carry out such research.

SECTION 10. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

The bureau of energy production and distribution shall be headed by a commissioner appointed by and directly responsible to the secretary in accordance with KRS 12.050. The bureau of production and distribution shall have responsibility for conducting research on the impact of current and future energy supply and demand on the Kentucky economy and perform research on transportation, manpower, materials and other appropriate areas that affect the production of fossil fuels. Prepare and maintain a continuous inventory of energy requirements and available supplies and capacities; develop major conservation programs involving all sections of the Kentucky economy and including broad public educational efforts as related to desirable conservation and utilization practices; formulate and update at least annually a contingency plan to cope with any energy shortages which may occur from time to time, and such other functions as delegated by the secretary. The bureau of energy production and distribution shall consist of the following organizational units which are hereby created:

(1) Division of conservation. The division of conservation shall be headed by a director appointed by the secretary, upon recommendation from the commissioner. The division of conservation shall have responsibility for conducting energy audits of educational facilities, state-owned buildings, and implementation of the Kentucky state energy conservation plans.

(2) Division of energy production. The division of energy production shall be headed by a director appointed by the secretary, upon recommendation from the commissioner. The division of energy production shall be responsible for implementing a program of energy demand projections and promote the efficient and effective production of energy and energy producing fuels in Kentucky through correlation of appropriate programs of other agencies.

(3) Division of energy distribution. The division of energy distribution shall be headed by a director appointed by the secretary, upon recommendation from the commissioner. The division of energy distribution shall have responsibility for, but not limited to, analyzing existing energy transportation needs and plans, transfer and storage facilities as well as working in cooperation with producers, and transporters.

SECTION 11. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

The bureau of production and distribution shall be responsible for energy resource information. The department of energy may enter into a contractual agreement between the department and the Kentucky geological survey and such other organizations deemed necessary in order to perform this function.

SECTION 12. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

The secretary shall establish the internal organization of the department not established in this Act and shall organize the department into such organizational units as the secretary deems necessary to perform the functions, powers, and duties of the department subject to the provisions of KRS Chapter 12.

SECTION 13. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

The secretary shall have any and all necessary power and authority, subject to appropriate provisions of the statutes, to create such positions and to employ the necessary personnel in such positions as are required to enable the secretary to perform the function of the department.

SECTION 14. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

All appointments to positions not in the classified service shall be made pursuant to KRS 12.050 and such appointees shall be major assistants to the secretary and shall assist in the development of policy.

SECTION 15. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

All funds, credits, assets, appropriations, outstanding obligations, personnel, equipment, any and all resources or other tangible property and any business or other matter undertaken or now vested in the department of energy and the Kentucky center for energy research are hereby transferred and vested in the department.

SECTION 16. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

All rules, regulations, acts, agreements, determinations and decisions of the department of energy and the Kentucky center for energy research shall remain in effect within the department until duly modified or repealed by the secretary.

SECTION 17. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

Except as otherwise provided by law, the department shall administer all state programs and all state and federally funded grant programs related to energy except those conducted by institutions of higher education.

SECTION 18. A NEW SECTION OF KRS CHAPTER 152A IS CREATED TO READ AS FOLLOWS:

The secretary may promulgate administrative regulations consistent with the provisions of this Act.

Section 19. KRS 11.065 is amended to read as follows:

(1) The heads of the executive department for finance and administration, department for human resources, department of justice, department for natural resources and environmental protection, department of transportation, cabinet for education and the arts, cabinet for development, *department of energy*, and the cabinet for public protection and regulation shall constitute the governor's executive cabinet. The governor shall be the chairman and the commissioner for finance and administration shall be secretary and vice-chairman of the executive cabinet.

(2) The cabinet shall meet not less than twice a month and at other times on call of the governor or the secretary of the cabinet. The executive cabinet shall be a part of the office of the governor and shall not constitute a separate department or agency of the state. Members of the cabinet shall be the major assistants to the governor in the administration of the state government and shall assist the governor in the proper operation of his office and perform such other duties as the governor may require of them.

(3) The cabinet shall consider such matters involving policies and procedures as the governor or any member may place before it. The cabinet shall advise and consult with the governor on all matters affecting the welfare of the state.

Section 20. KRS 12.250 is amended to read as follows:

There is established within state government the following program cabinets:

(1) Cabinet for development.

(2) Cabinet for education and arts.

(3) Cabinet for public protection and regulation.

(4) Department of energy.

Section 21. KRS 12.265 is amended to read as follows:

The cabinets established in KRS 12.250 shall be composed of departments, boards and commissions as follows:

I. Cabinet for development

A. Department of agriculture

B. Department of commerce

C. Department of fish and wildlife resources

D. Department of parks

[E. Department of energy]

E. [F.] Kentucky historical events celebration commission

F. [G.] State fair board

G. [H.] Kentucky geological survey

H. [I.] Economic development commission

I. [J.] Governor's council on agriculture

J. [K.] Farmers advocate's office.

II. Cabinet for education and the arts

A. Kentucky arts commission

B. Department of education

C. The Kentucky authority for educational television

D. Kentucky heritage commission

E. Kentucky historical society

F. Department of library and archives.

III. Cabinet for public protection and regulation

A. Department of alcoholic beverage control

B. Department of banking and securities

C. Department of insurance

D. Department of labor

E. Department of mines and minerals

F. Kentucky registry of election finance

G. Public service commission

H. Kentucky quarterhorse and appaloosa commission

I. Kentucky state racing commission

J. Kentucky harness racing commission

K. Kentucky board of tax appeals.

IV. Department of energy

A. Bureau of energy research

B. Bureau of production and distribution.

Section 22. The reviser of statutes shall make all changes in the Kentucky revised statutes necessary and appropriate to carry out the intent of this Act in order that said statutes shall conform to the plan establishing and organizing the department of energy and specifically whenever "Kentucky center for energy research" appears in the presently existing statutes, either expressly, implied, or by words or reference the language shall be changed by the reviser of statutes to "department of energy".

Section 23. KRS 152A.010, Department of energy —Functions —Commissioner, 152A.020, Duties and functions of department; 152A.200, Energy resources advisory commission —Members; 152A.400, Kentucky center for energy research; and 152A.410, Board of energy research —Members —Duties, are repealed.

Section 25. Whereas, there is a current crisis in energy related areas and there is a necessity for better coordination among state agencies on matters dealing with energy an emergency is declared to exist and this Act shall become effective upon passage and approval by the governor.

Approved March 29, 1978

THE COMMONWEALTH OF MASSACHUSETTS

Advance Copy 1978 Acts and Resolves

PAUL GUZZI, Secretary of the Commonwealth

Chap. 7. RESOLVE PROVIDING FOR AN INVESTIGATION AND STUDY BY THE MASSACHUSETTS ENERGY POLICY OFFICE AND THE MASSACHUSETTS ENERGY FACILITIES SITING COUNCIL RELATIVE TO THE LICENSING PROCEDURES FOR CERTAIN WATER POWER FACILITIES.

Resolved, That the Massachusetts energy policy office and the Massachusetts energy facilities siting council, acting jointly, shall conduct an investigation and study of the licensing procedure for water power facilities with an installed capacity of less than thirty megawatts. The members of said joint study shall report to the general court the results of its investigation and study, and its recommendations, if any, together with drafts of legislation necessary to carry its recommendations into effect, by filing the same with the clerk of the house of representatives on or before the last Wednesday in December, nineteen hundred and seventy-eight.

Approved April 28, 1978

Signed into law, August 4, Chapter 707

STATE OF NEW YORK

Cal. No. 1460 9186-B

IN SENATE

April 6, 1978

Introduced by Sen. McFARLAND—read once and referred to the Committee on Corporations, Authorities and Public Utilities—committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee—reported favorably from said committee and committed to the Committee on Rules—ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the energy law, in relation to long-range electric and gas planning and to repeal section one hundred forty-nine-b of the public service law relating thereto and making an appropriation therefor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1-103 of the energy law is hereby amended by adding a new subdivision one-a to read as follows:

1-a. "Board" shall mean the energy planning board which shall be in the office and consist of the commissioner, the chairman of the public service commission, the commissioner of environmental conservation, the temporary president of the senate, or his designee and the speaker of the assembly, or his designee. A chairman shall be appointed by the governor. Any decision or action by the board shall be by majority vote. Staff services shall be performed by personnel of the office. The board may provide for its own representation in all actions and proceedings under this article. This shall not preclude any member of the board from utilizing personnel from his own office or agency. The board shall have the power and duties set forth in sections 5-110, 5-112 and 5-114 of this chapter and the power to issue subpoenas and subpoena duces tecum; and, to specially authorize any person to conduct any hearing which the board is authorized to conduct, to take testimony in respect of the subject or matter under investigation, and report the testimony to the board, and in the conduct of such hearing, such person shall have all the powers of the board.

§ 2. Section 3-101 of such law is hereby amended by adding a new subdivision seven to read as follows:

7. to conduct energy planning in an integrated and comprehensive manner through development of a long-range energy master plan which shall provide the framework for energy related decisions made throughout the state.

§ 3. Such law is hereby amended by adding a new section 5-110 to read as follows:

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

§ 5-110. State energy master plan. The office shall adopt, in accordance with the requirements of this section, a state energy master plan which shall provide the framework for energy related decisions made throughout the state.

a. Draft state energy master plan; preparation. The office shall prepare a draft state energy master plan consistent with the energy policy of the state, as set forth in section 3-101 of this chapter. In preparing the draft plan, the office shall take into consideration the following factors:

(1) Economic growth and development trends, including changing patterns of population growth, urban development, transportation modes and building designs, which might significantly affect energy consumption in the state;

(2) The extent to which energy conservation measures and new energy technologies may affect the state's energy requirements;

(3) The extent to which the development of indigenous energy resources may contribute to meeting the state's requirements;

(4) The impact of the national energy policies on the state's energy needs and on available sources of supplies;

(5) The impact of alternative energy sources and energy conservation upon the economy of the state, the health, safety and welfare of the people of the state, and the quality of the state's environment; and

(6) Such additional factors as the office deems appropriate.

b. Draft state energy master plan; contents. The draft state energy plan shall contain the following:

(1) A forecast of state energy requirements for five, ten and fifteen year forecast periods, together with the bases for such forecasts;

(2) A summary of the plans of the state's major energy suppliers for meeting forecasted energy requirements, including descriptions of new energy sources;

(3) An identification and analysis of emerging trends related to energy supply, price and demand;

(4) A statement of specific energy policies, together with the reasons therefor, and recommendations for such administrative and legislative actions as the office has determined are desirable to implement the state energy policy; and

(5) Such additional information as the office deems appropriate.

c. Public hearing; comment. The office shall hold public hearings on reasonable notice, in connection with the preparation of the draft state energy master plan in at least three geographic locations and which shall be conducted in accordance with regulations promulgated by the office, to obtain the views and comments of all interested persons. Any person participating in the hearing may, within thirty days after termination of the hearing or such additional time as the office may prescribe, submit written comments on statements presented by other persons at the hearing. Such hearings shall not be considered part of an adjudicatory proceeding, as defined in subdivision three of section one hundred two of the state administrative procedure act, or as part of a rule making proceeding held under subdivision one of section two hundred two of such act. Subsequent to the hearing, the office shall prepare a draft state energy master plan, taking into account views and comments obtained during such hearings, and shall submit a copy of such plan, together with a copy of the hearing record, to the governor, the legislature and each member of the board.

d. Draft state energy master plan; notice; public inspection. The office shall:

(1) Provide reasonable public notice stating that a state energy master plan has been prepared, the law under which it was prepared, and where and how the public can review or obtain a copy of the plan.

(2) Maintain copies of the draft plan on file for public inspection in the office and file a copy with a library in each assembly district in the state.

e. Board action; hearing. Upon receipt of the draft state energy master plan, the board shall promptly publish once a week for three consecutive weeks, in newspapers

of general circulation, notice of public hearings thereon. Public hearings shall be conducted in at least three geoegraphic locations in the state in accordance with regulations which shall be adopted by the office, subject to modification by the board. Such regulations shall, at a minimum, require a hearing on the record with sworn witnesses and shall afford interested parties a reasonable opportunity to sponsor witnesses and to question witnesses sponsored by others, including office staff, consistent with the need to conclude the hearings expeditiously so that a state energy master plan can be adopted in a timely manner. The hearings shall not be considered part of an adjudicatory proceeding, as defined in subdivision three of section one hundred two of the state administrative procedure act, or as part of a rule making proceeding held under subdivision one of section two hundred two of such act.

f. Adoption of state energy master plan. The energy planning board shall, as expeditiously as practicable following the conclusion of its hearings, determine, based on the record, whether the draft state energy master plan be approved with modifications or disapproved, and shall state in writing the reasons for its determination. If the board has determined approval of the draft plan, it shall be adopted by the office in the form determined by the board. If the board has determined disapproval of the draft plan, the office shall modify the draft plan in accordance with the determination issued by the board and resubmit such plan to the board for its action.

g. State energy master plan update: amendments. From time to time and at least once every two years, the office shall review the state energy master plan and shall either (a) prepare any amendments necessary to update the plan or (b) issue a determination that no amendments are necessary and the reasons supporting the determination. Any interested person may seek such a review upon written application to the office for an amendment to the state energy master plan. Any statement issued by the office that no amendments are necessary shall be submitted to the energy planning board for approval, modification or disapproval. Amendments shall be adopted in the same manner as the plan itself.

§ 4. Such law is hereby amended by adding a new section 5-112 to read as follows:

§ 5-112. Long-range electric and gas system planning. 1. On and after January first, nineteen hundred seventy-nine, the members of the New York power pool, including the power authority of the state of New York, shall prepare and submit annually to the office a single comprehensive long-range plan for future operations drawn pursuant to regulations issued by the office. Such report shall include:

a. A forecast of electric demands for the next five, ten and fifteen year period by service area, including anticipated system loads, anticipated summer and winter peak loads, out-of-state sales, required replacement or substitution of generating capacity and the effect of possible load management and conservation techniques on load growth;

b. Identification of generating capacity, by fuel type, to be utilized in meeting such demands, or which will be required for purposes of system reliability and safety, including a schedule of proposed plant additions and retirements and a listing of capacity to be provided by others on a contractural basis;

c. An inventory of (i) all major utility facilities operated by members of the power pool and the power authority including the dates for completion and operation of facilities under construction and the retirement dates for facilities in operation, and (ii) land owned by such utilities and the power authority and held for future use as sites for a major steam electric generating facility;

d. Anticipated expenditures for research in the areas of energy conservation, load management, electric generation and transmission, new energy technologies and pollution abatement and control during the succeeding year;

e. A projection of estimated electricity prices to consumers over the forecast periods; and

f. Such additional information as the office may, by regulation, require to carry out the purposes of this section.

2. On and after January first, nineteen hundred seventy-nine, the members of the New York gas group shall prepare and submit in odd numbered years to the office, a single comprehensive long-range plan for future operations drawn pursuant to regulations issued by the office. Such report shall include;

a. A forecast for the next five, ten and fifteen year periods by service area of estimated peak day, winter season and annual gas requirements by appropriate end use classifications;

b. An identification of potential sources of supplies to be used in meeting such requirements, including existing and planned storage and transmission facilities, including their costs and capacities, and an identification of peaking capacity;

c. A description of projected population growth, urban development, industrial expansion and such other factors, statewide and by service area, which may influence demand for natural gas and the basis for any such projection;

d. A description of the load forecasting methodology used;

e. A projection of estimated gas prices to consumers over the forecast periods; and

f. Such additional information as the office may, by regulation, require to carry out the purposes of this section.

3. a. The reports required by this section shall be submitted upon such notice and at such time and place as the office shall by regulation require. The power pool and gas group shall, concurrently with the filing of their respective reports with the office, deliver copies of such reports to members of the board, the minority leader of the senate, the minority leader of the assembly, the secretary of state and the commissioner of commerce.

b. During nineteen hundred seventy-nine and in each odd numbered year thereafter, the office shall hold public hearings on reasonable notice on the reports in at least three geographic locations in the state and offer reasonable opportunity for written and oral comment to be received from members of the public and interested governmental agencies on all relevant issues relating to electric and gas demand and supply during the five, ten and fifteen year forecast periods; provided, however, that nothing herein shall require compliance with the rule making and adjudicatory provisions of the state administrative procedures act. Following analysis and review of the reports and such public and agency comment as may be received, the office shall prepare a draft report making specific findings with respect to projected long-range electric and gas demands in the state within the forecast periods, and with respect to supply requirements, together with estimates of the cost of electricity and gas to consumers, and submit such report on August first of each such odd numbered year to the board. Thereafter, the board shall conduct public hearings thereon in accordance with regulations adopted by the office, subject to modification by the board, in at least three locations and approve or modify such findings, as the case may be, by December first of such odd numbered year. Such regulations shall, at a minimum, require a hearing on the record with sworn witnesses and shall afford interested parties a reasonable opportunity to sponsor witnesses and to question witnesses sponsored by others, including office staff consistent with the need to conclude the hearings expeditiously so that a final report can be adopted by December first. The hearings shall not be considered part of an adjudicatory proceeding as defined in subdivision three of section one hundred two of the state administrative procedures act, or as part of a rule making proceeding held under subdivision one of section two hundred two of such act.

c. Notwithstanding any other law to the contrary, on and after January first, nineteen hundred eighty, the specific findings of projected electric demands for the

forecast periods in the board's report shall be binding on the New York state board on electric generation siting and the environment with respect to any determination of need for a facility that the siting board is required to make in order to grant, deny or amend a certificate of environmental compatibility and public need in any proceeding held pursuant to the provisions of article VIII of the public service law, and the specific findings of projected electric and gas demands shall be binding on the public service commission with respect to any determination of need for a facility that the commission is required to make in order to grant or deny a certificate of environmental compatibility and public need pursuant to article VII of the public service law. A siting board or the public service commission shall take judicial notice of any such board finding with respect to projected demands in the most current final report issued by the board prior to a final decision by a siting board or the commission in any proceeding under article VII or VIII of the public service law.

d. Any person may apply to the board within thirty days of the issuance of a final report for a rehearing, with respect to any specific electric or gas demand forecast within any such report. The board shall make a decision to grant or deny an application for a rehearing within fifteen days of receiving any such application. Any such rehearing shall be completed and a decision rendered thereon within sixty days following any decision to grant such a rehearing. Thereafter, any such person may obtain judicial review of the board's decision to deny a rehearing or of a board decision following a rehearing pursuant to article seventy-eight of the civil practice law and rules. Any such special proceeding shall be brought in the appellate division of the supreme court of the state of New York for the third judicial department. Such proceeding shall be initiated by the filing of a petition in such court within thirty days after the issuance of a decision by the board or, where an application for a rehearing is made, within thirty days after the issuance of the decision by the board upon the application for a rehearing, or within thirty days after the issuance of a decision by the board following a rehearing. The proceeding shall have a lawful preference over any other matter, shall be heard on an expedited basis and shall be completed in all respects, including any subsequent appeal, within one hundred eighty days of the filing of the petition. Where more than one such petition is filed, the court may provide for consolidation of the proceedings. Notwithstanding any provisions of articles VII and VIII of the public service law, the procedure set forth herein shall constitute the exclusive means for seeking judicial review of any such report or determination set forth therein.

4. Long-range electric and gas demand forecast report; amendment. Any interested person may seek a review of the electric and gas demand forecasts of the board issued pursuant to subdivision three of this section upon written application to the office for an amendment of any such forecast. Any determination by the office that no amendment is necessary, together with the reasons supporting such determination, shall be submitted to the board for approval, modification or disapproval. Amendments shall be considered in the same manner as the demand forecasts to which they relate, provided, however, that such consideration including a board decision shall be completed within one hundred twenty days of submission of a petition for amendment or, in the event the board has disapproved an office determination that no amendment is necessary, within one hundred twenty days of such disapproval.

§ 5. Such law is hereby amended by adding a new section 5–114 to read as follows:

§ 5–114. Funding. a. There is established in the energy office a fund to be distributed on an equitable basis to interested persons, including municipalities, in connection with their participation in the hearings conducted pursuant to sections 5–110 and 5–112 of this article. The fund shall be used to defray fees of experts who make statements, testify or otherwise participate in such hearings, but such fund

shall not be used to defray legal fees related to the participation of interested persons in such hearings.

b. The commissioner shall promulgate, subject to the board's approval, regulations for the management of the fund, for disbursements from the fund and for the proper auditing of monies in the fund, consistent with the purposes of this section. In no case shall more than ten thousand dollars be provided to any person and each person provided with funds shall be permitted to determine the hearing or hearings for which such funds shall be used.

c. The office, subject to the board's approval, shall annually recommend, to the governor and to the legislature, such funding as it deems necessary to effectuate the purposes of this section.

§ 6. The sum of two hundred thousand dollars ($200,000), or so much thereof as may be necessary, is hereby appropriated to the energy office out of monies in the state treasury in the general fund to the credit of the state purposes fund, not otherwise appropriated, for services and expenses for the retention of expert consultants as provided in section 5-114 of the energy law. Such monies shall be payable on the audit and warrant of the comptroller on vouchers certified and approved by the commissioner of the state energy office.

§ 7. Section one hundred forty-nine-b of the public service law is hereby **repealed**, provided, however, that the public service commission may complete proceedings with respect to any plan filed pursuant to such section before the effective date of this act.

§ 8. This act shall take effect immediately and shall continue in full force and effect until January first, nineteen hundred eighty-four.

An Act

ENROLLED HOUSE
BILL NO. 1536

BY: DAVIS (Don) and BARKER of the HOUSE

and

CROW and RANDLE of the SENATE

AN ACT RELATING TO THE OKLAHOMA STATE LEGISLATIVE COUNCIL; MAKING AN APPROPRIATION THERETO; STATING THE PURPOSE; PROVIDING FOR APPOINTMENT, DUTIES AND COMPENSATION OF EMPLOYEES; AUTHORIZING THE PAYMENT OF STATE ASSESSMENT FOR THE SOUTHWEST REGIONAL ENERGY COUNCIL; MAKING APPROPRIATION NONFISCAL; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. There is hereby appropriated to the State Legislative Council, from any monies in the General Revenue Fund of the State Treasury, for the fiscal year ending June 30, 1979, not otherwise appropriated, the sum of One Million Two Hundred Sixty-one Thousand One Hundred Ninety-six Dollars ($1,261,196.00), for the purpose of paying compensation of employees, operating expenses, renovation and all other expenses of the State Legislative Council.

SECTION 2. The State Legislative Council shall appoint and fix the duties and compensation of officials and employees necessary to perform the duties of the State Legislative Council and shall authorize other necessary expenses.

SECTION 3. The Oklahoma State Legislative Council is hereby authorized to pay, from monies appropriated by Section 1 of this act, an amount not to exceed Ten Thousand Dollars ($10,000.00) as State of Oklahoma assessment for the Southwest Regional Energy Council.

SECTION 4. The appropriation made by this act shall not be subject to fiscal year limitations and shall be available for encumbrance and expenditure purposes for a period of thirty (30) months from the date this act is approved.

SECTION 5. The provisions of this act are severable and if any part or provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Correctly Enrolled: Vice Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

Passed the House of Representatives the 8th day of March, 1978.

Speaker of the House of Representatives.

Passed the Senate the 6th day of March, 1978.

President of the Senate.

OFFICE OF THE GOVERNOR

Received by the Governor this 9th day of March, 1978, at 1:35 o'clock P M.

By:

Approved by the Governor of the State of Oklahoma the 15th day of March, 1978, at 12:56 o'clock P m.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 15th day of March, 1978, at 2:00 o'clock P. M.

By:

ENR. H. B. NO. 1536
hih

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Copyright Harold L. Runnels, Co-Chairman, COMMITTEE ON ENGROSSED AND ENROLLED BILLS

NO. 123. AN ACT TO ADD 2 V.S.A. CHAPTER 17 RELATING TO THE CREATION OF A JOINT ENERGY COMMITTEE.

(S.44)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 2 V.S.A. chapter 17 is added to read:

CHAPTER 17. JOINT ENERGY COMMITTEE

§ 601. CREATION OF COMMITTEE

(a) There is created a joint energy committee whose membership shall be appointed each biennial session of the general assembly. The committee shall consist of four representatives, at least one from each major party, appointed by the speaker of the house, and four members of the senate, at least one from each major party, appointed by the committee on committees.

(b) The committee shall elect a chairman, vice-chairman and clerk and shall adopt rules of procedure. The chairmanship shall rotate biennially between the house and the senate members. The committee may meet during a session of the general assembly at the call of the chairman or a majority of the members of the committee. The committee may meet during adjournment subject to approval of the speaker of the house and the president pro tem of the senate. A majority of the membership shall constitute a quorum.

§ 602. EMPLOYEES; RULES

(a) The joint energy committee shall meet following the appointment of its membership to organize and begin the conduct of its business.

(b) The staff of the legislative council shall provide professional and clerical assistance to the joint committee.

(c) For attendance at a meeting when the general assembly is not in session, members of the joint energy committee shall be entitled to the

same per diem compensation and reimbursement for necessary expenses as provided members of the general assembly for attendance at sessions of the general assembly.

(d) The joint energy committee shall keep minutes of its meetings and maintain a file thereof.

§ 603. FUNCTIONS

The joint energy committee shall:

(1) carry on a continuing review of all energy matters in the state and in the northeast region of the United States including energy sources, energy distribution, energy costs, energy planning, energy conservation and pertinent related subjects;

(2) at least annually report to the general assembly the results of its deliberations;

(3) work with, assist and advise other committees of the general assembly, the executive and the public, in energy related matters within their respective responsibilities.

Sec. 2. This chapter shall be effective only until July 1, 1982 unless reenacted by the general assembly.

Sec. 3. This act shall take effect from passage.

Approved: February 17, 1978

SPONSOR Sen. McDowell

COMMITTEE



VETOED BY THE GOVERNOR
April 7, 1977

DELAWARE STATE SENATE

129TH GENERAL ASSEMBLY

FIRST SESSION - 1977

SENATE JOINT RESOLUTION NO. 14

MAR 10 1977

DIRECTING DELMARVA POWER & LIGHT COMPANY TO FORMULATE A COMPREHENSIVE ENERGY DISTRIBUTION PLAN, THE OBJECTIVE OF WHICH IS TO MAINTAIN THE HIGHEST AMOUNT OF EMPLOYMENT POSSIBLE IN EVERY TYPE OF ENERGY CRISIS OR EMERGENCY.

WHEREAS, during the winter of 1977 the State of Delaware, in addition to other States in the Northeastern section of the United States, was deprived of natural gas when expected deliveries were curtailed or diverted; and

WHEREAS, because of this unexpected energy crisis Delmarva Power & Light Company informed a number of its industrial customers that gas normally supplied to them would be restricted or shut off entirely; and

WHEREAS, because some commercial and industrial customers were taken by surprise and had no alternative or back-up source of energy, they were compelled to suspend operations, laying off many Delaware wage earners; and

WHEREAS, the spring and summer of 1977 is an ideal time to utilize in attempting to provide advance planning for the winter of 1977 - 1978 and for formulating a comprehensive plan which would reduce or eliminate unemployment resulting from an energy crisis.

NOW, THEREFORE:

BE IT RESOLVED by the Senate and the House of Representatives of the 129th General Assembly of the State of Delaware, with the approval of the Governor as attested by his signature affixed hereto, that the Delmarva Power & Light Company is hereby directed to promulgate a comprehensive plan which has, as its primary

objective, the reduction or elimination of unemployment, to the extent such is possible, resulting from an energy crisis or emergency.

BE IT FURTHER RESOLVED that a preliminary progress report on the formulation of such a plan shall be made, copies of which shall be delivered to each member of the Senate and House of Representatives on or before June 1, 1977.

BE IT FURTHER RESOLVED that the comprehensive plan shall make recommendations regarding the allocation of each energy resource and what, for purposes of such allocation, the highest priorities should be.

SPONSOR Sen. McDowell

COMMITTEE _____



SIGNED BY THE GOVERNOR

JUN 7 1977

DELAWARE STATE SENATE

129TH GENERAL ASSEMBLY

FIRST SESSION - 1977

SENATE JOINT RESOLUTION NO. 18

DIRECTING THE DELMARVA POWER & LIGHT COMPANY AND THE CHESAPEAKE UTILITIES CORPORATION TO FORMULATE A COMPREHENSIVE ENERGY DISTRIBUTION PLAN, THE OBJECTIVE OF WHICH IS TO MAINTAIN THE HIGHEST AMOUNT OF EMPLOYMENT POSSIBLE IN EVERY TYPE OF ENERGY CRISIS OR EMERGENCY.

WHEREAS, during the winter of 1977 the State of Delaware, in addition to other States in the Northeastern section of the United States, was deprived of natural gas when expected deliveries were curtailed or diverted; and

WHEREAS, because of this unexpected energy crisis Delmarva Power & Light Company informed a number of its industrial customers that gas normally supplied to them would be restricted or shut off entirely: and

WHEREAS, because some commercial and industrial customers were taken by surprise and had no alternative or back-up source of energy, they were compelled to suspend operations, laying off many Delaware wage earners; and

WHEREAS, the spring and summer of 1977 is an ideal time to utilize in attempting to provide advance planning for the winter of 1977 - 1978 and for formulating a comprehensive plan which would reduce or eliminate unemployment resulting from an energy crisis.

NOW, THEREFORE:

BE IT RESOLVED by the Senate and the House of Representatives of the 129th General Assembly of the State of Delaware, with the approval of the Governor as attested by his signature affixed hereto, that the Delmarva Power & Light Company

and the Chesapeake Utilities Corporation are hereby directed to promulgate a comprehensive plan which has, as its primary objective, the reduction or elimination of unemployment, to the extent such is possible, resulting from an energy crisis or emergency.

BE IT FURTHER RESOLVED that a preliminary progress report on the formulation of such a plan shall be made, copies of which shall be delivered to each member of the Senate and House of Representatives on or before August 1, 1977, by Delmarva Power & Light Company and Chesapeake Utilities Corporation.

BE IT FURTHER RESOLVED that the comprehensive plan shall make recommendations regarding the allocation of each energy resource and what, for purposes of such allocation, the highest priorities should be.

EMERGENCY BILL

H O U S E O F D E L E G A T E S

81r0111 No. 364
(PRE-FILED)

By: Delegate Sklar
Requested: June 1, 1977
Introduced and read first time: January 11, 1978
Assigned to: Environmental Matters

Committee report: Favorable
House action: Adopted
Read second time: January 23, 1978

CHAPTER 19

AN ACT concerning

Governor's Emergency Energy Powers

FOR the purpose of extending until a certain time certain powers of the Governor during energy crisis emergency situations; continuing certain powers of the Joint Standing Committee on Administrative, Executive, and Legislative Review; clarifying language and structure, and making this Act an emergency measure.

BY repealing and reenacting, with amendments,

Article 41 - Governor-Executive and Administrative Departments
Section 15B(c-1)
Annotated Code of Maryland
(1971 Replacement Volume and 1977 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Annotated Code of Maryland be repealed, amended, or enacted to read as follows:

Article 41 - Governor-Executive and Administrative Departments

15B.

(c-1) (1) As used in this subtitle, but only until March 15, [1978] 1979, "crisis," "disaster," "catastrophe" and "or similar public emergency" also refers to a situation where the health, safety, or welfare of the citizens of this State are threatened by reason of an actual or impending acute shortage in usable energy resources. Upon reasonable

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike out~~ indicates matter stricken by amendment.

apprehension that such a crisis, disaster, catastrophe, or similar public emergency exists, the Governor may proclaim a state of emergency[, in which]. IN THAT event the Governor's orders, rules, and regulations, promulgated as provided in this subtitle, may also include, by way of further enumerated example rather than limitation, and notwithstanding any other provision or limitation of State or local law[,]:

(I) [provisions] PROVISIONS for the establishment and implementation of programs, controls, standards, priorities, and quotas for the allocation, conservation, and consumption of energy resources;

(II) [the] THE suspension and modification of existing standards and requirements affecting or affected by the use of energy resources, including those relating to air quality control, the type and composition of various energy resources, the production and distribution of energy resources, and the hours and days during which public buildings and commercial and industrial establishments may or are required to remain open; AND/OR

(III) [the] THE establishment and implementation of regional programs and agreements for the purposes of coordinating the energy resource programs and actions of the State with those of the federal government and of other states and localities.

(2) An order, rule or regulation promulgated by the Governor pursuant to this subsection may provide for the imposition of a civil penalty, not to exceed $1,000 for each violation, in lieu of or in addition to the penalties provided for in subsection (g) of this section, and for the method and conditions of its collection.

(3) [Nothing in this] THIS subsection [shall] MAY NOT be construed to authorize the establishment of oil refineries, deep water ports, offshore drilling facilities or other similar major capital facilities.

(4) Orders, rules and regulations promulgated by the Governor pursuant to the powers granted above, under this subsection shall first be presented to the Committee on Administrative, Executive and Legislative Review or whatever other joint committee if any may be substituted by law by the General Assembly to carry out its responsibilities with respect to the energy crisis for approval or rejection. If the committee fails to take action within seven days of submission of the orders, rules and regulations, the orders, rules and regulations shall become effective as promulgated by the Governor. In the event of extraordinary circumstances in which it is not feasible to secure the approval of the committee an order, rule, or regulation may become effective immediately, and shall within two days be communicated to the chairman of the committee and be subject

to reversal by the full committee which shall be convened within five days of communication of the order, rule or regulation. All records of orders, rules and regulations and committee meetings shall be open to the public.

(5) In addition to the specific emergency powers contained in this subtitle, the General Assembly of Maryland recognizes and confirms the Governor's power to exercise fully the authority necessary to implement the federal mandatory allocation program as set forth in the Emergency Petroleum Allocation Act of 1973 (87 Stat. 627), as well as any succeeding federal programs, laws, orders, rules, or regulations relating to the allocation, conservation, or consumption of energy resources.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is hereby declared to be an emergency measure and necessary for the immediate preservation of the public health and safety and having been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, the same shall take effect from the date of its passage.

Approved:

_____

Acting Governor.

_____

Speaker of the House of Delegates.

_____

President of the Senate.

S 201

LEGISLATIVE OFFICE
FEB 10 1977

Senate: Grossette, Dennis
Attorney:
Stenographer: Brinkley
Date: 2-9-77
No.: 5

FILE COPY
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A CONCURRENT RESOLUTION

TO PROVIDE FOR THE CONSENT OF THE GENERAL ASSEMBLY TO CONTINUE THE STATE OF EMERGENCY IN SOUTH CAROLINA FOR A LIMITED PERIOD OF TIME.

Whereas, there currently exists a severe shortage of natural gas resulting from severe weather conditions; and

Whereas, conditions have worsened to the extent that residence service is threatened and such shortage could possibly continue until approximately March 31, 1977; and

Whereas, Governor James B. Edwards did declare a State of Emergency in the State of South Carolina as of 6:00 o'clock a.m., January 29, 1977; and

Whereas, Act 128 of 1973 requires that a State of Emergency shall not continue for a period of more than fifteen days without the consent of the General Assembly. Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

That the General Assembly does hereby consent to the continuation of the State of Emergency in South Carolina until such time as the Governor shall deem that the natural gas shortage no longer exists but in no circumstances shall it continue after March 31, 1977.

House: Robert R. Woods, Bradley, Colegotis, Dangerfield, Kinard, Murray, Washington
Attorney: Todd
Stenographer: Brinkley
Date: 2-4-77
No.: 6

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A HOUSE RESOLUTION

REQUESTING THE HEADS OF ALL GOVERNMENTAL ENTITIES NOT TO COUNT AS ANNUAL LEAVE ANY TIME LOST BY EMPLOYEES BECAUSE OF THE CESSATION OF GOVERNMENTAL SERVICES DUE TO A WEATHER SITUATION OR ENERGY CRISIS.

Whereas, from time to time the State is afflicted with weather conditions or energy shortages which makes it impractical or impossible for governmental entities to operate;and

Whereas, during such periods of crises it may become necessary to suspend employment of the entity's employees; and

Whereas, such suspensions occur through no fault of the employees; and

Whereas, it would be inequitable and discriminatory to force such innocent persons to use their annual leave and in some instances to lose compensation when there is no annual leave; and

Whereas, the heads of governmental entities have discretion in decisions affecting employment during times of emergency.

Now, therefore,

Be it resolved by the House of Representatives:

That the heads of governmental entities are requested not to charge employees with annual leave or loss of pay when they are suspended during emergency situations caused by adverse weather conditions or lack of energy supplies.

LEGISLATIVE ARCHIVES

adopted

FEB 3 1977

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-2423

House: Warren D. Arthur, DesChamps
Attorney: Lipton
Stenographer: Bellinger
Date: 2-7-77
No. 6

A HOUSE RESOLUTION

TO DIRECT THE MAJOR OIL COMPANIES TO FULFILL HEATING FUEL ALLOTMENTS HELD BY OIL DEALERS IN SOUTH CAROLINA FOR KEROSINE AND NO. 2 FUEL OIL.

Whereas, because of the abnormal and extended cold weather the oil dealers of South Carolina have exhausted their fuel supply; and

Whereas, the dealers in spite of depleted fuel supplies nevertheless have fuel allotments that are not fulfilled; and

Whereas, the major oil companies have either ignored or treated with disdain the requests of dealers in South Carolina to fill their allotments. Now, therefore,

Be it resolved by the House of Representatives:

That the major oil companies are hereby directed to take reasonable and expeditious measures to fill the oil dealers' heating fuel allotments for kerosine and No. 2 oil or they will be held in contempt of the South Carolina House of Representatives.

House: McInnis
Attorney: Todd
Stenographer: Brinkley'
Date: 2-1-77
No.: 3

H 2350

A HOUSE RESOLUTION

TO REQUEST THE GOVERNOR TO TAKE ACTION, AS SOON AS PRACTICABLE, TO SUSPEND ALL SCHOOLS AND NONESSENTIAL STATE SERVICE UNTIL SUCH TIME AS ALL PRIORITY ONE NEEDS ARE SATISFIED SO THAT CRITICAL ENERGY SUPPLIES MAY BE RETURNED TO SOUTH CAROLINA INDUSTRY AT THE EARLIEST POSSIBLE DATE.

Whereas, South Carolina is one of many states in a state of emergency due to the severe weather and critical supplies of natural gas; and

Whereas, at the present time over thirty thousand South Carolinians are unemployed due to energy shortages with many more workers joining their ranks daily; and

Whereas, President Carter has committed himself to satisfying the national needs of priority one users such as homes and health services before any provisions are made for commercial and industrial users; and

Whereas, South Carolina must take all necessary steps to help stabilize the national energy situation so that planning can begin immediately to provide energy for the stability of our

state and national economy; and

Whereas, there are certain state services that can be suspended; and

Whereas, any classroom time lost now can be easily recovered during warmer summer months when the energy demands of schools are considerable less. Now, therefore,

Be it resolved by the House of Representatives:

That the Governor is hereby requested to take immediate action to suspend all schools and nonessential state service until such time as all priority one needs are satisfied so that critical energy supplies may be returned to South Carolina industry at the earliest possible date.

NO. 136. AN ACT TO EXTEND THE EMERGENCY ENERGY POWERS OF THE GOVERNOR.

(H.275)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. Emergency energy powers; extension

Notwithstanding the termination date provided in section 12 of No. 254 of the Acts of 1973, in section 1 of No. 54 of the Acts of 1975, and in section 3 of No. 77 of the Acts of 1977, all of the provisions of No. 254 of the Acts of 1973 shall continue in effect and shall terminate on June 30, 1979.

Sec. 2. This act shall take effect from passage.

Approved: March 17, 1978

Wisconsin - CH 418

1977 Assembly Bill 1220

SECTION 331p. 49.055 (1) and (2) of the statutes, as created by chapter 29, laws of 1977, are amended to read:

49.055 (1) Within the limits of the appropriation under s. 20.435 (4) (dL), the department shall distribute funds to counties which choose to provide assistance for fuel and utilities emergencies. Funds shall be distributed on the basis of population only to those counties which provide ~~25%~~ 20% county matching funds.

(2) Funds shall be distributed by the county agency designated by the county board of supervisors and shall be granted in the form of a loan not to exceed ~~$150~~ $200 per household ~~per year~~ for bills incurred between December 1 and March 31.

SECTION 331x. 49.055 (4) and (5) of the statutes are created to read:

49.055 (4) Loans shall be paid to only those households with an annual income at or below 125% of the federal poverty line.

(5) Receipt of assistance under a federal emergency fuel assistance program shall constitute a condition of ineligibility for assistance under this section.

A bill to be entitled

An act relating to limitations of civil actions; adding s. 95.031(3), Florida Statutes; providing for the computation of time for the period of limitations for causes of action involving sovereignty lands; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) is added to section 95.031, Florida Statutes, to read:

95.031 Computation of time.--Except as provided in subsection 95.051(2) and elsewhere in these statutes, the time within which an action shall be begun under any statute of limitations runs from the time the cause of action accrues.

(3) No cause of action on behalf of the state for conversion of property severed from, for trespass upon, or for other unauthorized use or invasion of state-owned lands, including sovereignty lands, shall be barred by any provision of this chapter.

Section 2. This act shall take effect upon becoming a law, and shall expire July 1, 1980.

5-D

CODING: Words in ~~struck through~~ type are deletions from existing law; words underlined are additions.

A bill to be entitled

An act relating to state lands; creating the State Lands Study Committee; prescribing the membership and duties of such committee; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. State Lands Study Committee.--

(1) There is hereby created a State Lands Study Committee composed of eight members, four to be appointed by the President of the Senate, at least two of whom shall be members of the Senate, and four to be appointed by the Speaker of the House of Representatives, at least two of whom shall be members of the House of Representatives. The persons appointed shall designate one member of the committee to serve as chairman, and the committee shall meet at the call of the chairman. Members of the committee shall receive no compensation but shall be entitled to receive reimbursement for travel expenses and per diem as provided in s. 112.061, Florida Statutes.

(2) The State Lands Study Committee shall make a study of the alienation by sale or conveyance of state lands. In making its study, the committee shall consider, but not be limited to:

(a) The effect the Marketable Record Title Act, chapter 712, Florida Statutes, has upon prior or future sales or conveyances of state lands.

(b) The effect chapter 95, Florida Statutes, and any other statutes limiting the time within which cause of action

CODING: Words in ~~struck through~~ type are deletions from existing law; words underlined are additions.

must be asserted, have upon any cause of action relating to prior or future sales or conveyances of state lands.

(3) The State Lands Study Committee shall report the results of its study to the Governor, the President of the Senate, and the Speaker of the House of Representatives as expeditiously as possible but no later than March 1, 1979. At that time, it may also recommend legislation designed to implement its findings. Upon the rendering of such report and recommendations, the State Lands Study Committee shall expire.

Section 2. The sum of $25,000 is hereby appropriated from the General Revenue Fund to the State Lands Study Committee to be used for the purpose of conducting the study and making the reports required by this act.

Section 3. This act shall take effect upon becoming a law.

6-D

CODING: Words in ~~struck through~~ type are deletions from existing law; words underlined are additions.

(S.J.M. No. 112)

A JOINT MEMORIAL

TO THE HONORABLE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED.

We, your Memorialists, the Senate and House of Representatives of the State of Idaho assembled in the Second Regular Session of the Forty-fourth Idaho Legislature, do respectfully represent that:

WHEREAS, in 1950, we were virtually self-sufficient in oil; and

WHEREAS, America's self-sufficiency in oil supply has been eroded since 1950, with oil imports rising from 23% in 1970, to 33% in 1972, to 44% in 1976; and

WHEREAS, in 1970, we paid nearly three billion dollars for imported oil (or approximately $15.00 per person), and in 1976, this already staggering tribute to foreign oil suppliers increased to $35 billion, or $160 for every man, woman and child in this nation; and

WHEREAS, the main dependable and available energy resources are coal and uranium; and

WHEREAS, oil and natural gas represent 6% of our identified primary energy reserves but together constitute 75% of our energy consumption; and

WHEREAS, on the other hand, coal is our most abundant fossil fuel with American coal reserves estimated at more than 1-1/2 trillion tons -- enough to last for 500 years; and

WHEREAS, coal comprises 93% of our fuel reserves, yet supplies only 17% of our total energy requirements; and

WHEREAS, solar energy and wind energy also represent potentially unlimited power resources deserving of vigorous development; and

WHEREAS, the increased energy supplies available through the development of our water resources is even now being demonstrated through the use of low head turbines to generate hydroelectric power on previously unharnessed low-fall streams; and

WHEREAS, as oil and natural gas shrink in supply and rise in price, the energy salvation of this nation must depend upon the maximum development and use of our coal and uranium reserves and the full realization of the energy potential present in the sun, the wind and our water resources.

NOW, THEREFORE, BE IT RESOLVED by the members of the

Second Regular Session of the Forty-fourth Idaho Legislature, the Senate and House of Representatives concurring, that we most respectfully urge the Congress of the United States to act now to break the chains of dependence on foreign oil supplies.

BE IT FURTHER RESOLVED that we most respectfully submit to the Congress of the United States that it must act immediately to promote and encourage the development of all sources of energy, with emphasis on coal and nuclear power, and further energy conservation if America's energy freedom is to be restored.

BE IT FURTHER RESOLVED that the Secretary of the Senate be, and he is hereby authorized and directed to forward copies of this Memorial to the President of the Senate, the Speaker of the House of Representatives of Congress, and to the Senators and Representatives representing this state in the Congress of the United States.

Adopted by the Senate January 26, 1978.
Adopted by the House March 17, 1978.

HOUSE BILL No. 2275

AN ACT authorizing the secretary of health and environment to establish fees for the monitoring of the environmental impact of power generation facilities; amending K.S.A. 75-3170a, as amended by House Bill No. 2605 in the 1978 legislative session, and repealing the existing section.

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

New Section 1. As used in this act the following terms shall have the meanings ascribed to them herein: (a) "Power generation facility" means any physical plant used for the production or generation of electricity, or coal gasification facility.

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

(c) "Person" means any individual, company, corporation, institution, municipality, township, county, state agency or federal agency.

New Sec. 2. In order to defray costs in determining and monitoring the environmental impact of power generation facilities with respect to air quality and, in the case of nuclear powered generation facilities, the overall radiological impact thereof, the secretary is authorized and directed to adopt rules and regulations to provide for the establishment of fees and for the collection thereof from each such facility. Such fees shall be determined and collected annually, and such determination shall be based upon the size and type of such facilities. In establishing programs for determining and monitoring environmental impact, the secretary shall take into consideration monitoring programs conducted by other persons and where possible avoid duplication of effort and expense. The secretary may also provide for quality review and evaluation of monitoring conducted by other persons in order to further the objectives of this act and to determine the extent and necessity of monitoring programs to be conducted by the department of health and environment.

New Sec. 3. The secretary shall remit all moneys received from fees to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury. Twenty percent (20%) of each such deposit shall be credited to the state general fund and the balance shall be credited to the power generating facility fee fund, which fund is hereby created. All expenditures from such 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.

Sec. 4. K.S.A. 75-3170a, as amended by House Bill No. 2605 in the 1978 legislative session, is hereby amended to read as follows: 75-3170a. (a) The twenty percent (20%) credit to the state general fund required by *section 3 and* K.S.A. 1977 Supp. 17-5612, 23-110, 34-102b, 36-512, 58-3014, 65-1718, 65-1817a, 65-2418, 65-2855, 65-2911, 65-4610, 66-1503, 74-715, 74-1108, 74-1405, 74-1503, 74-1609, 74-2704, 74-2902a, 74-3903, 74-5346, 74-5805, 74-7009 and K.S.A. 1-204, 9-1703, 16-609, 17-1271, 17-2236, 17-5609, 17-5610, 17-5701, 47-820, 55-128a, 55-131, 55-135, 55-141, 55-609, 55-711, 55-901, 75-1119b and 75-1509 and acts amendatory of any of the foregoing including amendments by other sections of this act is to reimburse the state general fund for accounting, auditing, budgeting, legal, payroll, personnel and purchasing services, and any and all other state governmental services, which are performed on behalf of the state agency involved by other state agencies which receive appropriations from the state general fund to provide such services.

(b) Nothing in this act or in the sections amended by this act shall be deemed to authorize remittances to be made less frequently than is authorized under K.S.A. 75-4215.

(c) Notwithstanding any provision of any section referred to in or amended by this act or referred to in subsection (a) of this section, whenever in any fiscal year such twenty percent (20%) credit to the state general fund in relation to any particular fee fund is two hundred thousand dollars ($200,000), in that fiscal year the twenty percent (20%) credit shall no longer apply to moneys received from sources applicable to such fee fund and for the remainder of such year the full one hundred percent (100%) so received shall be credited to such fee fund.

Sec. 5. K.S.A. 75-3170a, as amended by House Bill No. 2605 in the 1978 legislative session, is hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body.

_____

HOUSE concurred in
SENATE amendments _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE
as amended _____

_____
Presidents of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.

By. Delegates Beck, Bolden, Byrnes, Cumiskey, Taylor, Hoffman, Munson, Wagaman, Delphey, Virts, C. Smith, Harchenhorn, Matthews, Price, and Hyatt
Rules Suspended
Introduced and read first time: March 27, 1978
Assigned to: Rules
Re-referred to: Environmental Matters, March 31, 1978

Committee report: Favorable
House action: Adopted
Read second time: April 4, 1978

RESOLUTION NO. JR 63

HOUSE JOINT RESOLUTION

A House Joint Resolution concerning

Western Maryland Energy Crisis

FOR the purpose of requesting the Acting Governor of the State of Maryland to ask the President of the United States to declare Western Maryland a disaster area entitled to federal economic assistance and relief because of the extreme cost of the pass through fuel adjustment charges being placed on the customers of the Potomac Edison System as a result of the coal strike.

WHEREAS, The coal strike has prevented adequate supplies of coal from reaching the Hatfields Ferry, Fort Martin, Harrison and Albright power plants in the Allegheny Power System of which the Potomac Edison Company is a part; and

WHEREAS, Said coal shortages have required the Potomac Edison Company to purchase 60 percent of their total kilowatt hours from the grid system; and

WHEREAS, The kilowatt hours purchased by the Potomac Edison Company from the grid system have cost them approximately four times the cost of kilowatt hours produced by their own system; and

WHEREAS, The increased costs of kilowatt hours through the grid system incurred by the Potomac Edison Company have already and will be in the future passed on to Potomac Edison utility customers in Western Maryland resulting in severe economic hardship to said customers; now, therefore, be it

EXPLANATION:
Underlining indicates amendments to the resolution.
~~Strike out~~ indicates matter stricken by amendment.

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Acting Governor of the State of Maryland shall ask the President of the United States to declare Western Maryland, which is served electric power by the Potomac Edison Company, a disaster area entitled to federal economic relief and assistance; and be it further

RESOLVED, That copies of this Resolution be sent to the President of the United States; Senator Charles McC. Mathias, Jr., Senator Paul S. Sarbanes; and Congressman Goodloe E. Byron.

Approved:

_____
Acting Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

H O U S E O F D E L E G A T E S

Bir3816 No. 1707

By: Delegate Bolden
Introduced and read first time: February 23, 1978
Assigned to: Garrett County Delegation, Mr. Cumiskey and Mr. Taylor

Committee report: Favorable
House action: Adopted
Read second time: March 3, 1978

CHAPTER 400

AN ACT concerning

Garrett County - Natural Gas

FOR the purpose of providing a certain base pressure computation for natural gas in Garrett County.

BY repealing and reenacting, with amendments,

The Public Local Laws of Garrett County
Section 27-2(j)
Article 12 - Public Local Laws of Maryland
(1971 Edition, as amended)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That section(s) of the Code of Public Local Laws of Maryland be repealed, amended, or enacted to read as follows:

Article 12 - Garrett County

27-2.

(j) For the purpose of this sub-title, by the term "cubic foot of gas" is meant volume of gas expressed in cubic feet and computed at a base pressure of [four (4)] 5.28 ounces per square inch above the average barometric pressure of fourteen and four tenth (14.4) pounds per square inch, a standard base and flowing temperature of sixty (60) degrees Fahrenheit; correction to be made for pressure according to Boyle's Law, and for specific gravity according to test made by the balance method.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Numerals at right identify computer lines of text.
Underlining indicates amendments to bill.
~~Strike-out~~ indicates matter stricken by amendment.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1976.

Approved:

_____
Acting Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

81r3767 HOUSE JOINT RESOLUTION No. 95

By: Delegates Shapiro and Taylor
Introduced and read first time: February 24, 1978
Assigned to: Economic Matters

Committee report: Favorable with amendments
House action: Adopted
Read second time: March 28, 1978

RESOLUTION NO. JR 39

HOUSE JOINT RESOLUTION

A House Joint Resolution concerning

Technology, Production, Energy, Growth, and Trade

FOR the purpose of requesting that the Congress of the United States enact a comprehensive and balanced energy program based on advanced technologies; requesting that Congress act in a timely fashion to recharter the Export-Import Bank of the United States before a certain date and facilitate the Bank's ability to play a major role in American trade policy; and requesting Congress to expand the funding base of the Export-Import Bank and view the sponsorship of high technology trade for the purpose of creating jobs.

The United States is at a pivotal point in its 200 year existence. Millions of our American citizens, who are one of the most culturally advanced and highly educated work force and professionals in the world are either unemployed or employed at jobs far below their skill levels. In addition, our country's trade deficit and federal debt are growing. Maryland's own economy has been affected by these conditions, particularly in heavy manufacturing and basic research and development.

It is important that we remain sensitive to our traditional goals which made the United States the commercial and trading center for the entire world. Our government must pursue policies that will modernize our industry through utilizing the most advanced technologies. This will require rising rates of new capital formation, ensuring high employment levels at wages adequate for the continued education and cultural development of the population. This will ensure the increased productivity, the expansion of exports and the efficient utilization of energy necessary for the stability of our Nation's and Maryland's economies.

EXPLANATION:
Underlining indicates amendments to the resolution.
~~Strike out~~ indicates matter stricken by amendment.

The stability of the United States' dollar is a matter of concern to the security and economic well-being of the entire world. The most viable means of reversing declining production and employment is an emphasis on high-technology exports to create millions of new, high-paying, skilled and productive jobs. The largest immediate markets, on the order of $50 billion yearly, exist for nuclear power technologies, which our closest allies abroad are supporting for trade both in the advanced sector and the developing world. A high-export policy in the United States and accompanying investment in hard-commodity production in the United States is a measure which can support the value of the dollar, as well as provide the goods essential to the aspirations for industrial development of many nations now still underdeveloped.

The Export-Import Bank of the United States, created in 1945, is situated to finance increased exports from the United States, having financed $8.6 billion in export financing support in 1976 which generated nearly $12 billion in United States export sales and generated approximately 500,000 jobs. The purpose of the Export-Import Bank Act of 1945 was to design an institution to overcome obstacles in private market financing of United States exports.

The United States now has a trade deficit estimated on the order of $25 billion, and an aggressive export drive is needed; now, therefore, be it

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the United States Congress:

(1) Enact a comprehensive and balanced energy program based on advanced technologies. This should include high technology utilization of existing fossil fuels, i.e. magnetohydrodynamics for coal, completion of the fuel cycle with fission, fast breeder and fuel reprocessing plants, and upgrading the research effort in fusion energy development as a long-term cheap and abundant energy resource;

(2) Act in a timely fashion to recharter the Export-Import Bank of the United States well ahead of its September 1978 expiration, and facilitate its ability to play a major role in American trade policy;

(3) Expand the funding base <u>total commitment authority</u> of the Export-Import Bank from its present ~~$50~~ <u>$25</u> billion level towards ~~$200~~ <u>$40</u> billion and view the sponsorship of high-technology trade as the United States "jobs" policy, with the estimate that such funding will create 11 million high-skill jobs for American workers; and be it further

RESOLVED, That copies of this Resolution be sent to the Honorable Jimmy Carter, President of the United States, 1600

Pennsylvania Avenue, Washington, D. C. 20006; to the Honorable James R. Schlesinger, Secretary of the Department of Energy, Washington, D. C. 20545; to the Honorable James O. Eastland, President Pro Tempore of the Senate, Dirksen Building, Washington, D. C. 20510; to the Honorable Thomas P. O'Neill, Speaker of the House, Office of the Speaker, Room H-204, the Capitol Building, Washington, D. C. 20510; and that a copy of this Resolution be sent to the Maryland Congressional Delegation: Senators Charles McC. Mathias, Jr. and Paul S. Sarbanes, Senate Office Building, Washington, D.C. 20510; and Representatives Robert E. Bauman, Clarence D. Long, Barbara A. Mikulski, Marjorie S. Holt, Gladys N. Spellman, Goodloe E. Byron, Parren J. Mitchell, and Newton I. Steers, Jr., House Office Building, Washington, D.C. 20515.

Approved:

_____
Acting Governor.

_____
Speaker of the House of Delegates.

_____
President of the Senate.

CHAPTER 58

AN ACT

RELATING TO THE SEIZURE AND SALE OF ILLEGAL OIL OR GAS OR PRODUCTS; REPEALING SECTION 65-3-28 NMSA 1953 (BEING LAWS 1935, CHAPTER 72, SECTION 23, AS AMENDED BY LAWS 1977, CHAPTER 255, SECTION 65 AND CHAPTER 351, SECTION 1); ENACTING A NEW SECTION 65-3-28 NMSA 1953; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 65-3-28 NMSA 1953 (being Laws 1935, Chapter 72, Section 23, as amended by Laws 1977, Chapter 255, Section 65 and Chapter 351, Section 1) is repealed and a new Section 65-3-28 NMSA 1953 is enacted to read:

"65-3-28. SEIZURE AND SALE OF ILLEGAL OIL OR GAS OR PRODUCTS--PROCEDURE.--

A. Apart from, and in addition to, any other remedy or procedure which may be available to the commission or the division, or any penalty which may be sought against or imposed upon any person, with respect to violations relating to illegal oil or illegal gas or illegal products thereof, all such oil or gas or products thereof shall, except under such circumstances as are stated herein, be contraband and shall be seized and sold, and the proceeds applied as herein provided. The sale shall not take place unless the court finds in the proceeding provided in this section that the owner of such illegal oil or illegal gas or product thereof is liable, or in some proceeding authorized by Sections 65-3-1 through 65-3-34 NMSA

HOUSE BILL 79
Approved: February 24, 1978

1953, such owner has already been held to be liable, for penalty for having produced the illegal oil or illegal gas, or for having purchased or acquired the illegal oil or illegal gas or product thereof. Whenever the division believes that illegal oil or illegal gas or product thereof is subject to seizure and sale, as provided herein, it shall, through the attorney general, bring a civil action in rem for that purpose in the district court of the county where the commodity is found, or the action may be maintained in connection with any suit or cross-action for injunction or for penalty relating to any prohibited transaction involving the illegal oil or illegal gas or product thereof. Notice of the action in rem shall be given in conformity with the law or rule applicable to such proceeding. Any person or party in interest who may show himself to be adversely affected by any such seizure and sale shall have the right to intervene in the suit to protect his rights.

B. Whenever the pleading with respect to the forfeiture of illegal oil or illegal gas or product thereof shows ground for seizure and sale, and the pleading is verified or is supported by affidavit or affidavits, or by testimony under oath, the court shall order such commodity to be impounded or placed under the control, actual or constructive, of the court through an agent appointed by the court.

C. The judgment affecting the forfeiture shall provide that the commodity be seized, if not already under the control of the court, and that a sale be had in similar manner and with similar notice as provided by law or rule with respect to the sale of personal property

under execution; provided, however, the court may order that the commodity be sold in specified lots or portions, and at specified intervals, instead of being sold at one time. Title to the amount sold shall pass as of the date of the seizure. The judgment shall provide for payment of the proceeds of the sale into the common school fund, after first deducting the costs in connection with the proceedings and the sale. The amount sold shall be treated as legal oil or legal gas or product thereof, as the case may be, in the hands of the purchaser, but the purchaser and the commodity shall be subject to all applicable laws and rules, regulations and orders with respect to further sale or purchase or acquisition, and with respect to the transportation, refining, processing, or handling in any other way, of the commodity purchased.

D. Nothing in this section shall deny or abridge any cause of action a royalty owner, or any lien holder, or any other claimant, may have, because of the forfeiture of the illegal oil or illegal gas or product thereof, against the person whose act resulted in such forfeiture."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is March 31, 1978.

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

CHAPTER 61

AN ACT

RELATING TO OIL AND GAS; PURCHASE OF NATURAL GAS; REPEALING SECTION 65-13-8.6 NMSA 1953 (BEING LAWS 1977, CHAPTER 255, SECTION 103 AND CHAPTER 378, SECTION 1); ENACTING A NEW SECTION 65-13-8.6 NMSA 1953; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 65-13-8.6 NMSA 1953 (being Laws 1977, Chapter 255, Section 103 and Chapter 378, Section 1) is repealed and a new Section 65-13-8.6 NMSA 1953 is enacted to read:

"65-13-8.6. ENERGY AND MINERALS DEPARTMENT—ADDITIONAL DUTIES--PURCHASE OF NATURAL GAS.—

A. The energy and minerals department shall advise with and negotiate the purchase of natural gas for political subdivisions of the state or their natural gas distributors serving them or any combination thereof, or purchase natural gas and resell it to them at a price which will produce a reasonable return on the state funds used to purchase the natural gas, enter into any contracts and agreements necessary to achieve these purposes, including but not limited to the storage or sale of surplus gas from such purchases if purchase of excess natural gas is necessary to secure an adequate future supply.

B. The department shall not:

(1) enter into any contract for the purchase of natural gas without prior approval of the state board of finance;

(2) enter into any contract for the purchase of natural gas without first securing expert and professional advice that the producer has adequate reserves to prevent any loss of advance payments and make the installation of necessary delivery systems economically sound; or

(3) enter into any contract for the purchase of natural gas in place or for the purchase of a lease for the development and production of natural gas."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is March 31, 1978.

Section 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 82
Approved: February 24, 1978

CHAPTER 112

AN ACT

RELATING TO THE NATURAL GAS PURCHASE REVOLVING FUND; AMENDING SECTION 65-13-8.2 NMSA 1953 (BEING LAWS 1976, CHAPTER 44, SECTION 3, AS AMENDED BY LAWS 1977, CHAPTER 255, SECTION 99); DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 65-13-8.2 NMSA 1953 (being Laws 1976, Chapter 44, Section 3, as amended by Laws 1977, Chapter 255, Section 99) is amended to read:

"65-13-8.2 REVOLVING FUND CREATED--LIMITS--EXCESS.--The "natural gas purchase revolving fund" is created. The money in the fund may be spent upon vouchers signed by the administrative head of the energy resources board, or its successor agency, for the purchase of natural gas for resale. Unless the price paid for natural gas is necessarily higher than a federally regulated resale price, the resale shall be upon such terms and at such prices that the revolving fund will not be depleted in aid of any political subdivision, natural gas distributor or other purchaser. The money received from the sale of natural gas shall be returned to the fund. If at any time the fund exceeds one million dollars ($1,000,000), the excess shall be transferred to the severance tax income fund."

Section 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HOUSE BILL 266
Approved: March 6, 1978

Signed into law June 19, Chapter 396

STATE OF NEW YORK

9021

IN SENATE

March 30, 1978

Introduced by Sen. AUER—(at request of the Governor)—read twice and ordered printed, and when printed to be committed to the Committee on Conservation and Recreation

AN ACT to amend the environmental conservation law and the energy law, in relation to energy resource development

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 23-0301 of the environmental conservation law, as amended by chapter nine hundred twenty-two of the laws of nineteen hundred seventy-three, is hereby amended to read as follows:

§ 23-0301. Declaration of policy.

It is hereby declared to be in the public interest to [foster, encourage and promote] *regulate* the development, production and utilization of natural resources of oil and gas in this state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be had, and that the correlative rights of all owners and the rights of all persons including landowners and the general public may be fully protected, and to provide in similar fashion for the underground storage of gas and the solution mining of salt.

§ 2. Subdivision five of section 3-101 of the energy law is hereby amended to read as follows:

5. to *foster*, encourage *and promote* the prudent development and wise use of [limited] *all idigenous state* energy resources *including, but not limited to, on-shore oil and natural gas, off-shore oil and natural gas, natural gas from Devonian shale formations, small head hydro, wood, solar, wind, solid waste, energy from biomass, fuel cells and cogeneration; and*

§ 3. Section 5-107 of such law is hereby amended by adding a new subdivision eleven to read as follows:

11. Conduct activities to encourage and promote the prudent development and wise use of all energy resources indigenous to the state or shared by the state with the Dominion of Canada, the federal government or other states.

§ 4. This act shall take effect immediately.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

Signed into law July 25, Chapter 649

STATE OF NEW YORK

9140

IN SENATE

April 5, 1978

Introduced by Sens. PISANI, DUNNE—(at request of the Governor)—read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Public Utilities

AN ACT to amend the energy law, in relation to solar energy products and warranties applicable thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The energy law is hereby amended by adding a new article twelve to read as follows:

ARTICLE 12

SOLAR ENERGY PRODUCTS WARRANTY ACT

Section 12-101. Title.
12-102. Purpose.
12-103. Definitions.
12-104. Contracts.
12-106. Warranties and service agreements.
12-108. Rules and regulations.
12-110. Violations.
12-112. Prohibition of waiver.
12-114. Severability.

§ 12-101. Title. This act shall be known and may be cited as the "Solar Energy Products Warranty Act."

§ 12-102. Purpose. The legislature hereby finds and declares that the use of renewable energy technologies, such as solar energy, within the state should be encouraged to the maximum extent possible; that effective, well-designed, carefully manufactured and properly serviced solar thermal systems are essential for the development of a viable solar industry; that false claims, fraudulent sales practices, shoddy workmanship, equipment failures and poor servicing of products would inhibit the growth of the solar industry; that adequate warranty protections should be made available to consumers in order to prevent such deceptions; that certain warranty protections are presently made available to consumers of products normally used for personal, family or household purposes pursuant to the Federal Magnuson-Moss Warranty Act; and that warranty protections should be made available to purchasers of all solar energy products in this state, regardless of use.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is old law to be omitted.

§ 12-103. Definitions. 1. "Building" means any combination of materials, whether portable or fixed, having a roof to form a structure which is heated or cooled in the normal course, affording shelter for persons, animals or property, including any equipment therein or attached thereto.

2. "Component" means any device or element of a solar thermal system which can generally be purchased separately from the entire system but is essential to the normal operation of that system.

3. "Customer" means any party who contracts with an installer of solar thermal systems to install such a system.

4. "Installer" means any person who for a fee offers to provide or sell to a customer an operating solar thermal system.

5. "Solar thermal system" means an arrangement or combination of components designed to provide heating, cooling or hot water by the collection or storage of solar energy.

6. "Thermal performance characteristics" means the thermal output, in energy units, and required supplemental energy, in energy units, under specified conditions of mean solar radiation, ambient temperature and collector temperature, as determined by testing procedures to be promulgated by the commissioner.

§ 12-104. Contracts. 1. Every agreement for the installation of a solar thermal system in a building shall be in writing and subscribed by the installer of his lawful agent, and by the customer or his lawful agent.

2. Every such agreement shall contain or have annexed thereto:

(a) The names and addresses of the manufacturer of any component with a replacement cost of more than twenty-five dollars which is utilized in the installed solar thermal system, together with such component's model, name and number.

(b) In the case of a solar thermal system which is to supply a building with hot water, the classification of the hot water demand pattern of such building, as set forth in regulations to be promulgated by the commissioner.

(c) The minimum projected thermal performance characteristics of the solar thermal system, as installed, under conditions of mean incident solar radiation and ambient temperature which are typical to the installation location as listed in publication NBSIR 77-1226 entitled "Intermediate Minimum Property Standards for Solar Heating and Domestic Hot Water Systems," of the Department of Housing and Urban Development, dated March, nineteen hundred seventy-seven. If such projected performance is not under warranty, then the following statement shall be displayed on the face of the agreement in a clear and conspicuous manner: "The Thermal Performance of This Solar Thermal System Is Not Under Warranty."

(d) In the case of a solar thermal system which is sold entirely without warranty, the following statement displayed on the face of the agreement in a clear and conspicuous manner: "This Solar Thermal System Is Sold Without Warranty."

§ 12-106. Warranties and service agreements. 1. All express warranties and service agreements pertaining to any solar thermal system or component thereof which is sold in the state shall be in writing and shall be in compliance with rules and regulations to be promulgated by the commissioner. Such rules and regulations shall contain standards no less stringent than those contained in the Federal Magnuson-Moss Warranty Act (15U.S.C.§§2301 et seq.) and the rules and regulations issued pursuant thereto.

2. No person shall offer a service agreement for a solar thermal system unless such person shall have developed a service capability for such system.

§ 12-108. Rules and regulations. On or before October first, nineteen hundred seventy-eight, the commissioner shall promulgate rules and regulations as necessary for the effective implementation of this article.

§ 12-110. Violations. 1. Whenever the attorney general has reason to believe that any violation of this article is a repeated or persistent practice, he may bring an

action to enjoin such practice and to obtain restitution for any aggrieved party or parties. In such action preliminary relief may be granted under article sixty-three of the civil practice law and rules. Before any violation of this article is sought to be enjoined, the attorney general shall be required to give the person against whom such proceeding is contemplated notice by certified mail and an opportunity to show in writing within five business days after receipt of notice why proceedings should not be instituted against him, unless the attorney general shall find, in any case in which he seeks preliminary relief, that to give such notice and opportunity is not in the public interest.

2. Any owner of a solar thermal system injured by a violation of any provision of this article issued pursuant thereto may bring an action in his own name to enjoin such violation and to recover his actual damages. In such action, there may be awarded reasonable attorney's fees and costs to the plaintiff. Nothing in this section shall be construed to abridge or limit any other right or remedy an owner may have at law or in equity, statutory or otherwise. Provided, however, that such individual action shall be precluded if, prior to its commencement, the attorney general has commenced an action for an injunction and restitution pursuant to the provisions of subdivision one of this section.

§ 12-112. Prohibition of waiver. Any waiver by the owner of a solar thermal system of the provisions of this article shall be deemed contrary to public policy and shall be unenforceable and void.

§ 12-114. Severability. In the event any section, subdivision, sentence, clause or phrase of this article be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subdivisions, sentences, clauses or phrases of this article, which shall remain in full force and effect, as if the section, subdivision, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally part hereof.

§ 2. This act shall take effect on October first, nineteen hundred seventy-eight.

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2369

House: James M. Arthur, Clarke, Carmell, McAbee
Attorney: Draffin
Stenographer: Boozer
Date: 2-2-77
No.: 3

A CONCURRENT RESOLUTION

MEMORIALIZING CONGRESS TO ENACT SUCH LEGISLATION AS WILL ENCOURAGE RESEARCH AND DEVELOPMENT OF ALTERNATE SOURCES OF ENERGY.

Whereas, the winter of 1976-77 has been one of the worst winters in the history of the United States; and

Whereas, because of this harsh winter, severe shortages of energy have developed in many parts of the country; and

Whereas, parts of the northeast, midwest and south have in particular experienced severe shortages of natural gas; and

Whereas, this shortage has put thousands of people

temporarily cut of work and has threatened the health and safety of huge segments of our population; and

Whereas, even if more natural gas and other available energy supplies can be located and provided to consumers, it will be necessary in the long run to develop alternate sources of energy if a recurrence of the current energy crisis is to be prevented. Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

That the Congress of the United States be memorialized to enact such legislation as will encourage research and development of alternate sources of energy for the purpose of insuring that sufficient supplies of energy will be available in the future in all parts of the United States regardless of season.

Be it further resolved that a copy of this resolution be forwarded to the President of the United States, to each United States Senator from South Carolina, each member of the House of Representatives of Congress from South Carolina, the Senate of the United States and the House of Representatives of the United States.

LD2557

HOUSE RESOLUTION NO. 11

Offered February 6, 1978

Requesting the Subcommittee on Energy of the Committee on General Laws of the House of Delegates to study the interrelationship of State and federal energy programs.

Patrons–Vickery, Wilson, Axselle, Dickinson, Pickett, Slayton, Baliles, Swanson, Michie, and Johnson

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Referred to the Committee on General Laws

WHEREAS, problems associated with balancing demands for and availability of energy are nation-wide, and are being addressed both by the several states and by the federal government; and

WHEREAS, the most efficient and effective means of dealing with the energy crisis may well lie in closer cooperation and coordination between state and federal governmental entities; and

WHEREAS, not infrequently federal financial assistance can be made available to the states and their agencies, if the states adopt adequate and timely enabling legislation; now, therefore, be it

RESOLVED by the House of Delegates, That the Subcommittee on Energy of the Committee on General Laws of the House of Delegates is hereby requested to study the interrelationship between the energy programs of the federal government and those of this Commonwealth in order that the two may be brought more nearly into harmony.

ENGROSSED

SENATE JOINT RESOLUTION NO. 60

Senate Amendments in [ ] - February 18, 1978

Commending the Kingdom of Saudi Arabia.

Patrons–Babalas, Fears, Colgan, and Yeatts

Referred to the Committee on Rules

WHEREAS, the petroleum and petroleum derivatives are the life blood of the industrialized countries of the world; and

WHEREAS, fluctuations in the price of crude oil have an immediate impact upon the economies of such industrialized nations; and

WHEREAS, the world price of crude oil is crucially affected by decisions made by the Organization of Petroleum Exporting Countries; and

WHEREAS, the Kingdom of Saudi Arabia has recently exercised its influence within the Organization of Petroleum Exporting Countries to restrain efforts, once again, to [~~significantly~~ ~~raise~~ *raise significantly*] the world price of crude oil; and

WHEREAS, such action by the Kingdom of Saudi Arabia, putting the long-term stability of the world's industrial economy ahead of Saudi Arabia's own immediate profits is characterized by international statesmanship of the highest order; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, That the government of the Kingdom of Saudi Arabia is hereby commended by the General Assembly for its far-sighted internationalism in restraining increases in the world price of oil. In expressing to the government of Saudi Arabia the thanks of this body, the General Assembly requests the government of Saudi Arabia to continue its efforts to restrain further oil price increases, and further requests that efforts of the government of Saudi Arabia be extended and intensified to exert influence upon crude oil processors similarly to restrain price and cost increases associated with petroleum and petroleum products; and, [~~be it~~ *it being the sense of this body that such restraint, intelligently applied, is in the*

best interests of the industrialized nations, the Organization of Petroleum Exporting Countries, and the nations of the group commonly referred to as the Third World nations; and be it]

RESOLVED FURTHER, That the Clerk of the Senate is hereby instructed to send a copy of this resolution to the Ambassador from Saudi Arabia to the United States of America for transmittal to the government and King of Saudi Arabia in order that they may be apprised of the sense of this body.

Official Use By Clerks	
Agreed to By The Senate	**Agreed to By The House of Delegates**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
_____	_____
Clerk of the Senate	Clerk of the House of Delegates

Signed

AMENDED IN SENATE AUGUST 18, 1978

AMENDED IN SENATE AUGUST 11, 1978

AMENDED IN ASSEMBLY MAY 10, 1978

AMENDED IN ASSEMBLY APRIL 24, 1978

CALIFORNIA LEGISLATURE—1977–78 REGULAR SESSION

ASSEMBLY BILL No. 3032

Introduced by Assemblymen Keene and Calvo
(Principal coauthor: Senator Rains)

March 21, 1978

REFERRED TO COMMITTEE ON RESOURCES, LAND USE, AND ENERGY

An act to add Sections 25004.2 and 25134 to the Public Resources Code, and to amend Sections 216 and 218 of, and to add Section 218.5 to, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 3032, as amended, Keene (Res., L.U., & E.). Energy: cogeneration technology.

Existing law, generally, defines "public utility" as including every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for, or the commodity delivered to, the public.

This bill would specify that in no event shall ownership or operation of a facility which employs cogeneration technology be deemed to make a person a public utility, within the

95 40

meaning of the provisions of the Public Utilities Code, solely because of the ownership or operation of such a cogeneration facility. It would also provide that a corporation or person may employ cogeneration technology in the generation of electricity for its own use or the use of its tenants or for sale to an electrical corporation or state or local public agency, but not for sale to others, without becoming subject to the jurisdiction and control of the Public Utilities Commission as an electrical corporation itself.

The bill would define cogeneration technology for purposes of the above provisions, and would make a declaration regarding legislative intent with respect to cogeneration technology.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 25004.2 is added to the Public Resources Code, to read:

25004.2. The Legislature further finds that cogeneration technology is a potential energy resource and should be an important element of the state's energy supply mix. The Legislature further finds that cogeneration technology can assist meeting the state's energy needs while reducing the long-term use of convential fuels, is readily available for immediate application, and reduces negative environmental impacts. The Legislature further finds that cogeneration technology is important with respect to the providing of a reliable and clean source of energy within the state and that cogeneration technology should receive immediate support and commitment from state government.

SEC. 2. Section 25134 is added to the Public Resources Code, to read:

~~25134. "Cogeneration technology" means the combining of process steam, process heat, or space conditioning with electrical power generation which leads to an efficiency of fuel utilization greater than that resulting from the independent generation of equivalent units of process steam, process heat, space conditioning,~~

95 80

~~or electrical power. Cogeneration technology shall not include steam or heat developed solely for electrical power generation.~~

~~"Process steam" and "process heat" are steam and heat utilized to develop an end product other than electrical power.~~

~~"Space conditioning" is space cooling or space heating within an enclosed area of human habitation.~~

25134. "Cogeneration technology" means the use for the generation of electricity of exhaust steam, waste steam, heat, or resultant energy from an industrial, commercial, or manufacturing plant or process, or the use of exhaust steam, waste steam, or heat from a thermal powerplant for an industrial, commercial, or manufacturing plant or process. For purposes of this division, the industrial, commercial, or manufacturing plant or process shall not be considered a thermal powerplant or portion thereof. Cogeneration technology shall not include steam or heat developed solely for electrical power generation.

SEC. 3. Section 216 of the Public Utilities Code is amended to read:

216. (a) "Public utility" includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof.

(b) Whenever any common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, wharfinger, warehouseman, or heat corporation performs a service or delivers a commodity to the public or any portion thereof for which any compensation or payment whatsoever is received, such common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation,

AMENDED IN SENATE AUGUST 30, 1978
AMENDED IN SENATE AUGUST 24, 1978
AMENDED IN SENATE AUGUST 14, 1978
AMENDED IN ASSEMBLY JUNE 28, 1978
AMENDED IN ASSEMBLY JUNE 19, 1978
AMENDED IN ASSEMBLY JUNE 6, 1978

CALIFORNIA LEGISLATURE—1977-78 REGULAR SESSION

ASSEMBLY BILL No. 3623

Introduced by Assemblyman Hart

April 3, 1978

REFERRED TO COMMITTEE ON RESOURCES, LAND USE, AND ENERGY

An act to amend Sections 17052.5 and 23601 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 3623, as amended, Hart (Res., L.U., & E.). Solar energy and antipollution facilities.

Existing State Personal Income Tax Law and Bank and Corporation Tax Law authorize every taxpayer to deduct from such taxes a credit of an amount equal to 55% of the acquisition cost of a solar energy system, within specified limits, including certain energy conservation measures in conjunction with the system.

This bill would change the maximum amount of the credit which may be deducted in certain circumstances, revise

93 20

provisions for the administration of such credit, and revise the definition of a solar energy system, for such purposes.

This bill would take effect immediately as a tax levy and would remain in effect until January 1, 1981, and as of such date, would be repealed, unless a later enacted statute deletes or extends such date.

This bill would incorporate additionl changes in Section 17052.5 of the Revenue and Taxation Code proposed by Assembly Bill 3250 to be effective only if Assembly Bill 3250 and this bill are chaptered.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no

The people of the State of California do enact as follows:

SECTION 1. Section 17052.5 of the Revenue and Taxation Code is amended to read:

17052.5. (a) (1) There shall be allowed as a credit against the amount of "net tax", an amount equal to the amount determined in paragraphs (2) and (3).

(2) Except as provided in paragraph (3), the amount of the credit allowed by this section shall be 55 percent of the cost (including installation charges but excluding interest charges) incurred by the taxpayer of any solar energy system on premises in California which are owned by the taxpayer at the time of installation. Such credit shall not exceed three thousand dollars ($3,000). The owner of the premises on which the solar energy system is installed may claim the tax credit for costs incurred; however, an owner-builder or owner-developer of new homes may elect not to claim the solar energy tax credit for any or all systems installed on new homes. If an owner-builder or owner-developer irrevocably elects not to claim the tax credit for a solar energy system, the original purchaser of the new home on which the system is installed may claim the credit provided that the purchaser can confirm the election, if necessary, by a written document signed by the owner-builder or owner-developer.

The solar energy tax credit shall be claimed in the state

income tax return for the taxable year in which the solar energy system was installed; however, if an owner-builder or owner-developer irrevocably elects not to claim the tax credit for a solar energy system, the original purchaser of the new home on which the system is installed may claim the credit for the taxable year during which the purchaser's escrow closed or the taxable year during which the purchaser acquired legal title to the home.

(3) With regard to premises in California which are owned by the taxpayer, other than single-family dwellings, on which the cost (including installation charges but excluding interest charges) exceeds twelve thousand dollars ($12,000), the amount of the credit allowed by this section shall be 25 percent of the cost of the solar energy system.

(4) If a solar energy system serves two or more single-family dwellings, the owners of the dwellings shall be eligible to receive the credit in proportion to the number of single-family dwellings served. The amount of the credit shall be determined by dividing the cost (including installation charges but excluding interest charges) of the solar energy system by the number of single-family dwellings served by the system, and applying the formula described in either paragraph (2) or (3) to the per dwelling cost.

(5) Energy conservation measures applied in conjunction with solar energy systems to reduce the total cost or backup energy requirements of such systems shall be considered part of the systems, and shall be eligible for the tax credit. Qualified energy conservation measures installed within six months of the solar energy system are considered to be installed "in conjunction with" the solar energy system, even if the period spans two taxable years. In cases involving more than six months between the installations of the energy conservation measures and the solar energy system, the taxpayer must be able to provide persuasive evidence that the energy conservation measures were in fact installed in conjunction with a solar energy system. Eligible conservation measures applied in

conjunction with solar space heating shall include, but not be limited to, ceiling, wall, and floor insulation above that required by law at the time of original construction. Eligible conservation measures applied in conjunction with solar water heating shall include, but not be limited to, water heater insulation jackets, and shower and faucet flow reducing devices. Energy conservation measures which shall be eligible for the tax credit when applied in conjunction with solar energy systems shall be defined by the Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(6) The basis amount of any solar energy system eligible for the credit provided under this section shall be reduced by any grant provided by a public entity for such system.

(b) The credit for such cost shall be in lieu of any deduction under this part to which the taxpayer otherwise may be entitled, if any.

(c) The basis of any system for which a credit is allowed shall either be reduced to its salvage value at the end of its useful life, or reduced by the amount of the credit, whichever results in the lesser basis. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(d) With the exception of a husband and wife, if there is more than one owner of a premises on which a solar energy system is installed, each owner shall be eligible to receive the solar energy tax credit in proportion to his or her ownership interests in the premises. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(e) The tax credit provided by this section shall not apply to trusts or estates subject to tax under this part.

(f) In the case where the credit allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds such "net tax" may be carried over to the "net tax" in succeeding taxable years, with respect to which this section shall remain in effect for purposes of carrying over excess credit, until

such credit is used. The credit shall be applied first to the earliest years possible.

(g) The Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. Such guidelines and criteria may include, but shall not be limited to, minimum requirements for safety, reliability and durability of solar energy systems. The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(h) (1) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of solar energy systems, then to the extent such credit is allowed for a solar energy system as defined in this section, the state credit provided in paragraph (2) of subdivision (a) shall be reduced so that the combined effective credit shall not exceed 55 percent of such costs, notwithstanding the carryover provisions of subdivision (f).

(2) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of solar energy systems, then to the extent such credit is allowed for a solar energy system as defined in this section, the state credit provided in paragraph (3) of subdivision (a) shall be reduced by the amount of such federal credit.

(i) For purposes of this section:

(1) "Installed" means placed in position in a functionally operative state.

(2) "Net tax" means the tax imposed under either Section 17041 or 17048 minus all credits except the credits provided by Section 17061, (relating to excess State disability insurance withheld), Section 18555.1, (relating to excess income tax withheld), Section 17053.5, (relating to the renters' credit).

(3) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative

housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises.

(4) "Premises" means land, buildings, or mobilehomes.

(5) "Single-family dwelling" means a building used for residential purposes, and includes individual units of a condominium, cooperative or other multiple dwelling unit.

(6) (A) "Solar energy system" means the use of solar devices for the individual function of:

(i) Domestic, recreational, therapeutic, or service water heating;

(ii) Space conditioning;

(iii) Production of electricity;

(iv) Process heat;

(v) Solar mechanical energy; and

(vi) Wind energy for the production of electricity or mechanical work.

The term "solar energy system" shall include, but is not limited to, passive thermal systems, semipassive thermal systems, active thermal systems, photovoltaic systems and wind-driven systems.

(B) Eligible solar energy systems shall have a useful life of not less than three years.

(7) "Solar device" means the equipment associated with the collection, transfer, distribution, storage and control of solar energy. In the case of a solar device associated with two or more solar energy systems, the credit allowed for the solar device may be taken for any one of the systems, or divided equally between them.

(8) "Passive thermal system" means a system which utilizes the structural elements of the building, and is not augmented by mechanical components, to provide for collection, storage, and distribution of solar energy for heating or cooling.

(9) "Active thermal system" means a system which utilizes solar devices thermally isolated from the living space to provide for collection, storage, and distribution of solar energy for heating or cooling.

(10) "Semipassive thermal system" means a system

which utilizes the structure of a building and is augmented by mechanical components to provide for collection, storage, and distribution of solar energy for heating or cooling.

SEC. 1.5. Section 17052.5 of the Revenue and Taxation Code is amended to read:

17052.5. (a) (1) There shall be allowed as a credit against the amount of "net tax" (as defined in subdivision (e)), an amount equal to the amount determined in paragraphs (2) and (3).

(2) Except as provided in paragraph (3), the amount of the credit allowed by this section shall be 55 percent of the cost (including installation charges and costs associated with the acquisition of a solar easement as specified in paragraph (6), but excluding interest charges) incurred by the taxpayer of any solar energy systems on premises in California which are owned by the taxpayer at the time of installation. Such credit shall not exceed three thousand dollars ($3,000). The owner of the premises on which the solar energy system is installed may claim the tax credit for costs incurred; however, an owner-builder or owner-developer of new homes may elect not to claim the solar energy tax credit for any or all systems installed on new homes. If an owner-builder or owner-developer irrevocably elects not to claim the tax credit for a solar energy system, the original purchaser of the new home on which the system is installed may claim the credit provided that the purchaser can confirm the election, if necessary, by a written document signed by the owner-builder or owner-developer.

The solar energy tax credit shall be claimed in the state income tax return for the taxable year in which the solar energy system was installed; however, if an owner-builder or owner-developer irrevocably elects not to claim the tax credit for a solar energy system, the original purchaser of the new home on which the system is installed may claim the credit for the taxable year during which the purchaser's escrow closed or the taxable year during which the purchaser acquired legal

title to the home.

(3) With regard to premises in California which are owned by the taxpayer, other than single-family dwellings, on which the cost (including installation charges but excluding interest charges and costs associated with the acquisition of an easement) exceeds twelve thousand dollars ($12,000), the amount of the credit allowed by this section shall be 25 percent of the cost of the solar energy system.

(4) If a solar energy system serves two or more single-family dwellings, the owners of the dwellings shall be eligible to receive the credit in proportion to the number of single-family dwellings served. The amount of the credit shall be determined by dividing the cost (including installation charges but excluding interest charges) of the solar energy system by the number of single-family dwellings served by the system, and applying the formula described in either paragraph (2) or (3) to the per dwelling cost.

(5) Energy conservation measures applied in conjunction with solar energy systems to reduce the total cost or backup energy requirements of such systems shall be considered part of the systems, and shall be eligible for the tax credit. Qualified energy conservation measures installed within six months of the solar energy system are considered to be installed "in conjunction with" the solar energy system, even if the period spans two taxable years. In cases involving more than six months between the installations of the energy conservation measures and the solar energy system, the taxpayer must be able to provide persuasive evidence that the energy conservation measures were in fact installed in conjunction with a solar energy system. Eligible conservation measures applied in conjunction with solar space heating shall include, but not be limited to, ceiling, wall, and floor insulation above that required by law at the time of original construction. Eligible conservation measures applied in conjunction with solar water heating shall include, but not be limited to, water heater insulation jackets, and shower and faucet flow reducing devices. Energy conservation measures

which shall be eligible for the tax credit when applied in conjunction with solar energy systems shall be defined by the Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(6) The compensation paid to the owner of burdened property in connection with the acquisition of a solar easement as defined in Section 801.5 of the Civil Code, and the fees for the recording of such an easement shall be considered part of solar energy systems, and shall be eligible for the tax credit.

(7) The basis amount of any solar energy system eligible for the credit provided under this section shall be reduced by any grant provided by a public entity for such system.

(b) The credit for such cost shall be in lieu of any deduction under this part to which the taxpayer otherwise may be entitled, if any.

(c) The basis of any system for which a credit is allowed shall either be reduced to its salvage value at the end of its useful life, or reduced by the amount of the credit, whichever results in the lesser basis. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(d) With the exception of a husband and wife, if there is more than one owner of a premises on which a solar energy system is installed, each owner shall be eligible to receive the solar energy tax credit in proportion to his or her ownership interests in the premises. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(e) The tax credit provided by this section shall not apply to trusts or estates subject to tax under this part.

(f) In the case where the credit allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds such "net tax" may be carried over to the "net tax" in succeeding taxable years, with respect to which this section shall remain in effect for purposes of carrying over excess credit, until such credit is used. The credit shall be applied first to the

earliest years possible.

(g) The Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. Such guidelines and criteria may include, but shall not be limited to, minimum requirements for safety, reliability and durability of solar energy systems. The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(h) (1) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of solar energy systems, then to the extent such credit is allowed for a solar energy system as defined in this section, the state credit provided in paragraph (2) of subdivision (a) shall be reduced so that the combined effective credit shall not exceed 55 percent of such costs, notwithstanding the carryover provisions of subdivision (f).

(2) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of solar energy systems, then to the extent such credit is allowed for a solar energy system as defined in this section, the state credit provided in paragraph (3) of subdivision (a) shall be reduced by the amount of such federal credit.

(i) For purposes of this section:

(1) "Installed" means placed in position in a functionally operative state.

(2) "Net tax" means the tax imposed under either Section 17041 or 17048 minus all credits except the credits provided by Section 17061, (relating to excess state disability insurance withheld), Section 18555.1, (relating to excess income tax withheld), Section 17053.5, (relating to the renters' credit).

(3) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the

exclusive right of occupancy to the premises.

(4) "Premises" means land, buildings, or mobilehomes.

(5) "Single-family dwelling" means a building used for residential purposes, and includes individual units of a condominium, cooperative or other multiple dwelling unit.

(6) (A) "Solar energy system" means the use of solar devices for the individual function of:

(i) Domestic, recreational, therapeutic, or service water heating;

(ii) Space conditioning;

(iii) Production of electricity;

(iv) Process heat;

(v) Solar mechanical energy; and

(vi) Wind energy for the production of electricity or mechanical work.

The term "solar energy system" shall include, but is not limited to, passive thermal systems, semipassive thermal systems, active thermal systems, photovoltaic systems and wind-driven systems.

(B) Eligible solar energy systems shall have a useful life of not less than three years.

(7) "Solar device" means the equipment associated with the collection, transfer, distribution, storage and control of solar energy. In the case of a solar device associated with two or more solar energy systems, the credit allowed for the solar device may be taken for any one of the systems, or divided equally between them.

(8) "Passive thermal system" means a system which utilizes the structural elements of the building, and is not augmented by mechanical components, to provide for collection, storage, and distribution of solar energy for heating or cooling.

(9) "Active thermal system" means a system which utilizes solar devices thermally isolated from the living space to provide for collection, storage, and distribution of solar energy for heating or cooling.

(10) "Semipassive thermal system" means a system which utilizes the structure of a building and is

augmented by mechanical components to provide for collection, storage, and distribution of solar energy for heating or cooling.

SEC. 2. Section 23601 of the Revenue and Taxation Code is amended to read:

23601. (a) (1) There shall be allowed as a credit against the taxes imposed by this part (except the minimum franchise tax and the tax on preference income), an amount equal to the amount determined in paragraphs (2) and (3).

(2) Except as provided in paragraph (3), the amount of the credit allowed by this section shall be 55 percent of the cost (including installation charges but excluding interest charges) incurred by the taxpayer of any solar energy system on premises in California which are owned by the taxpayer at the time of installation. Such credit shall not exceed three thousand dollars ($3,000). The owner of the premises on which the solar energy system is installed may claim the tax credit for costs incurred; however, an owner-builder or owner-developer of new homes may elect not to claim the solar energy tax credit for any or all systems installed on new homes. If an owner-builder or owner-developer irrevocably elects not to claim the tax credit for a solar energy system, the original purchaser of the new home on which the system is installed may claim the credit provided that the purchaser can confirm the election, if necessary, by a written document signed by the owner-builder or owner-developer.

The solar energy tax credit shall be claimed in the state franchise or income tax return for the income year in which the solar energy system was installed; however, if an owner-builder or owner-developer irrevocably elects not to claim the tax credit for a solar energy system, the original purchaser of the new home on which the system is installed may claim the credit for the taxable year during which the purchaser's escrow closed or the taxable year during which the purchaser acquired legal title to the home.

(3) With regard to premises in California which are

owned by the taxpayer, other than a single-family dwelling, on which the cost (including installation charges but excluding interest charges) exceeds twelve thousand dollars ($12,000), the amount of the credit allowed by this section shall be 25 percent of the cost of the solar energy system.

(4) If a solar energy system serves two or more single-family dwellings, the owners of the dwellings shall be eligible to receive the credit in proportion to the number of single-family dwellings served. The amount of the credit shall be determined by dividing the cost (including installation charges but excluding interest charges) of the solar energy system by the number of single-family dwellings served by the system, and applying the formula described in either paragraph (2) or (3) to the per dwelling cost.

(5) Energy conservation measures applied in conjunction with solar energy systems to reduce the total cost or backup energy requirements of such systems shall be considered part of the systems, and shall be eligible for the tax credit. Qualified energy conservation measures installed within six months of the solar energy system are considered to be installed "in conjunction with" the solar energy system, even if the period spans two taxable years. In cases involving more than six months between the installations of the energy conservation measures and the solar energy system, the taxpayer must be able to provide persuasive evidence that the energy conservation measures were in fact installed in conjunction with a solar energy system. Eligible conservation measures applied in conjunction with solar space heating shall include, but not be limited to, ceiling, wall, and floor insulation above that required by law at the time of original construction. Eligible conservation measures applied in conjunction with solar water heating shall include, but not be limited to, water heater insulation jackets, and shower and faucet flow reducing devices. Energy conservation measures which shall be eligible for the tax credit when applied in conjunction with solar energy systems shall be defined by the Energy Resources Conservation and Development

Commission as part of the solar energy system eligibility criteria.

(6) The basis amount of any solar energy system eligible for the credit provided under this section shall be reduced by any grant provided by a public entity for such system.

(b) The credit for such cost shall be in lieu of any deduction under this part to which the taxpayer otherwise may be entitled, if any

(c) The basis of any system for which a credit is allowed shall either be reduced to its salvage value at the end of its useful life, or reduced by the amount of the credit, whichever results in the lesser basis. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(d) In the case where the credit allowed under this section exceeds the taxes imposed by this part (except the minimum franchise tax and the tax on preference income) for the income year, that portion of the credit which exceeds such taxes may be carried over to the taxes imposed by this part (except the minimum franchise tax and the tax on preference income) in succeeding income years, with respect to which this section shall remain in effect for purposes of carrying over excess credit, until such credit is used. The credit shall be applied first to the earliest years possible.

(e) The Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. Such guidelines and criteria may include, but shall not be limited to, minimum requirements for safety, reliability and durability of solar energy systems. The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(f) (1) If federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of solar energy systems, then to the extent such credit is allowed for a solar energy system as defined in this section, the state credit provided in paragraph (2) of

subdivision (a) shall be reduced so that the combined effective credit shall not exceed 55 percent of such costs, notwithstanding the carryover provisions of subdivision (d).

(2) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of solar energy systems, then to the extent such credit is allowed for a solar energy system as defined in this section, the state credit provided in paragraph (3) of subdivision (a) shall be reduced by the amount of such federal credit.

(g) The following definitions govern construction of this section:

(1) "Installed" means placed in position in a functionally operative state.

(2) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises.

(3) "Premises" means land, buildings, or mobilehomes.

(4) "Single-family dwelling" means a building used for residential purposes, and includes individual units of a condominium, cooperative or other multiple dwelling unit.

(5) (A) "Solar energy system" means the use of solar devices for the individual function of:

(i) Domestic, recreational, therapeutic, or service water heating;

(ii) Space conditioning;

(iii) Production of electricity;

(iv) Process heat;

(v) Solar mechanical energy; and

(vi) Wind energy for the production of electricity or mechanical work.

The term "solar energy system" shall include, but is not limited to, passive thermal systems, semipassive thermal systems, active thermal systems, photovoltaic systems

and wind-driven systems.

(B) Eligible solar energy systems shall have a useful life of not less than three years.

(6) "Solar device" means the equipment associated with the collection, transfer, distribution, storage and control of solar energy. In the case of a solar device associated with two or more solar energy systems, the credit allowed for the solar device may be taken for any one of the systems, or divided equally between them.

(7) "Passive thermal system" means a system which utilizes the structural elements of the building, and is not augmented by mechanical components, to provide for collection, storage, and distribution of solar energy for heating or cooling.

(8) "Active thermal system" means a system which utilizes solar devices thermally isolated from the living space to provide for collection, storage, and distribution of solar energy for heating or cooling.

(9) "Semipassive thermal system" means a system which utilizes the structure of a building and is augmented by mechanical components to provide for collection, storage, and distribution of solar energy for heating or cooling.

SEC. 3. The provisions of ~~Sections 1 and~~ *Section 1 or 1.5 and Section* 2 of this act shall have no force or effect in the computation of taxes for taxable years and income years which begin after December 31, 1980; provided, however, that any unused credit may be used beyond that date on the same basis and to the same extent as permitted under the law immediately prior to January 1, 1981.

~~Sections 1 and~~ *Section 1 or 1.5 and Section* 2 of this act shall remain in effect only until January 1, 1981, and as of such date are repealed, unless a later enacted statute, which is chaptered before such date, deletes or extends such date.

SEC. 4. It is the intent of the Legislature, if this bill and Assembly Bill No. 3250 are both chaptered and amend Section 17052.5 of the Revenue and Taxation Code, and this bill is chaptered after Assembly Bill No. 3250, that

Section 17052.5 of the Revenue and Taxation Code, as amended by Section 1 of this act shall remain operative only until the operative date of Assembly Bill No. 3250, and that on the operative date of Assembly Bill No. 3250 Section 17052.5 of the Revenue and Taxation Code as amended by Section 1 of this act be further amended in the form set forth in Section 1.5 of this act to incorporate the changes in Section 17052.5 proposed by Assembly Bill No. 3250. Therefore, Section 1.5 of this act shall become operative only if Assembly Bill No. 3250 is chaptered before this bill and amends Section 17052.5, and in such case Section 1.5 of this act shall become operative on the operative date of Assembly Bill No. 3250.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall be applied in the computation of taxes for taxable years and income years beginning after December 31, 1977.

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Signed

AMENDED IN ASSEMBLY AUGUST 28, 1978

AMENDED IN ASSEMBLY AUGUST 22, 1978

AMENDED IN ASSEMBLY AUGUST 15, 1978

AMENDED IN SENATE JUNE 20, 1978

AMENDED IN SENATE MAY 1, 1978

SENATE BILL No. 2066

Introduced by Senators Rains and Greene

April 3, 1978

An act to add Chapter 7.5 (commencing with Section 25650) to Division 15 of the Public Resources Code, relating to energy, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 2066, as amended, Rains. Energy: coal gasification demonstration program.

(1) Existing law requires the State Energy Resources Conservation and Development Commission to develop and coordinate research and development activities, including participation in large-scale demonstrations of alternative energy systems sited in California.

This bill would make legislative findings to the effect that it is the responsibility of state government to ensure energy production and distribution in a manner consistent with environmental quality and that the exigencies associated with increasing cost and scarcity of traditional fuels has created an urgent need to develop, demonstrate, and commercialize new and advanced energy technologies, including coal gasification. The bill would set out guidelines for developing and funding a coal gasification demonstration project or projects.

(2) Under current law, the commission studies proposals

for, and extensively regulates the site selection and construction of, energy producing facilities.

The bill would revise the requirements for findings and certifications relative to coal gasification combined cycle demonstation projects. ~~The bill would require a regulated public utility applying for a demonstration project to obtain a resolution from the Public Utilities Commission, as specified.~~

(3) This bill would take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Chapter 7.5 (commencing with Section 25650) is added to Division 15 of the Public Resources Code, to read:

CHAPTER 7.5. COAL GASIFICATION

25650. This chapter shall be known and may be cited as the Coal Gasification Generation Act.

25651. (a) The Legislature hereby finds and declares that a reliable supply of energy is essential for rational and efficient business planning and activity, and for the maintenance of high levels of employment, production, and income for the people of the state, and that it is the responsibility of state government to ensure that energy is produced and distributed in a manner consistent with the protection of environmental quality and the general welfare.

(b) The Legislature further finds and declares that uncertainties in the supply and price of traditional fuels, and the increasing knowledge of the environmental hazards of existing conventional technologies, have created an urgent need to develop, demonstrate, and commercialize new and advanced energy technologies, and that coal gasification shows near-term promise as a reliable source of energy.

(c) The Legislature further finds and declares that financial commitment by public agencies, public and private utilities, and private industry for the expeditious development of advanced coal gasification generation technologies depends upon credible and timely demonstrations of the feasibility, efficiency, environmental acceptability, and reliability of those technologies in units of commercial scale.

(d) The Legislature further finds and declares that timely demonstration, development, and commercialization of advanced energy technologies requires expanded authority for direct participation in energy development projects by state government, that there is a statewide need to expedite decisions on developing and financing such projects, that there is a need to establish and consolidate the state's responsibility for participation in such projects, and that all governmental action necessary for implementing this policy and intent be coordinated and expedited by state agencies to the maximum extent possible.

(e) The Legislature further finds that the methods for participation in energy projects provided by this division are in the public interest and serve a public purpose and will promote the health, welfare, and economic security of the citizens of the state.

25652. It is the purpose of this division to carry out and make effective the findings of the Legislature and to that end to aid industry, utilities, and public agencies within the state in providing and establishing coal gasification generation facilities which are needed to accomplish the purposes of this division.

25653. The commission shall evaluate coal gasification generation projects and the Business and Transportation Agency shall evaluate the economic benefits of such projects to the people of the State of California. The commission and the Business and Transportation Agency may call upon any agency, board, or department of the state government or the University of California for aid and assistance in the preparation of plans and specifications and in the development of this technology.

necessary to develop energy projects in the State of California.

25654. The commission is hereby authorized to negotiate, enter into contracts and participate in agreements with any public or private utility, public agency, private research institution or any other party, consistent with the purposes of this division, to support the construction of a coal gasification electric generation commercial determination project in California.

25655. Notwithstanding any other provisions of law, if a person proposes a coal gasification combined cycle demonstration plant for construction in California, no notice of intention shall be required, and the commission shall issue its final decision on the application, as specified in Section 25523, within 12 months after the filing of the application for certification of such facility, or at such later time as is mutually agreed by the commission and the applicant.

Such facility may not exceed 300 megawatts unless the commission, by regulation, authorizes a greater capacity. The provisions of Section 25524 shall not apply to any such powerplant and related facility or facilities.

~~Concurrently with application to the commission for a coal gasification combined cycle demonstration project, a public utility regulated by the Public Utilities Commission shall obtain a resolution from the Public Utilities Commission which approves the expenditure of funds for the project, subject to review of specific expenditures presented in a general rate proceeding.~~

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order to allow for the expeditious development of advanced coal gasification generation technologies, it is necessary that this act take effect immediately.

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AMENDED IN SENATE AUGUST 23, 1978
AMENDED IN SENATE AUGUST 15, 1978
AMENDED IN SENATE AUGUST 7, 1978
AMENDED IN ASSEMBLY JUNE 19, 1978
AMENDED IN ASSEMBLY MAY 10, 1978
AMENDED IN ASSEMBLY APRIL 27, 1978

CALIFORNIA LEGISLATURE—1977-78 REGULAR SESSION

ASSEMBLY BILL No. 2841

Introduced by Assemblymen Mello, Bates, and Calvo
(Coauthors: Senators Roberti and Greene)

March 13, 1978

REFERRED TO COMMITTEE ON LABOR, EMPLOYMENT, AND CONSUMER AFFAIRS

An act to add and repeal Article 3 (commencing with Section 9120) to Part 1 of Division 3 of the Unemployment Insurance Code, and to add *and repeal* Section 25406 to the Public Resources Code, relating to job training for low-income individuals.

LEGISLATIVE COUNSEL'S DIGEST

AB 2841, as amended, Mello (L., E., & C.A.). Job training for low-income individuals.

Existing law provides for various job training programs to assist potentially employable individuals to become job ready and to create employment opportunities.

This bill would require the Employment Development De-

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partment and the Energy Resources Conservation and Development Commission to make a specified study regarding energy employment needs through 1982, and to report their findings to the Legislature by November 30, 1979. It would also require both the department and commission to cooperate with each other by providing information regarding energy and labor requirements with respect to trends in the energy field.

Provisions added by this bill would be repealed on July 31, 1980, unless reenacted.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 3 (commencing with Section 9120) is added to Part 1 of Division 3 of the Unemployment Insurance Code, to read:

Article 3. Training for Energy-Related Jobs

9120. The purpose of this article is to foster conditions which fulfill the needs of employers in the energy sector for trained personnel and to maximize the career opportunities of low-income, economically disadvantaged persons in energy-related employment.

9121. The Legislature hereby finds and declares:

(a) That the rapid implementation of energy conservation and timely development of domestic energy sources is essential to the maintenance of a healthy economy in California.

(b) That the Legislature has devised and adopted certain measures to encourage energy conservation and the use of renewable energy sources in California homes and businesses, which will encourage the expansion of new energy industries in California.

(c) That there is a need to ensure that new or expanding energy industries and small businesses in California are provided with a labor force which is adequately prepared and trained for employment in

these industries and small businesses.

(d) That there is significant potential for the creation of expanded employment opportunities in the energy sector, and that it is the intent of the Legislature that employment in the energy industry be encouraged by the effective use of industry expertise and participation in providing energy skills training and vocational education.

(e) That there is presently a lack of access to employment opportunities in the energy sector for low-income and economically disadvantaged persons, and that it is the intent of the Legislature to concentrate existing employment training and vocational education resources to achieve greater access for low-income and economically disadvantaged persons for employment opportunities in the energy sector.

9122. The Employment Development Department shall:

(a) Compile, to the extent possible within existing resources, a listing and description of training programs for energy-related jobs and comment on the effectiveness of these programs, including the extent to which economically disadvantaged persons are served.

(b) Review and utilize, to the extent possible, data provided by the Energy Resources Conservation and Development Commission on energy trends in power generation, energy conservation, and use of alternative technologies. The department shall further review available estimates of direct labor requirements expected due to energy trends in power generation, energy conservation, and use of alternative technologies.

(c) Develop information on the job skills in energy related industries currently in demand and expected to be in demand in 1980, 1981, and 1982. The information developed shall, to the extent possible, identify the skills in demand by energy source and labor market area. The information shall be developed to the extent possible within existing resources and available data, including data prescribed by Section 25406 of the Public Resources Code, except that if federal funds become available and

are necessary to complete this task, such funds may be utilized.

9123. The Employment Development Department shall report to the Legislature by November 30, 1979, the findings from the tasks required pursuant to subdivisions (a) and (c) of Section 9122. The Employment Development Department shall forward two copies of these reports to the regional office of the United States Department of Labor and request such office to disseminate the same to local prime sponsors, public and private nonprofit agencies, and other agencies which it deems appropriate.

9124. The Employment Development Department shall utilize the information derived from the requirements of Section 9122 to assist in the assessment and planning of training programs the department funds for energy-related jobs. The information shall be available to the maximum extent feasible to applicants for employment services, to operators of employment and training programs, and to other persons who are deemed to benefit from such information.

9125. This article shall remain in effect only until July 31, 1980, and as of such date is repealed, unless a later enacted statute, which is chaptered before July 1, 1980, deletes or extends such date.

SEC. 2. Section 25406 is added to the Public Resources Code, to read:

25406. The Energy Resources Conservation and Development Commission shall cooperate, to the extent possible, with the Employment Development Department and provide that department with information on energy trends in power generation, energy conservation, and use of alternative technologies, as well as provide available estimates of labor requirements on these trends.

This section shall remain in effect only until July 31, 1980, and as of such date is repealed, unless a later enacted statute, which is chaptered before July 1, 1980, deletes or extends such date.

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AMENDED IN SENATE AUGUST 28, 1978

AMENDED IN SENATE AUGUST 14, 1978

AMENDED IN ASSEMBLY MAY 17, 1978

CALIFORNIA LEGISLATURE—1977-78 REGULAR SESSION

ASSEMBLY BILL No. 2976

Introduced by Assemblyman Mello

March 20, 1978

REFERRED TO COMMITTEE ON RESOURCES, LAND USE, AND ENERGY

An act to add and repeal Section 25611 of the Public Resources Code, relating to wind energy, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2976, as amended, Mello (Res., L.U., & E.). Energy resources: wind energy program.

Under the existing law, the State Energy Resources Conservation and Development Commission is required to develop and coordinate a program of research and development in alternate sources of energy supply.

This bill would require the commission to implement a state wind energy program to speed commercialization of wind electric systems, as defined, at appropriate locations throughout the state. It would designate the tasks which ~~shall be included in~~ *would be required to be accomplished during* the first and *included in the* succeeding years of the program. The bill would require the commission to report to the Legislature, as specified, on the progress in the implementation of such provisions. It would provide that such provisions shall

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remain in effect only until January 1, 1984.

This bill would appropriate $800,000 from the State Energy Resources Conservation and Development Reserve Account in the General Fund to the commission for purposes of carrying out the provisions of the bill.

Vote: ⅔. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) That wind energy in California is abundant. The technology to convert wind to electricity is proven and the economics of electrical generation from wind are promising.

(b) That wind should be an important element of the state's energy supply mix and that 10 percent of California's electricity could be supplied cost effectively by wind energy by the year 2000. As stated in the 1977 Biennial Report of the State Energy Resources Conservation and Development Commission, 500 megawatts of wind electricity could be on line in California in the middle 1980's, given an aggressive program of wind exploration, demonstration of wind technologies, and development of wind turbine models suited to California conditions.

(c) The lack of quantifiable wind-site data, the lack of operations testing of existing wind turbine designs, and the lack of appropriate large-scale wind electric turbine prototypes for conditions in California are limiting the statewide implementation of wind electric systems.

(d) California needs a wind energy program which will result in siting of large-scale wind electric systems owned and operated by private and public utilities throughout the state.

SEC. 2. Section 25611 is added to the Public Resources Code, to read:

25611. (a) For the purposes of this section:

(1) "Large-scale wind electric turbine" means any

wind device including blades, tower, and turbine, which uses wind as the primary source of energy to generate electricity and has a rated electrical generating capacity of at least 250 kilowatts.

(2) "Prospecting" means the initial mapping of wind resources and general indication of the wind potential of different locations.

(3) "Validation" means the verification of wind resources and wind potential at a given site by extensive instrumentation and testing of that site.

(4) "Wind electric system" means a group of large-scale wind electric turbines which are sited together in order to take maximum advantage of wind resources in a particular location.

(5) "Wind energy" means electricity generated by any device which uses wind as its primary source of power.

(b) The commission shall implement a state wind energy program to speed commercialization of wind electric systems at appropriate locations throughout the state. The goal of the program shall be to obtain 10 percent of the state's electricity from wind by the year 2000. It is the intent of the Legislature to encourage public- and investor-owned utility participation, and also private sector participation in this program, to the greatest extent possible.

(c) The program ~~may~~ *shall* include, but shall not be limited to, the following tasks:

(1) An assessment of wind resources in the state, including: prospecting for sites with commercial wind potential; validation of sites; and establishment of a wind information center to gather, analyze, map, and centralize wind information from all available sources and to disseminate such information to all potential users.

(2) Operations testing of wind electric systems using currently available wind electric turbines, including: selection and acquisition of one southern California and one northern California site; design and construction of test facilities at selected sites; and selection, ordering, and performance testing of currently available ~~large scale~~ wind electric turbines.

(3) The *research and* development of large scale prototype wind electric turbines to meet California requirements.

~~(d) The first year of the program may include, but shall not be limited to, the following tasks:~~

(d) At least the following tasks shall be accomplished during the first year:

(1) Procurement and testing of one currently available medium scale wind electric turbine not to exceed 150 kilowatts.

(2) Establishment of the wind information center.

(3) Prospecting for sites in California with commercial wind potential.

(e) The commission shall report to the Legislature on the progress in the implementation of the provisions of this section on or before January 1, 1980, January 1, 1982, and January 1, 1984.

(f) This section shall remain in effect only until January 1, 1984, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1984, deletes or extends such date.

SEC. 3. Notwithstanding the provisions of Section 25804 of the Public Resources Code, the sum of eight hundred thousand dollars ($800,000) is hereby appropriated from the State Energy Resources Conservation and Development Reserve Account in the General Fund to the ~~commission~~ *State Energy Resources Conservation and Development Commission* for the purpose of carrying out the provisions of Section 25611 of the Public Resources Code.

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Assembly Bill No. 3539

Passed the Assembly June 22, 1978

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Chief Clerk of the Assembly

Passed the Senate August 24, 1978

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 1978, at _____ o'clock ___ M.

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Private Secretary of the Governor

CHAPTER _____

An act to add Section 25406 to the Public Resources Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 3539, Mello. Energy surveys.

Existing law requires the State Energy Resources Conservation and Development Commission to conduct an ongoing assessment of the opportunities and constraints presented by all forms of energy, to continuously carry out studies, research projects, data collection, and other activities required to assess the nature, extent, and distribution of energy resources to meet the needs of the state, and to submit to the Public Utilities Commission and to any publicly owned electric utility, recommendations designed to reduce wasteful, unnecessary, or uneconomic energy consumption resulting from certain practices.

This bill would require the State Energy Resources Conservation and Development Commission to undertake a study in order to develop a program, including specified elements, to promote and increase the use of energy surveys, as defined, and to ensure the quality and cost effectiveness of energy surveys to the public. The commission would be required to submit such study and program to the Governor and to the Legislature not later than December 31, 1979.

The people of the State of California do enact as follows:

SECTION 1. Section 25406 is added to the Public Resources Code, to read:

25406. (a) The commission shall undertake a study in order to develop a program to promote and increase the use of energy surveys and to ensure the quality and cost effectiveness of energy surveys to the public.

(b) The goal of the program is to achieve a 20-percent improvement in energy efficiency in the nonresidential sector by 1985 through expanded use of energy surveys.

(c) The study and the resulting program shall be

developed with the assistance and cooperation of the Public Utilities Commission, publicly and privately owned utilities, the Department of Consumer Affairs, and businesses and firms engaged in energy surveying.

(d) The program shall include, but not be limited to, recommendations for all of the following:

(1) Standards and criteria for assessing the effectiveness and the cost effectiveness of energy surveys.

(2) Competency standards, educational requirements, and, if necessary, licensure of persons engaged in performing energy surveys, including private companies, utilities, and public agencies which provide energy surveying services to nonresidential energy users.

(3) Utilities' actions which will increase the use and implementation of effective energy surveys.

(4) Procedures for assessing the thoroughness, quality, effectiveness, and cost effectiveness of energy surveys undertaken by public utilities as part of their conservation programs, and procedures for verifying that utility energy surveys are being properly implemented.

(5) Incentives to businesses and industries to undertake energy surveys, and to implement the actions recommended by such surveys.

(6) Legislative actions and executive actions, including those of the commission and of the Public Utilities Commission, to promote the use of energy surveys and to ensure the quality and cost effectiveness of such surveys.

(e) For the purposes of this section, "energy survey" means the process of identifying energy use and energy waste in a facility, and recommending actions which will increase the energy efficiency of that facility.

(f) The commission shall submit the study and program required by this section to the Governor and to the Legislature not later than December 31, 1979.

Signed

AMENDED IN ASSEMBLY AUGUST 28, 1978

AMENDED IN ASSEMBLY AUGUST 22, 1978

AMENDED IN ASSEMBLY AUGUST 15, 1978

AMENDED IN ASSEMBLY AUGUST 7, 1978

AMENDED IN ASSEMBLY JUNE 22, 1973

AMENDED IN SENATE MAY 10, 1978

SENATE BILL No. 1805

Introduced by The Joint Committee on the State's Economy (Senator Holmdahl, Chairman, Senators Marks, Roberti, Russell; Assemblyman Keysor, Vice-Chairman, Assemblymen Hallett, Hayden, McAlister and Robinson); and Senator Alquist

(Coauthors: Assemblymen Dannemeyer, Ellis, Goggin, Gualco, Hayden, Kapiloff, Keene, Levine, Mello, Rosenthal, Wornum, Wray, Bates, and Calvo)

March 20, 1978

An act to amend Sections 25503 and 25524 of, to add Section 25134 to, and to add Section 25540.6 to, the Public Resources Code, to amend Section 218 of the Public Utilities Code, and to amend Section 6353 of the Revenue and Taxation Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1805, as amended, Holmdahl. Energy: thermal powerplants.

(1) Under existing law, any person proposing to construct a thermal powerplant on a site is required to submit a notice of intention to file an application for the certification of such site with the State Energy Resources Conservation and Development Commission. Every notice is required to contain

at least 3 proposed alternative sites.

This bill would provide that no notice of intention shall be required for a thermal powerplant, and the commission shall issue its final decision on the application within 12 months after the filing of the application for certification of such facility, or at such later time as is mutually agreed by the commission and the applicant, if a person proposes to construct a thermal powerplant, not exceeding 300 megawatts unless a greater capacity is authorized by commission regulation, which shall employ cogeneration technology, a thermal powerplant for which only 1 site is feasible, a thermal powerplant with a specified generating capacity, or a thermal powerplant designed to develop or demonstrate new technologies, or if a person proposes a modification of an existing facility.

This bill would define electrical corporation, within the meaning of the provisions of the Public Utilities Code, to not include a corporation or person employing cogeneration technology solely for generation of electricity for its own use or its tenants or for sale to an electrical corporation or state or local public agency. Further, exhaust steam, waste steam, heat, or resultant energy produced in connection with cogeneration technology, would be exempted from state sales taxes.

The bill would define cogeneration technology for purposes of the above provisions.

(2) Under existing law, if modification of an existing power facility is proposed, the commission may require that alternative methods of providing additional service or making the proposed modification be specified in the notice.

This bill would repeal such provision of existing law.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 25134 is added to the Public Resources Code, to read:

25134. "Cogeneration technology" means the use for the generation of electricity of exhaust steam, waste steam, heat, or resultant energy from an industrial, commercial, or manufacturing plant or process, or the

use of exhaust steam, waste steam, or heat from a thermal powerplant for an industrial, commercial, or manufacturing plant or process. For purposes of this division, the industrial, commercial, or manufacturing plant or process shall not be considered a thermal powerplant or portion thereof. Cogeneration technology shall not include steam or heat developed solely for electrical power generation.

SEC. 2. Section 25503 of the Public Resources Code is amended to read:

25503. Each notice of intention to file an application shall contain at least three alternative sites and related facilities, at least one of which shall not be located in whole or in part in the coastal zone. In addition, the alternative sites and related electrical facilities may be proposed from an inventory of sites which have previously been approved by the commission in a notice of intent or may be proposed from sites previously examined.

SEC. 3. Section 25524 of the Public Resources Code is amended to read:

25524. The commission shall not certify any facility contained in the application, unless its findings with respect to subdivision (f) of Section 25523 are in the affirmative.

SEC. 4. Section 25540.6 is added to the Public Resources Code, to read:

25540.6. Notwithstanding any other provisions of law, if a person proposes any of the following, no notice of intention shall be required, and the commission shall issue its final decision on the application, as specified in Section 25523, within 12 months after the filing of the application for certification of such powerplant and related facility or facilities, or at such later time as is mutually agreed by the commission and the applicant:

(a) A thermal powerplant which will employ cogeneration technology. Such facility may not exceed 300 megawatts unless the commission, by regulation, authorizes a greater capacity.

(b) A modification of an existing facility.

(c) A thermal powerplant which it is only technologically or economically feasible to site at or near the energy source.

(d) A thermal powerplant with a generating capacity of up to 100 megawatts.

(e) A thermal powerplant designed to develop or demonstrate technologies which have not previously been built or operated on a commercial scale. Such research, development, or commercial demonstration project may include, but not be limited to, use of renewable or alternative fuels, improvements in energy conversion efficiency, or use of advanced pollution control systems. Such facility may not exceed 300 megawatts unless the commission, by regulation, authorizes a greater capacity. The provisions of Section 25524 shall not apply to any such powerplant and related facility or facilities.

SEC. 5. Section 218 of the Public Utilities Code is amended to read:

218. "Electrical corporation" includes every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property alone solely for his own use or the use of his tenants and not for sale to others.

Electrical corporation shall not include a corporation or person employing cogeneration technology solely for the generation of electricity for its own use or the use of its tenants or for sale to an electrical corporation or state or local public agency, but not for sale to others, unless such corporation or person is otherwise an electrical corporation.

SEC. 6. Section 6353 of the Revenue and Taxation Code is amended to read:

6353. There are exempted from the taxes imposed by this part the gross receipts from the sales, furnishing, or service of and the storage, use, or other consumption in this state of gas, electricity, and water when delivered to consumers through mains, lines, or pipes, and water

when sold to an individual in bulk quantities of 50 gallons or more for general household use in his residence if the residence is located in an area not serviced by mains, lines or pipes, and of exhaust steam, waste steam, heat, or resultant energy, produced in connection with cogeneration technology, as defined in Section ~~25133~~ *25134* of the Public Resources Code.

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Signed

AMENDED IN ASSEMBLY AUGUST 23, 1978

AMENDED IN ASSEMBLY AUGUST 15, 1978

AMENDED IN ASSEMBLY AUGUST 8, 1978

AMENDED IN SENATE MAY 9, 1978

SENATE BILL No. 1859

Introduced by Senators Alquist and Russell

March 22, 1978

An act to amend Section 66645 of the Government Code, to amend Sections 25300, 25304, 25305, 25308, 25309, 25507, 25509, 25510, 25511, 25512, 25513, 25514, 25514.5, 25515, 25516, 25516.5, 25523, 25524, 25531, and 30413 of, and to add Sections 25323, 25509.5, 25512.5, and 25516.6 to, the Public Resources Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1859, as amended, Alquist. Energy resources: conservation and development.

(1) The Warren-Alquist State Energy Resources Conservation and Development Act provides for, among other things, planning and forecasting of energy resources, and for site certification of designated powerplants and related facilities by the State Energy Resources Conservation and Development Commission.

Under the act, every electric utility in the state is required to send the commission 5-, 10-, and 20-year forecasts or assessments of loads and resources for its service area which the commission is required to review and evaluate.

This bill would delete the requirement for a 10-year forecast and, instead, require a 12-year forecast.

(2) Under the act, the commission is required to send the Governor and the Legislature a comprehensive report or

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energy supply, demand, and conservation every 2 years.

This bill would revise the criteria for such reports.

(3) Under the act, the commission is required to evaluate and certify sites and related facilities supplying electric power. When a notice of intention to file an application is received by the commission, it is required to conduct public informational hearings in the county of the proposed site and related facilities and to subsequently prepare and make public a preliminary report on the notice of intention to file an application prior to the final report of the commission.

This bill would delete such requirements with respect to conducting public informational hearings and preparing a preliminary report and, instead, would require the commission to conduct public information presentations in the county or counties of the proposed sites and related facilities within 45 days after filing of a notice of intention. It would require the commission to commence nonadjudicatory hearings 15 days after conclusion of the public informational presentations for the purpose of identification of issues and other matters, to prepare a summary and hearing order, which specifies dates for an adjudicatory hearing, and to carry out adjudicatory hearings. The bill would require the commission to prepare its final report after the conclusion of the adjudicatory hearings, but no later than 300 days after the filing of the notice of intention.

The bill would provide that the commission is not authorized, as specified, to mandate a specific supply plan for any utility.

The bill would require the commission to issue its written decision on the notice of intention not later than 12 months after filing of the notice of intention unless a later time is mutually agreed upon by the commission and the applicant.

(4) The bill would make related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 66645 of the Government Code is amended to read:

66645. (a) In addition to the provisions of Sections 25302, 25500, 25507, 25508, 25514, 25516.1, 25519, 25523, and 25526 of the Public Resources Code, the provisions of this section shall apply to the commission and the State Energy Resources Conservation and Development Commission with respect to matters within the statutory responsibility of the latter.

(b) After one or more public hearings, and prior to January 1, 1979, the commission shall designate those specific locations within the Suisun Marsh, as defined in Section 29101 of the Public Resources Code, or the area of jurisdiction of the commission, where the location of a facility, as defined in Section 25110 of the Public Resources Code, would be inconsistent with this title or Division 19 (commencing with Section 29000) of the Public Resources Code. The following locations, however, shall not be so designated: (1) any property of a utility that is used for such a facility or will be used for the reasonable expansion thereof; (2) any site for which a notice of intention to file an application for certification has been filed pursuant to Section 25502 of the Public Resources Code prior to January 1, 1978, and is subsequently approved pursuant to Section 22516 of the Public Resources Code; and (3) the area east of Collinsville Road that is designated for water-related industrial use on the Suisun Marsh Protection Plan Map. Each designation made pursuant to this section shall include a description of the boundaries of such locations, the provisions of this title or Division 19 (commencing with Section 29000) of the Public Resources Code with which they would be inconsistent, and detailed findings concerning the significant adverse impacts that would result from development of a facility in the designated area. The commission shall consider the conclusions, if any, reached by the State Energy Resources Conservation and Development Commission in its most recently promulgated comprehensive report issued pursuant to Section 25309 of the Public Resources Code. The commission also shall request the assistance of the State Energy Resources Conservation and Development

Commission in carrying out the requirements of this section. The commission shall transmit a copy of its report prepared pursuant to this subdivision to the State Energy Resources Conservation and Development Commission.

(c) Every two years the commission shall revise and update the designations specified in subdivision (b) of this section. The provisions of subdivision (b) of this section shall not apply to any sites and related facilities specified in any notice of intention to file an application for certification filed pursuant to Section 25502 of the Public Resources Code prior to designation of additional locations made by the commission pursuant to this subdivision.

(d) Whenever the State Energy Resources Conservation and Development Commission exercises its siting authority and undertakes proceedings pursuant to the provisions of Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code with respect to any thermal powerplant or transmission line to be located, in whole or in part, within the Suisun Marsh or the area of jurisdiction of the commission, the commission shall participate in such proceedings and shall receive from the State Energy Resources Conservation and Development Commission any notice of intention to file an application for certification of a site and related facilities within the Suisun Marsh or the area of jurisdiction of the commission. The commission shall analyze each notice of intention and, prior to commencement of the hearings conducted pursuant to Section 25513 of the Public Resources Code, shall forward to the State Energy Resources Conservation and Development Commission a written report on the suitability of the proposed site and related facilities specified in such notice. The commission's report shall contain a consideration of, and findings regarding, the following:

(1) If it is to be located within the Suisun Marsh, the consistency of the proposed site and related facilities, with the provisions of this title and Division 19 (commencing with Section 29000) of the Public

Resources Code, the policies of the Suisun Marsh Protection Plan (as defined in Section 29113 of the Public Resources Code) and the certified local protection program (as defined in Section 29111 of the Public Resources Code) if any.

(2) If it is to be located within the area of jurisdiction of the commission, the consistency of the proposed site and related facilities with the provisions of this title and the San Francisco Bay Plan.

(3) The degree to which the proposed site and related facilities could reasonably be modified so as to be consistent with the provisions of this title, Division 19 (commencing with Section 29000) of the Public Resources Code, the Suisun Marsh Protection Plan, or the San Francisco Bay Plan.

(4) Such other matters as the commission deems appropriate and necessary to carry out the provisions of Division 19 (commencing with Section 29000) of the Public Resources Code.

SEC. 1.5. Section 25300 of the Public Resources Code is amended to read:

25300. Every electric utility in the state shall prepare and transmit to the commission on or before March 1, 1976, and every two years thereafter, a report specifying 5-, 12-, and 20-year forecasts or assessments of loads and resources for its service area. The report shall set forth the facilities which, as determined by the electric utility, will be required to supply electric power during the forecast or assessment periods. The report shall be in a form specified by the commission and shall include all of the following:

(a) A tabulation of estimated peak loads, resources, and reserve margins for each year during the 5- and 12-year forecast or assessment periods, and an estimate of peak load, resources, and reserve margins for the last year in the 20-year forecast or assessment period.

(b) A list of existing electric generating plants in service, with a description of planned and potential generating capacity at existing sites.

(c) A list of facilities which will be needed to serve

additional electrical requirements identified in the forecasts or assessments, the general location of such facilities, and the anticipated types of fuel to be utilized in the proposed facilities.

(d) A description of additional system capacity which might be achieved through, among other things, improvements in (1) generating or transmission efficiency, (2) importation of power, (3) interstate or interregional pooling, and (4) other improvements in efficiencies of operation.

(e) An estimation of the availability and cost of fuel resources for the 5-, 12-, and 20-year forecast or assessment periods with a statement by the electric utility describing firm commitments for supplies of fuel required during the forecast or assessment periods.

(f) An annual load duration curve and a forecast of anticipated peak loads for each forecast or assessment period for the residential, commercial, industrial, and such other major demand sectors in the service area of the electric utility as the commission shall determine.

(g) A description of projected population growth, urban development, industrial expansion, and other growth factors influencing increased demand for electric energy and the bases for such projections.

SEC. 2. Section 25304 of the Public Resources Code is amended to read:

25304. The commission shall review and evaluate the electric utilities' forecasts of loads and resources, and the comments of the Public Utilities Commission on such forecasts, in relation to the population growth estimates prepared by the Department of Finance, Population Research Unit, and in relation to statewide and regional land use, transportation, and economic development programs and forecasts. The commission shall also examine the implications of the forecast level of loads and resources on, among other things, all of the following:

(a) Critical environmental and other resources of the state, including air and water quality, coastal, natural, and other unique areas, and energy resources.

(b) Public health and safety, general welfare, and the

state's economy.

(c) Capital requirements for new facilities and costs to consumers of electricity and other forms of energy.

(d) Other significant factors which relate to the provision of electrical energy in the amounts and in the manner proposed by the electric utilities.

The commission shall also identify reasonable alternative technologies to those proposed by the electric utilities for consideration pursuant to subdivisions (j) and (k) of Section 25309.

SEC. 3. Section 25305 of the Public Resources Code is amended to read:

25305. Within six months after receipt of the reports specified in Section 25300, the commission shall prepare and distribute a preliminary report, setting forth its findings and conclusions regarding the electric utilities' forecasts. The report shall be based upon information and views presented in the comments received under Section 25303 and the commission's independent analysis, and shall contain all of the following:

(a) The commission's evaluation of the probable service area and statewide, environmental, and economic impact and the health and safety aspect of constructing and operating the facilities proposed by the electric utilities and a description of the measures considered necessary by the commission to avoid or ameliorate any adverse impacts.

(b) Identification of reasonable alternative technologies to those proposed by the electrical utilities for consideration pursuant to subdivisions (j) and (k) of Section 25309.

(c) After consideration of the factors listed in subdivision (b) of Section 25309, including reasonable conservation, load management, or other demand reducing measures, the anticipated 5- and 12-year level of demand for energy to be utilized as a basis for certification of facilities, and an anticipated 20-year level of demand for energy to be utilized as a basis for recommending energy conservation policies and actions.

(d) Statement, on a statewide and service area basis, of

the probable capacity additions consistent with the anticipated level of demand.

(e) An analysis and evaluation of the means by which the projected annual rate of demand growth of electrical energy may be reduced, together with an estimate of the amount of such reduction to be obtained by each of the means analyzed and evaluated, including a statement of the impact of such reduction on the factors reviewed by the commission set forth in Section 25304 and subdivision (a) of this section.

SEC. 4. Section 25308 of the Public Resources Code is amended to read:

25308. Within 12 months after receipt of the reports required in Section 25300, the commission shall include within its biennial report to the Governor and the Legislature, as specified in Section 24309, its final report on the electric utilities' forecasts and on the commission's independent analyses and evaluations, as specified in Section 25305.

SEC. 5. Section 25309 of the Public Resources Code is amended to read:

25309. Beginning January 1, 1977, and every two years thereafter, the commission shall transmit to the Governor and the Legislature a comprehensive report designed to identify emerging trends related to energy supply, demand, and conservation and public health and safety factors, to specify the level of statewide and service area electrical energy demand for each year in the forthcoming 5-, 12-, and 20-year periods, and to provide the basis for state policy and actions in relation thereto, including, but not limited to, approval of new sites for additional facilities. The report shall include, but not be limited to, all of the following:

(a) An overview, looking 20 years ahead, of statewide growth and development as they relate to future requirements for energy, including patterns of urban metropolitan expansion, statewide and service area economic growth, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the

commission, will significantly affect energy consumption and need to be considered in formulating state energy policy and programs.

(b) The level of statewide and service area electrical energy demand for the forthcoming 5- and 12-year forecast or asssessment period which, in the judgment of the commission, will reasonably balance requirements of state and service area growth and development, protection of public health and safety, preservation of environmental quality, maintenance of a sound economy, and conservation of energy and resources reasonably expected to occur. Such 5- and 12-year forecasts or assessments established by the commission shall serve as the basis for planning and certification of facilities proposed by electric utilities. Conservation, load management, or other demand reducing measures reasonably expected to occur shall be explicitly taken into account only in the determination pursuant to the provisions of this subdivision, of the level of demand, and shall not be considered as alternatives to a proposed facility during the siting process specified in Chapter 6 (commencing with Section 25500) of this division.

(c) Statement, on a statewide and service area basis, of the probable capacity additions consistent with the level of demand determined by the commission pursuant to subdivision (b) of this section.

(d) The anticipated level of statewide and service area electrical energy demand for 20 years, which shall serve as the basis for recommendations by the commission to the Governor, the Legislature, and other appropriate public and private agencies in the following:

(1) Demand-reducing policies.

(2) Conservation of energy.

(3) Development of potential sources of energy.

(4) Other policies and actions designed to affect the rate of growth in demand for electrical energy.

(e) A list, including maps, of existing electrical power generating sites, indicating those where the commission has determined that expansion is feasible within the forthcoming 12-year period.

(f) A list, including maps, of possible areas appropriate for additional electrical generating sites, including the generating capacity to be installed at the sites and the type of fuel and other general characteristics of the facilities which, as determined by the commission, will be required to meet the 12-year level of electrical energy demand established by the commission as specified in subdivision (b) of this section.

(g) Based upon the commission's 20-year forecasts or assessment of growth trends in energy consumption and production, identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including, but not limited to, the costs of electricity and other forms of energy to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas.

(h) Assessment of the energy resources available to the state, including among others, fossil fuels and nuclear, solar, geothermal, cogeneration, and purchased power resources and power pooling; assessment of the potential of, and examination of the availability of, commercially developable fuels, including imported fuels, during the forthcoming 12- and 20-year periods; and recommendations regarding measures to be applied to conserve energy and fuels.

(i) An analysis and evaluation of the means by which the projected annual rate of demand growth of energy may be reduced, together with an estimate of the amount of such reduction to be obtained by each of the means analyzed and evaluated, including, but not limited to, a statement of the impact of such reduction on the factors reviewed by the commission set forth in Section 25304 and subdivision (a) of this section.

(j) The commission's determination, after generic proceedings, of the commercial availability of technologies for the generation of electrical energy or capacity, and a list of the issues which may affect the ability to employ such technologies at a proposed site.

(k) The commission's determination, after generic

proceedings, of nongeneration technologies which are available or are reasonably expected to become available for use to reduce demand determined pursuant to subdivision (b) of this section, and the issues which may affect the ability to employ such technologies to reduce demands.

(*l*) An indication of those technologies which merit continued consideration or support in the commission's long range assessment efforts and its research and development program. The report shall indicate the status of the commission's ongoing research and development program directed to energy supply, demand, and conservation and describe the new projects which have been proposed for funding as specified in Chapter 7 (commencing with Section 25600) of this division.

(m) Description of the commission's adopted plan for emergency measures to be applied in the event of impending serious shortage of electrical and other forms of energy as provided in Chapter 8 (commencing with Section 25700) of this division.

(n) Recommendations to the Governor and the Legislature for administrative and legislative actions based on the results of commission studies and evaluations as specified in this section and in Chapter 5 (commencing with Section 25400).

(o) A list, including maps, of sites and potential multiple-facility sites which have been found to be acceptable by the commission pursuant to Sections 25516 and 25516.5, including the generating capacity to be installed at the site and the type of fuel and other general characteristics of the facilities at such sites.

SEC. 6. Section 25323 is added to the Public Resources Code, to read:

25323. Nothing in this division shall authorize the commission in the performance of its analytical, planning, siting, or certification responsibilities to mandate a specified supply plan for any utility.

SEC. 7. Section 25507 of the Public Resources Code is amended to read:

25507. (a) If any alternative site and related facility proposed in the notice is proposed to be located, in whole or in part, within the coastal zone, the commission shall transmit a copy of the notice to the California Coastal Commission. The California Coastal Commission shall analyze the notice and prepare the report and findings prescribed by subdivision (d) of Section 30413 prior to commencement of hearings pursuant to Section 25513.

(b) If any alternative site and related facility proposed in the notice is proposed to be located, in whole or in part, within the Suisun Marsh, or within the jurisdiction of the San Francisco Bay Conservation and Development Commission, the commission shall transmit a copy of the notice to the San Francisco Bay Conservation and Development Commission. The San Francisco Bay Conservation and Development Commission shall analyze the notice and prepare the report and findings prescribed by subdivision (d) of Section 66645 of the Government Code prior to commencement of hearings pursuant to Section 25513.

SEC. 8. Section 25509 of the Public Resources Code is amended to read:

25509. Within 45 days of the filing of the notice, the commission shall conduct public informational presentations in the county or counties in which the proposed sites and related facilities are located. The place of such public informational presentations shall be as close as practicable to the proposed sites. Such presentations shall be for the purpose of setting forth the electrical demand basis for the proposed site and related facility and providing knowledge and understanding of the proposed facilities and sites.

SEC. 9. Section 25509.5 is added to the Public Resources Code, to read:

25509.5. No sooner than 15 days after the conclusion of the presentations pursuant to Section 25509, the commission shall commence nonadjudicatory hearings. Such hearings shall identify issues for adjudication in hearings pursuant to Section 25513, issues which may be eliminated from further consideration in the notice

proceedings, and issues which should be deferred to the certification proceeding. Any person may participate to the extent deemed reasonable and relevant by the presiding member of the commission in any such hearing. In scheduling such hearings the presiding member shall confer with the public adviser to provide that the hearing dates and locations are so convenient as possible for interested parties and the public. Such hearings shall be conducted in order to accomplish all of the following purposes:

(a) To set forth the electrical demand basis for the proposed site and related facility.

(b) To provide knowledge and understanding of proposed facilities and sites.

(c) To obtain the views and comments of the public, parties, and concerned governmental agencies on the environmental, public health and safety, economic, social, and land use impacts of the facility at the proposed ~~sites. In scheduling such hearings the presiding member shall confer with the public adviser to provide that the hearing dates and locations maximize the convenience to interested parties and the public.~~ *sites.*

(d) To solicit information regarding reasonable alternative sources of the electric generating capacity or energy to be provided by alternative sites and related facilities, or combinations thereof, which will better carry out the policies and objectives of this division.

SEC. 10. Section 25510 of the Public Resources Code is amended to read:

25510. After the conclusion of such hearings, and no later than 150 days after filing of the notice, the commission shall prepare and make public a summary and hearing order on the notice of intention to file an application. The commission may include within the summary and hearing order any other alternatives proposed by the commission or presented to the commission at a public hearing prior to preparation of the summary and hearing order. The summary and hearing order shall be published and made available to the public and to interested local, regional, state, and federal

agencies.

SEC. 10.5. Section 25511 of the Public Resources Code is amended to read:

25511. The commission shall review the factors related to safety and reliability of the facilities at each of the alternative sites designated in the notice. In addition to other information requested of the applicant, the commission shall, in determining the appropriateness of sites and related facilities, require detailed information on proposed emergency systems and safety precautions, plans for transport, handling and storage of wastes and fuels, proposed methods to prevent illegal diversion of nuclear fuels, special design features to account for seismic and other potential hazards, proposed methods to control density of population in areas surrounding nuclear powerplants, and such other information as the commission may determine to be relevant to the reliability and safety of the facility at the proposed sites. The commission shall analyze the information provided by the applicant, supplementing it, where necessary, by onsite investigations and other studies. The commission shall determine the adequacy of measures proposed by the applicant to protect public health and safety, and shall include its findings in the final report required by Section 25514.

SEC. 11. Section 25512 of the Public Resources Code is amended to read:

25512. The summary and hearing order shall be based upon the record of the proceeding including statements or documents presented during any hearing or informational presentation on the notice, the comments transmitted by the Public Utilities Commission and local, regional, state, and federal agencies and the public to the commission, and independent studies conducted by the commission's staff.

The summary and hearing order shall:

(a) Identify those issues for consideration in hearings pursuant to Section 25513.

(b) Identify those issues which may be eliminated from further consideration in the notice of intention

proceedings.

(c) Identify those issues which should be deferred to the certification proceeding.

(d) Contain proposed findings on matters relevant to the provisions of Section 25514.

(e) Specify dates for the adjudicatory hearings.

SEC. 12. Section 25512.5 is added to the Public Resources Code, to read:

25512.5. Within 15 days of the publication of the summary and hearing order, a copy will be distributed to any person who requests such copy.

SEC. 13. Section 25513 of the Public Resources Code is amended to read:

25513. No earlier than 30 days after distribution of the summary and hearing order, the commission shall commence adjudicatory hearings pursuant to the hearing order.

SEC. 14. Section 25514 of the Public Resources Code is amended to read:

25514. After conclusion of the hearings held pursuant to Section 25513 and no later than 300 days after filing of the notice, a final report shall be prepared and distributed. The final report shall include, but not be limited to, all of the following:

(a) The findings and conclusions of the commission regarding the conformity of alternative sites and related facilities designated in the notice or considered in the notice of intention proceeding with both of the following:

(1) The 12-year forecast of statewide and service area electric power demands adopted pursuant to subdivision (b) of Section 25309, except as provided in Section 25514.5.

(2) Applicable local, regional, state, and federal standards, ordinances, and laws, including any long-range land use plans or guidelines adopted by the state or by any local or regional planning agency, which would be applicable but for the exclusive authority of the commission to certify sites and related facilities; and the standards adopted by the commission pursuant to Section 25216.3.

(b) Any findings and comments submitted by the California Coastal Commission pursuant to Section 25507 and subdivision (d) of Section 30413.

(c) Any findings and comments submitted by the San Francisco Bay Conservation and Development Commission pursuant to Section 25507 of this code and subdivision (d) of Section 66645 of the Government Code.

(d) The commission's findings on the acceptability and relative merit of each alternative siting proposal designated in the notice or presented at the hearings and reviewed by the commission. The specific findings of relative merit shall be made pursuant to the provisions of Sections 25502 to 25516, inclusive. In its findings on any alternative siting proposal, the commission may specify modification in the design, construction, location, or other conditions which will meet the standards, policies, and guidelines established by the commission.

(e) Findings and conclusions with respect to the safety and reliability of the facility or facilities at each of the sites designated in the notice, as determined by the commission pursuant to Section 25511, and any conditions, modifications, or criteria proposed for any site and related facility proposal resulting from such findings and conclusions.

SEC. 15. Section 25514.5 of the Public Resources Code is amended to read:

25514.5. In considering the acceptability of a site proposed to accommodate ultimately additional power-generating capacity, the commission, in determining, pursuant to Sections 25514 and 25512, the conformity of the facilities proposed in the notice with the 12-year forecast of statewide and service area electric power demands adopted pursuant to subdivision (b) of Section 25309, shall base its determination only on such initial facilities as are proposed for operation within the forthcoming 12-year period. Additional facilities projected to be operating at the site at a time beyond the forthcoming 12-year period shall not be considered in the determination of conformity with the electric power

demand forecast.

SEC. 16. Section 25515 of the Public Resources Code is amended to read:

25515. No later than 30 days after the final report is distributed, a hearing or hearings on the final report shall be commenced. Such hearings shall be concluded within 15 days of their commencement.

SEC. 17. Section 25516 of the Public Resources Code is amended to read:

25516. The approval of the notice by the commission shall be based upon findings pursuant to Section 25514. The notice shall not be approved unless the commission finds at least two alternative site and related facility proposals considered in the commission's final report as acceptable. If the commission does not find at least two sites and related facilities acceptable, additional sites and related facilities may be proposed by the applicant which shall be considered in the same manner as those proposed in the original notice.

If the commission finds that a good faith effort has been made by the person submitting the notice to find an acceptable alternative site and related facility and that there is only one acceptable site and related facility among those submitted, the commission may approve the notice based on the one site and related facility. If a notice is approved based on one site and related facility, the commission may require a new notice to be filed to identify acceptable alternative sites and related facilities for the one site and related facility approved unless suitable alternative sites and related facilities have been approved by the commission in previous notice of intention proceedings.

If the commission finds that additional electric generating capacity is needed to accommodate the electric power demand forecast pursuant to subdivision (b) of Section 25309 and, after the commission finds that a good faith effort was made by the person submitting the notice to propose an acceptable site and related facility, it fails to find any proposed site and related facility to be acceptable, the commission shall designate, at the request

of and at the expense of the person submitting the notice, a feasible site and related facility for providing the needed electric generating capacity.

SEC. 18. Section 25516.5 of the Public Resources Code is amended to read:

25516.5. On a notice which proposes an expanded ultimate electric generating capacity for a site, the commission may, based upon findings pursuant to Section 25514, either approve the notice only for the initial facility or facilities proposed for operation within the forthcoming 12-year period or may approve the notice for the initial facility or facilities and find the site acceptable for additional generating capacity of the type tentatively proposed. The maximum allowable amount and type of such additional capacity shall be determined by the commission.

If a notice is approved which includes a finding that a particular site is suitable to accommodate a particular additional generating capacity, the site shall be designated a potential multiple-facility site. The commission may, in determining the acceptability of a potential multiple-facility site, specify conditions or criteria necessary to insure that future additional facilities will not exceed the limitations of the site.

SEC. 19. Section 25516.6 is added to the Public Resources Code, to read:

25516.6. Except as otherwise expressly provided in this division, the commission shall issue its written decision on the notice not later than 12 months after such notice is filed, or at such later time as is mutually agreed upon by the commission and the applicant.

SEC. 20. Section 25523 of the Public Resources Code is amended to read:

25523. The commission shall prepare a written decision after the public hearing on an application, which shall include all of the following:

(a) Specific provisions relating to the manner in which the proposed facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety.

(b) In the case of a site to be located in the coastal zone, specific provisions to meet the objectives of Division 20 (commencing with Section 30000) as may be specified in the report submitted by the California Coastal Commission pursuant to subdivision (d) of Section 30413, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or that the provisions proposed in the report would not be feasible.

(c) In the case of a site to be located in the Suisun Marsh or in the jurisdiction of the San Francisco Bay Conservation and Development Commission, specific provisions to meet the requirements of Division 19 (commencing with Section 29000) of this code or Title 7.2 (commencing with Section 66600) of the Government Code as may be specified in the report submitted by the San Francisco Bay Conservation and Development Commission pursuant to subdivision (d) of Section 66645 of the Government Code, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or the provisions proposed in the report would not be feasible.

(d) Findings regarding the conformity of the proposed site and related facilities with standards adopted by the commission pursuant to Section 25216.3 and subdivision (d) of Section 25402, with public safety standards and the applicable air and water quality standards, and with other relevant local, regional, state, and federal standards, ordinances, or laws. If the commission finds that there is noncompliance with any state, local, or regional ordinance or regulation in the application, it shall consult and meet with the state, local, or regional governmental agency concerned to attempt to correct or eliminate the noncompliance. If the noncompliance cannot be corrected or eliminated, the commission shall inform the state, local, or regional governmental agency if it makes the findings required by Section 25525.

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(e) Provision for restoring the site as necessary to protect the environment, if the commission denies approval of the application.

(f) Findings regarding the conformity of the proposed facility with the 12-year forecast of statewide and service area electric power demands adopted pursuant to subdivision (b) of Section 25309.

SEC. 21. Section 25524 of the Public Resources Code is amended to read:

25524. The commission shall not certify any facility contained in the application, unless its findings with respect to subdivision (f) of Section 25523 are in the affirmative.

SEC. 22. Section 25531 of the Public Resources Code is amended to read:

25531. (a) The decisions of the commission on any application of any electric utility for certification of a site and related facility shall be subject to judicial review in the same manner as the decisions of the Public Utilities Commission on the application for a Certificate of Public Convenience and Necessity for the same site and related facility.

(b) No new or additional evidence may be introduced upon review and the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the United States Constitution or the California Constitution. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review, except as provided in this article. Such questions of fact shall include ultimate facts and the findings and conclusions of the commission. A report prepared by, or an approval of, the commission pursuant to Section 25510, 25514, 25516, or 25516.5, or subdivision (b) of Section 25520.5, shall not constitute a decision of the commission subject to judicial review.

(c) Subject to the right of judicial review of decisions

of the commission, no court in this state shall have jurisdiction to hear or determine any case or controversy concerning any matter which was, or could have been, determined in a proceeding before the commission, or to stop or delay the construction or operation of any thermal powerplant except to enforce compliance with the provisions of a decision of the commission.

(d) Notwithstanding Section 1250.370 of the Code of Civil Procedure:

(1) If the commission requires pursuant to subdivision (a) of Section 25528, as a condition of certification of any site and related facility, that the applicant acquire development rights, such requirement conclusively establishes the matters referrred to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any eminent domain proceeding brought by the applicant to acquire such development rights.

(2) If the commission certifies any site and related facility, such certification conclusively establishes the matters referred to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any eminent domain proceeding brought to acquire such site and related facility.

(e) No decision of the commission pursuant to Section 25516, 25522, or 25523 shall be found to mandate a specific supply plan for any utility as prohibited by Section 25323.

SEC. 23. Section 30413 of the Public Resources Code is amended to read:

30413. (a) In addition to the provisions set forth in subdivision (f) of Section 30241, and in Sections 25302, 25500, 25507, 25508, 25514, 25516.1, 25519, 25523, and 25526, the provisions of this section shall apply to the commission and the State Energy Resources Conservation and Development Commission with respect to matters within the statutory responsibility of the latter.

(b) The commission shall, prior to January 1, 1978, and after one or more public hearings, designate those specific locations within the coastal zone where the location of a facility as defined in Section 25110 would

prevent the achievement of the objectives of this division; provided, however, that specific locations that are presently used for such facilities and reasonable expansion thereof shall not be so designated. Each such designation shall include a description of the boundaries of such locations, the objectives of this division which would be so affected, and detailed findings concerning the significant adverse impacts that would result from development of a facility in the designated area. The commission shall consider the conclusions, if any, reached by the State Energy Resources Conservation and Development Commission in its most recently promulgated comprehensive report issued pursuant to Section 25309. The commission shall transmit a copy of its report prepared pursuant to this subdivision to the State Energy Resources Conservation and Development Commission.

(c) The commission shall every two years revise and update the designations specified in subdivision (b) of this section. The provisions of subdivision (b) of this section shall not apply to any sites and related facilities specified in any notice of intention to file an application for certification filed with the State Energy Resources Conservation and Development Commission pursuant to Section 25502 prior to designation of additional locations made by the commission pursuant to this subdivision.

(d) Whenever the State Energy Resources Conservation and Development Commission exercises its siting authority and undertakes proceedings pursuant to the provisions of Chapter 6 (commencing with Section 25500) of Division 15 with respect to any thermal powerplant or transmission line to be located, in whole or in part, within the coastal zone, the commission shall participate in such proceedings and shall receive from the State Energy Resources Conservation and Development Commission any notice of intention to file an application for certification of a site and related facilities within the coastal zone. The commission shall analyze each notice of intent and shall, prior to commencement of the hearings conducted pursuant to

Section 25513, forward to the State Energy Resources Conservation and Development Commission a written report on the suitability of the proposed site and related facilities specified in such notice of intent. The commission's report shall contain a consideration of, and findings regarding, all of the following:

(1) The compatibility of the proposed site and related facilities with the goal of protecting coastal resources.

(2) The degree to which the proposed site and related facilities would conflict with other existing or planned coastal-dependent land uses at or near the site.

(3) The potential adverse effects that the proposed site and related facilities would have on aesthetic values.

(4) The potential adverse environmental effects on fish and wildlife and their habitats.

(5) The conformance of the proposed site and related facilities with certified local coastal programs in those jurisdictions which would be affected by any such development.

(6) The degree to which the proposed site and related facilities could reasonably be modified so as to mitigate potential adverse effects on coastal resources, minimize conflict with existing or planned coastal-dependent uses at or near the site, and promote the policies of this division.

(7) Such other matters as the commission deems appropriate and necessary to carry out the provisions of this division.

(e) The commission may, at its discretion, participate fully in other proceedings conducted by the State Energy Resources Conservation and Development Commission pursuant to its powerplant siting authority. In the event the commission participates in any public hearings held by the State Energy Resources Conservation and Development Commission, it shall be afforded full opportunity to present evidence and examine and cross-examine witnesses.

(f) The State Energy Resources Conservation and Development Commission shall forward a copy of all reports it distributes pursuant to Sections 25302 and 25306

to the commission and the commission shall, with respect to any report that relates to the coastal zone or coastal zone resources, comment on such reports, and shall in its comments include a discussion of the desirability of particular areas within the coastal zone as designated in such reports for potential powerplant development. The commission may propose alternate areas for powerplant development within the coastal zone and shall provide detailed findings to support the suggested alternatives.

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AMENDED IN SENATE AUGUST 22, 1978
AMENDED IN SENATE AUGUST 11, 1978
AMENDED IN SENATE AUGUST 7, 1978
AMENDED IN ASSEMBLY JUNE 20, 1978
AMENDED IN ASSEMBLY JUNE 5, 1978
AMENDED IN ASSEMBLY APRIL 27, 1978
AMENDED IN ASSEMBLY APRIL 18, 1978
AMENDED IN ASSEMBLY APRIL 6, 1978

CALIFORNIA LEGISLATURE—1977-78 REGULAR SESSION

ASSEMBLY BILL No. 2644

Introduced by Assemblyman Goggin
(Principal coauthors: Assemblymen Kapiloff and Suitt)
Assemblymen Calvo, Bates, Ellis, and Lewis

February 28, 1978

REFERRED TO COMMITTEE ON RESOURCES, LAND USE, AND ENERGY

An act to add Section 65928.5 to, and to add Article 6 (commencing with Section 65960) to Chapter 4.5 of Division 1 of Title 7 of, the Government Code, and to amend Sections 25101, 25102, 25120, and 25540 of, and to add Sections 3715.5, 21065.5, 21090.1, 25115, 25133, 25540.1, 25540.2, 25540.3, 25540.4, and 25540.5 to, the Public Resources Code, and to amend Section 2802 of, and to add Section 782 to, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2644, as amended, Goggin (Res., L.U., & E.). Energy resources: development projects: geothermal powerplants, certification: energy producers.

(1) Existing law generally requires any public agency that has the principal responsibility for approving a development project to approve or disapprove the project within one year from the date on which an application requesting approval has been received and accepted as complete and any other public agency which has responsibility for approving the project to approve or disapprove the project within specified time limits.

This bill would define "geothermal field development project" for such purposes and provide that only one permit from the lead agency and one permit from each responsible agency shall be required with respect to an application for approval of such project for all drilling, construction, operation, and maintenance activities. The bill would permit such lead agency and each such responsible agency to approve permits for less than full field development and would require such permits to include a monitoring program capable of assuring the permittee's conformance with permit conditions and stipulations.

(2) Under the California Environmental Quality Act, all public agencies, state and local, are generally required to prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report on any discretionary project, as defined, they propose to carry out or approve which may result in a substantial, or potentially substantial, adverse change in the environment.

This bill would define "geothermal exploratory project" for such purposes, and provide that such project shall be deemed to be separate and distinct from any subsequent geothermal field development project. The bill would designate the Division of Oil and Gas of the Department of Conservation as the lead agency for such purposes, *with specified exclusions,* require the division to complete its responsibilities under such act, including public and agency review and approval or disapproval of the project, within 135 days of the receipt of the application for such project, and further provide that the divi-

sion may delegate its lead agency responsibility to a county which has adopted a geothermal element for its general plan.

(3) The Warren-Alquist State Energy Resources Conservation and Development Act provides for, among other things, site certification of thermal powerplants and related facilities of certain designated generating capacities, by the State Energy Resources Conservation and Development Commission. Prior to the certification of any thermal powerplant and related facilities, including any geothermal powerplant, an applicant is required to file, with the commission, a notice of intent to file an application for certification and an application for certification of a powerplant and related facilities.

This bill would revise the procedure and time schedules in the processing and approval of notice of intent and application for certification of any geothermal powerplant and related facilities. It would authorize the commission to approve an equivalent certification program, as defined, which would delegate to a county, which has adopted a geothermal element, as defined, for its general plan, full authority for the certification of all geothermal powerplants within such county, and that would replace and supersede the procedures for certification of all geothermal powerplants, as specified, to be located within such county.

(4) Under the existing law the Public Utilities Commission, generally, regulates the operations of electrical corporations.

This bill would allow the commission, upon a complaint by a geothermal energy producer, to prohibit any electrical corporation from curtailing the generation, production, or transmission of electricity from a geothermal powerplant operated by such corporation, if the commission deems that such curtailment is not in the public interest. It would also redefine "private energy producer" and would specify that such producer is not a public utility subject to the general jurisdiction of the commission for specified purposes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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The people of the State of California do enact as follows:

SECTION 1. Section 65928.5 is added to the Government Code, to read:

65928.5. "Geothermal field development project" means a development project as defined in Section 65928 which is composed of geothermal wells, resource transportation lines, production equipment, roads, and other facilities which are necessary to supply geothermal energy to any particular heat utilization equipment for its productive life, all within an area delineated by the applicant.

SEC. 2. Article 6 (commencing with Section 65960) is added to Chapter 4.5 of Division 1 of Title 7 of the Government Code, to read:

Article 6. Development Permits for Classes of Projects

65960. Notwithstanding any other provision of law, if any person applies for approval of a geothermal field development project, then only one permit from the lead agency and one permit from each responsible agency shall be required for all drilling, construction, operation, and maintenance activities required during the course of the productive life of the project, including, but not limited to, the drilling of makeup wells, redrills, well cleanouts, pipeline hookups, or any other activity necessary to the continued supply of geothermal steam to a powerplant. The lead agency and each responsible agency may approve such permits for less than full field development if the applicant submits such an application. Such permits shall include (1) any conditions or stipulations deemed necessary by the lead or responsible agency, including appropriate mitigation measures within the statutory jurisdiction of such agency, and (2) a monitoring program capable of assuring the permittee's conformance with all such conditions or stipulations. This section shall not apply to any permit whose issuance is a ministerial act by the permitting agency.

SEC. 3. Section 3715.5 is added to the Public Resources Code, to read:

3715.5. For the purposes of the California Environmental Quality Act (commencing with Section 21000), the division shall be the lead agency as defined in Section 21067 for all geothermal exploratory projects as defined in Section 21065.5. The division shall complete all its responsibilities pursuant to the California Environmental Quality Act, including public and agency review and approval or disapproval of the project, within 135 days of the receipt of the application for such project. The division may delegate its lead agency responsibility under this section to a county which has adopted a geothermal element, as defined in Section 25133, for its general plan. Any such delegation shall provide that the county complete its lead agency responsibility under this section within 135 days of the receipt of the application for such project. *The provisions of this section shall not apply to geothermal exploratory projects as defined in Section 21065.5 where, prior to January 1, 1979, preparation of an environmental impact report for such project has begun or an application for such project which will require preparation of an environmental impact report has been filed.*

SEC. 4. Section 21065.5 is added to the Public Resources Code, to read:

21065.5. "Geothermal exploratory project" means a project as defined in Section 21065 composed of not more than six wells and associated drilling and testing equipment, whose chief and original purpose is to evaluate the presence and characteristics of geothermal resources prior to commencement of a geothermal field development project as defined in Section 65928.5 of the Government Code. Wells included within a geothermal exploratory project must be located at least one-half mile from geothermal development wells which are capable of producing geothermal resources in commercial quantities.

SEC. 5. Section 21090.1 is added to the Public Resources Code, to read:

21090.1. For all purposes of this division, a geothermal exploratory project shall be deemed to be separate and distinct from any subsequent geothermal field development project as defined in Section 65928.5 of the Government Code.

SEC. 6. Section 25101 of the Public Resources Code is amended to read:

25101. "Applicant" means any person who submits an application for certification pursuant to the provisions of this division, including, but not limited to, any person who explores for or develops geothermal resources.

SEC. 7. Section 25102 of the Public Resources Code is amended to read:

25102. "Application" means any request for certification of any site and related facility filed in accordance with the procedures established pursuant to this division. An applicant for a geothermal powerplant and related facilities may propose more than one site and related geothermal facilities in the same application.

SEC. 8. Section 25115 is added to the Public Resources Code, to read:

25115. "Equivalent certification program" means a program, as further defined in Section 25540.5, administered by a county and approved by the commission, which may substitute for the site and related facility certification procedures established pursuant to this division.

SEC. 8.5. Section 25120 of the Public Resources Code is amended to read:

25120. "Thermal powerplant" means any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto. Exploratory, development, and production wells, resource transmission lines, and other related facilities used in connection with a geothermal exploratory project or a geothermal field development project are not appurtenant facilities for the purposes of this division.

SEC. 9. Section 25133 is added to the Public Resources

Code, to read:

25133. "Geothermal element" means an element of a county general plan consisting of a statement of geothermal development policies, including a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals, including a discussion of environmental damages and identification of sensitive environmental areas, including unique wildlife habitat, scenic, residential, and recreational areas, adopted pursuant to Section 65303 of the Government Code.

SEC. 10. Section 25540 of the Public Resources Code is amended to read:

25540. If a person proposes to construct a geothermal powerplant and related facility or facilities on a site, the commission shall not require three alternative sites and related facilities to be proposed in the application. Notwithstanding the provisions of Section 25519, an application for a geothermal powerplant and related facilities shall be filed with the commission not later than 12 months before any construction is to commence. Additional facilities at a potential multiple facility site subject to Section 25540.4 shall be exempt from such 12-month requirement.

SEC. 11. Section 25540.1 is added to the Public Resources Code, to read:

25540.1. The commission shall be deemed to have accepted an application for a geothermal powerplant and related facilities on the original filing date, unless the commission shall, within 30 calendar days after the receipt of such application, have notified the applicant in writing that the application is not complete. If the application is determined not to be complete, the commission's determination shall specify in writing those parts of the application which are incomplete and shall indicate the manner in which it can be made complete. Upon the applicant's filing with the commission such additional information requested by the commission to make the application complete, such application shall be deemed accepted by the commission on the date of such subsequent filing.

SEC. 12. Section 25540.2 is added to the Public Resources Code, to read:

25540.2. Notwithstanding any other provision of law:

(a) If an applicant proposes to construct a geothermal powerplant at a site which the applicant can reasonably demonstrate to be capable of providing geothermal resources in commercial quantities, no notice of intention pursuant to Section 25502 shall be required, and the commission shall issue the final decision on the application, as specified in Section 25523, within 12 months after acceptance of the application for certification of such facility, or at such later time as is mutually agreed by the commission and the applicant.

(b) If a person proposes to construct a geothermal powerplant and related facility or facilities on a site, that person may submit to the commission a notice of intention to file an application for certification of such site and related facility or facilities. The commission shall not require three alternative sites and related facilities to be proposed in the notice. The commission shall issue its decision, pursuant to Section 25523, within nine months from the date of filing of an application for certification of a geothermal powerplant site and related facility or facilities for which the commission has approved a notice of intention pursuant to 25516.

(c) Upon receipt of an application for certification of a geothermal powerplant and related facilities, the commission shall transmit a copy of the application to every state and local agency having jurisdiction over land use in the area involved.

SEC. 13. Section 25540.3 is added to the Public Resources Code, to read:

25540.3. (a) An applicant for a geothermal powerplant may propose a site to be approved that will accommodate a potential maximum electric generating capacity in excess of the capacity being proposed for initial construction. In addition to the information concerning the initial powerplant and related facilities proposed for construction required pursuant to Section 25520, such application shall include all of the following,

to the extent known:

(1) The number, type, and energy source of electric generating units which the site is proposed ultimately to accommodate and the maximum generating capacity for each unit.

(2) The projected installation schedule for each unit.

(3) The impact of the site, when fully developed, on the environment and public health and safety.

(4) The amount and sources of cooling water needed at the fully developed site.

(5) The general location and design of auxiliary facilities planned for each stage of development, including, but not limited to pipelines, transmission lines, waste storage and disposal facilites, switchyards, and cooling ponds, lakes, or towers.

(6) Such other information relating to the design, operation, and siting of the facility as the commission may by regulation require.

(b) If an application is filed pursuant to subdivision (a) which proposes a site to be approved which will accommodate a potential maximum electric generating capacity in excess of the capacity being proposed for initial construction, the commission may, in its decision pursuant to subdivision (1) of Section 25540.3, either certify only the initial facility or facilities proposed for initial construction or may certify the initial facility or facilities and find the site acceptable for additional generating capacity of the type tentatively proposed. The maximum allowable amount and type of such additional capacity shall be determined by the commission.

If the decision includes a finding that a particular site is suitable to accommodate a particular additional generating capacity, the site shall be designated a potential multiple facility site. The commission may, in determining the acceptability of a potential multiple facility site, specify conditions or criteria necessary to ensure that future additional facilities will not exceed the limitations of the site.

SEC. 14. Section 25540.4 is added to the Public Resources Code, to read:

25540.4. Notwithstanding any other provision of law:

(a) The decision of the commission on an application for an additional facility at a potential multiple facility site shall be issued within three months after the acceptance of the application or at such later time as is mutually agreed upon by the commission and the applicant.

(b) In reviewing an application for an additional facility at a potential multiple facility site, the commission may, upon a showing of good cause, undertake a reconsideration of its prior determinations in the final report for the site pursuant to Section 25514 or its decision pursuant to Section 25523 based on current conditions and other reasonable alternatives to the proposed facility. Such reconsideration must be completed within seven months after acceptance of such application for an additional facility.

(c) The commission shall, pursuant to Section 21100.2, provide by resolution or order for completing and certifying the environmental impact report within the time limits established by subdivisions (a) and (b).

SEC. 15. Section 25540.5 is added to the Public Resources Code, to read:

25540.5. The commission may, at the petition of a county which has adopted a geothermal element for its general plan, approve an equivalent certification program which delegates to that county full authority for the certification of all geothermal powerplants within such county. Once approved by the commission, the equivalent certification program shall replace and supersede the procedures for certification of all geothermal powerplants and related facilities, pursuant to Sections 25540 to 25540.4, inclusive, to be located within such county. The commission may, after public hearings, revoke the approved equivalent certification program of such county if the commission finds that the program does not comply with current commission certification requirements. The equivalent certification program shall include, but not be limited to, provisions for all of the following:

(a) Certification of geothermal areas as potential multiple facility sites, if so applied for.

(b) Processing of applications in less than 12 months.

(c) Periodic review and updating of the program by the county as may be required by law and the commission.

(d) Appeal procedures, including appeals to the commission on substantive issues. In any such appeal on a substantive issue, the commission shall determine whether the act or decision is supported by substantial evidence in the light of the whole record. The commission shall determine, within 15 days of receipt of an appeal, whether the appeal has merit and whether action should be taken.

(e) Input and review by other relevant public agencies and members of the public.

(f) Public hearing procedures equivalent to those specified in Article 6 (commencing with Section 65350) of Chapter 3 of Title 7 of the Government Code.

SEC. 16. Section 782 is added to the Public Utilities Code, to read:

782. In order to encourage the development of geothermal resources in the State of California, the commission may, upon a complaint by a geothermal energy producer, prohibit any electrical corporation from curtailing the generation, production, or transmission of electricity from a geothermal powerplant operated by such corporation, if the commission deems that such curtailment is not in the public interest.

SEC. 17. Section 2802 of the Public Utilities Code is amended to read:

2802. "Private energy producer" includes every person, corporation, city, county, district, and public agency of the state generating or producing electricity not generated from conventional sources or natural gas for energy either directly or as a byproduct solely for his or its own use or the use of his or its tenants; or generating or producing electricity, or owning the means thereof, to or for any electrical corporation, heat corporation, state agency, city, county, district, or an association thereof,

but not to or for the public for any other purpose. Notwithstanding any other provision of law, a private energy producer shall not be found to be a public utility subject to the general jurisdiction of the commission solely because of conducting any activity authorized by this chapter.

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AMENDED IN SENATE AUGUST 24, 1978

AMENDED IN SENATE AUGUST 10, 1978

AMENDED IN ASSEMBLY MAY 10, 1978

CALIFORNIA LEGISLATURE—1977-78 REGULAR SESSION

ASSEMBLY BILL No. 3046

Introduced by Assemblyman Rosenthal

March 22, 1978

REFERRED TO COMMITTEE ON RESOURCES, LAND USE, AND ENERGY

An act to add Section 25603.5 to the Public Resources Code, relating to energy, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 3046, as amended, Rosenthal (Res., L.U., & E.). Energy: passive solar design: competition.

Under existing law, the State Energy Resources Conservation and Development Commission is required to, in cooperation with other state agencies, participate in the design, construction, and operation of energy conserving buildings.

This bill would make certain legislative declarations in connection with passive solar design features in housing and require the commission to conduct a statewide architectural design competition to select outstanding designs for new single family and multifamily residential units which incorporate passive solar and other energy-conserving design features. It would provide for the establishment of a judging panel, with prescribed membership, to evaluate the submitted designs. The bill would provide for making cash awards and medallions for the winning designs.

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The bill would appropriate $315,000 from the ~~Environmental Protection Program~~ *State Energy Resources Conservation and Development Reserve Account in the General* Fund to carry out the purposes of the bill, to be allocated as prescribed.

Vote: ⅔. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares the following:

(a) The use of passive solar design features in housing can result in lower energy costs to consumers, particularly moderate income consumers, and can help to decrease the state's dependence on limited supplies of fossil fuels.

(b) Passive solar and other energy conserving features incorporated in the design of new residential buildings can significantly decrease the energy requirements of those buildings in a cost-effective manner while maintaining conventional aesthetic standards.

(c) It is the policy of the state to encourage architects, building designers, and members of the building profession, as well as purchasers of new homes and the rental population, to make greater use of passive solar and energy conservation features in new residential and multifamily construction.

~~(d) The Environmental Protection Program Fund, a special fund for programs "concerned with the preservation and protection of California's environment",~~

(d) The State Energy Resources Conservation and Development Reserve Account in the General Fund is an appropriate source of funding for a statewide passive solar design competition. The environmental objective of the competition is to promote residential applications of solar energy, a renewable, nonpolluting, environmentally benign source of energy whose widespread use can help decrease dependence on limited fossil fuel resources.

SEC. 2. Section 25603.5 is added to the Public Resources Code, to read:

25603.5. (a) Pursuant to the duties of the commission described in subdivision (a) of Section 25401 and Section 25603, the commission shall conduct a statewide architectural design competition to select outstanding designs for new single family and multifamily residential units which incorporate passive solar and other energy-conserving design features.

The purpose of the competition, to be known as the "State Solar Medallion Passive Design Competition", is to demonstrate the technical and economic feasibility of passive solar design for residential construction, to speed its commercialization, and to promote its use by developers in housing for moderate income families in the state. The competition shall be carried out with the assistance and cooperation of the office of the State Architect.

(b) The competition shall be conducted for each of the state's six regional climate zones. Each climate zone shall have the following four categories of competition:

(1) Single family dwellings. The construction costs of these dwellings shall not exceed thirty-five thousand dollars ($35,000) and the market price, inclusive of land, construction, permits, fees, overhead and profit shall not exceed fifty-five thousand dollars ($55,000).

(2) Single family dwellings. The construction costs of these dwellings shall not exceed fifty-five thousand dollars ($55,000) and the market price, inclusive of land, construction, permits, fees, overhead and profit shall not exceed eighty-five thousand dollars ($85,000).

(3) Multifamily housing units with a market price or rental value comparable to paragraph (1) of this subdivision.

(4) Multifamily housing units with a market price or rental value comparable to paragraph (2) of this subdivision.

(c) In order to qualify for the competition, entrants shall be a team composed of at least one member from each of the following categories:

(1) A building designer or architect.

(2) A builder, developer or contractor.

(d) With submission of designs to the competition, all entrants shall agree to comply with the following provisions, if awarded the Solar Medallion or the first place prize in any category:

(1) To build five models of the winning design for single family home categories if the builder, developer, or contractor member of the winning team constructed more than 30 single family detached units during the one-year period ending on the date of the award, or

(2) To build three models of the winning design for single family home categories if the builder, developer, or contractor member of the winning team constructed 30 or fewer single family detached units during the one-year period ending on the date of the award, or

(3) To build one model of the winning design for all multi-family categories.

(4) To commence construction within one year of announcement of awards.

(5) To permit the commission to install monitoring equipment for measuring energy conservation performance of the structure on all models constructed in compliance with paragraphs (1), (2), and (3) this subdivision.

(6) To permit the commission to document, exhibit, and publicize the constructed designs.

All models of winning designs shall be built on the site or sites described in the submission or on an alternate site or sites with comparable features.

Cash awards to authors of the Solar Medallion and first place designs shall not be made until the agreed upon construction commences.

All winning designs in the competition shall become the property of the state and may be published and exhibited by the state after completion of competition.

(e) The judging panel for the competition shall consist of the following five jurors:

(1) One representative of the Office of the State Architect.

(2) One representative of the commission.
(3) One certificated architect.
(4) One representative of the state's lending institutions.
(5) One developer, builder or contractor.

The nonagency members shall be appointed by the State Architect.

In recognition of the wide variation in construction costs statewide, and in order to ensure fair and equitable competition in all areas of the state, a cost index shall be used to determine different construction cost and market price requirements for each category of competition in the major metropolitan areas of the state. The construction cost and market price figures specified in paragraphs (1) and (2) of subdivision (b) shall be used as the upper limit values on which the index shall be based. Construction cost and market price figures reflecting the diversity in costs in different areas of the state shall be determined in relation to upper limit values specified in this section.

The cost index shall be prepared by the office of the State Architect and shall be published in the competition program.

The evaluation shall take place in two stages, with an initial technical review by the commission staff. The staff shall submit to the judging panel a rigorous technical assessment of the anticipated energy conservation performance of all submissions. Final selection shall be made by the judging panel.

Designs submitted to the competition shall be judged on the extent to which they satisfy the following criteria:

(1) Use of passive solar and other energy conserving design features.
(2) Amount of energy savings achieved by the design.
(3) Adaptability of the design to widespread use.

(f) The commission shall be responsible for developing rules and procedures for the conduct of the competition and for the judging, which rules shall ensure anonymity of designs submitted prior to final awarding of prizes, shall ensure impartiality of the judging panel, and

shall ensure uniform treatment of competitors.

In administering the competition, the commission shall accomplish the following tasks:

(1) Preparation of a competition program, including climatological data for each of the six regional climate zones.

(2) Distribution of competition information and ongoing publicity.

(3) Development of rules and procedures for competitors and judges.

(4) Preparation of a summary document for the competition, including a portfolio of winning designs and follow-up publicity.

(5) Instrumentation of winning dwellings constructed in accordance with requirements of this section; instrumentation for measurement of energy conservation performance of the units and ongoing data collection shall be provided by the commission pursuant to Section 25607.

For purposes of administering the competition, the commission shall contract with the Office of the State Architect for materials and services that cannot be performed by its staff.

(g) Cash awards to authors of the winning designs shall be made on the following basis:

Using the criteria in subdivision (e) of this section, the judging panel shall select, as follows:

(1) The most outstanding design statewide selected from among the first place winners in either of two single family categories in any of the six climate zones which shall receive the State Solar Medallion Award and five thousand dollars ($5,000) in addition to the cash award specified in paragraph (3) of this subdivision.

(2) The most outstanding design statewide selected from among the first place winners in either of the two multi-family categories in any of the six climate zones which shall receive the State Solar Medallion Award and five thousand dollars ($5,000) in addition to the cash award specified in paragraph (3) of this subdivision.

(3) The first place designs in each of the four

competition categories within each of the six climate zones, which shall each receive a cash award of five thousand dollars ($5,000).

(4) The second place designs in each of the four competition categories within each of the six climate zones, which shall each receive a cash award of two thousand dollars ($2,000).

SEC. 3. The sum of three hundred fifteen thousand dollars ($315,000) is hereby appropriated from the ~~Environmental Protection Program Fund to the State~~ *State Energy Resources Conservation and Development Reserve Account in the General Fund to the State* Energy Resources Conservation Development Commission in order to conduct the State Solar Medallion Passive Design Competition under Section 25603.5 of the Public Resources Code, to be allocated on the following basis:

(1) One hundred thirty-seven thousand dollars ($137,000) for administration of the competition and duties described in Section 25603.5 of the Public Resources Code, except for the purposes of paragraph (5) of subdivision (f) of Section 25603.5 of the Public Recources Code, for which funds are currently available.

(2) One hundred seventy-eight thousand dollars ($178,000) for cash awards to winning competitors pursuant to subdivision (g) of Section 25603.5 of the Public Resources Code.

Such funds shall be used exclusively for actual expenses incurred in carrying out the purposes of this act. Any funds not expended for such purposes shall revert to the Environmental Protection Program Fund.

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Assembly Bill No. 3250

Passed the Assembly August 31, 1978

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Chief Clerk of the Assembly

Passed the Senate August 31, 1978

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 1978, at _____ o'clock ___ M.

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Private Secretary of the Governor

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CHAPTER _____

An act to amend Section 801 of, and to add Sections 714 and 801.5 to, the Civil Code, to add Sections 65850.5, 66473.1, and 66475.3 to the Government Code, to add Section 17959.1 to the Health and Safety Code, and to amend and repeal Section 17052.5 of the Revenue and Taxation Code, relating to solar easements.

LEGISLATIVE COUNSEL'S DIGEST

AB 3250, Levine. Solar easements.

Existing law specifies that a right of receiving light from or over land may be attached to other land as an easement.

This bill would provide that the right of receiving sunlight upon and over land may be attached to other land as an easement and would define a solar easement and a solar energy system.

This bill would make void and unenforceable any covenant, restriction, or condition in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in real property which purports to restrict or prohibit the installation or use of a solar energy system, as defined in the bill, except as to provisions imposing reasonable limitations, as specified.

This bill would require any instrument creating a solar easement to contain specified information regarding its dimensions, restrictions on the obstruction of sunlight, and the terms or conditions, if any, of its revision or termination.

Existing law authorizes the legislative bodies of cities and counties by ordinance to exercise certain powers regarding land planning and zoning.

This bill would preclude the legislative bodies, including those of chartered cities, from enacting ordinances restricting or prohibiting the use of solar energy systems, except as specified.

Existing law requires tentative subdivision maps to meet specified design requirements and requires the denial of the approval by the legislative body of any ten-

tative or final map not meeting those design requirements.

This bill would require such maps to provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision, as specified.

This bill would authorize the legislative body, whenever a tentative subdivision map is required by specified provisions of law, to require by ordinance, as a condition of approving a tentative subdivision map, the dedication of easements for the purpose of assuring each subdivision parcel or unit the right to receive sunlight across adjacent parcels or units in the subdivision for which approval is sought for any solar energy system, provided such ordinance contains specified information.

Existing law permits a state personal income tax credit, as specified, for the costs of solar energy systems and energy conservation measures applied in conjunction therewith.

This bill would, with respect to single-family dwellings owned and controlled by the taxpayer, make recording fees and the compensation paid to the owner of burdened property in connection with the acquisition of a solar easement part of a solar energy system and eligible for such tax credit.

This bill would incorporate additional changes in Section 17052.5 of the Revenue and Taxation Code proposed by AB 3623 to be effective only if AB 3623 and this bill are chaptered.

This bill would provide that if any provision of this bill or the application thereof to any person or circumstances is held invalid or unconstitutional, the remaining provisions of the bill shall not be affected, but shall remain in full force and effect, and to this end the provisions of this bill are severable.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the California Solar Rights Act of 1978.

SEC. 2. The Legislature hereby finds and declares that:

(a) Solar energy is a renewable, nonpolluting energy source.

(b) The use of solar energy systems will reduce the state's dependence on nonrenewable fossil fuels, supplement existing energy sources, and decrease the air and water pollution which results from the use of conventional energy sources. It is, therefore, the policy of the state to encourage the use of solar energy systems. In order to insure uniform application of this policy in all parts of California, the provisions of this act shall be applicable to charter cities.

(c) The purpose of this act is to promote and encourage the widespread use of solar energy systems and to protect and facilitate adequate access to the sunlight which is necessary to operate solar energy systems.

SEC. 3. Section 714 is added to the Civil Code, to read:

714. Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property which effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

This section shall not apply to provisions which impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency, or which allow for an alternative system of comparable cost and efficiency.

For the purposes of this section, "solar energy system" shall be defined as set forth in Section 801.5.

SEC. 4. Section 801 of the Civil Code is amended to read:

801. The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture;

2. The right of fishing;

3. The right of taking game;
4. The right-of-way;
5. The right of taking water, wood, minerals, and other things;
6. The right of transacting business upon land;
7. The right of conducting lawful sports upon land;
8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land;
9. The right of receiving water from or discharging the same upon land;
10. The right of flooding land;
11. The right of having water flow without diminution or disturbance of any kind;
12. The right of using a wall as a party wall;
13. The right of receiving more than natural support from adjacent land or things affixed thereto;
14. The right of having the whole of a division fence maintained by a coterminous owner;
15. The right of having public conveyances stopped, or of stopping the same on land;
16. The right of a seat in church;
17. The right of burial;
18. The right of receiving sunlight upon or over land as specified in Section 801.5.

SEC. 5. Section 801.5 is added to the Civil Code, to read:

801.5. (a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred to as a solar easement. "Solar easement" means the right of receiving sunlight across real property of another for any solar energy system.

As used in this section, "solar energy system" means either of the following:

(1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, or for water heating; or

(2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating or cooling, or for water heating.

(b) Any instrument creating a solar easement shall include, at a minimum, all of the following:

(1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed, or a combination of these descriptions.

(2) The restrictions placed upon vegetation, structures, and other objects which would impair or obstruct the passage of sunlight through the easement.

(3) The terms or conditions, if any, under which the easement may be revised or terminated.

SEC. 6. Section 65850.5 is added to the Government Code, to read:

65850.5. The legislative body of any city or county shall not enact an ordinance which has the effect of prohibiting or of unreasonably restricting the use of solar energy systems other than for the preservation or protection of the public health or safety. This prohibition shall be applicable to charter cities since the promotion of the use of nonfossil fuel sources of energy, such as solar energy and energy conservation measures, is a matter of statewide concern.

This section shall not apply to ordinances which impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency, or which allow for an alternative system of comparable cost and efficiency.

For the purposes of this section, "solar energy system" shall have the same meaning as set forth in Section 801.5 of the Civil Code.

SEC. 7. Section 17959.1 is added to the Health and Safety Code, to read:

17959.1. No local ordinance enacted pursuant to this chapter shall have the effect of prohibiting or of

unreasonably restricting the use of solar energy systems, other than for the preservation of the public health and safety. The provisions of this section shall apply to charter cities.

This section shall not apply to ordinances which impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency, or which allow for an alternative system of comparable cost and efficiency.

As used in this section, "solar energy system" shall be defined as set forth in Section 801.5 of the Civil Code.

SEC. 8. Section 66473.1 is added to the Government Code, to read:

66473.1. The design of a subdivision for which a tentative map is required pursuant to Section 66426 shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.

Examples of passive or natural heating opportunities in subdivision design, include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure.

Examples of passive or natural cooling opportunities in subdivision design include design of lot size and configuration to permit orientation of a structure to take advantage of shade or prevailing breezes.

In providing for future passive or natural heating or cooling opportunities in the design of a subdivision, consideration shall be given to local climate, to contour, to configuration of the parcel to be divided, and to other design and improvement requirements, and such provision shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or structure under applicable planning and zoning in force at the time the tentative map is filed.

The requirements of this section do not apply to condominium projects which consist of the subdivision of

airspace in an existing building when no new structures are added.

For the purposes of this section, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

SEC. 9. Section 66475.3 is added to the Government Code, to read:

66475.3. For divisions of land for which a tentative map is required pursuant to Section 66426, the legislative body of a city or county may by ordinance require, as a condition of the approval of a tentative map, the dedication of easements for the purpose of assuring that each parcel or unit in the subdivision for which approval is sought shall have the right to receive sunlight across adjacent parcels or units in the subdivision for which approval is sought for any solar energy system, provided that such ordinance contains all of the following:

(1) Specifies the standards for determining the exact dimensions and locations of such easements.

(2) Specifies any restrictions on vegetation, buildings and other objects which would obstruct the passage of sunlight through the easement.

(3) Specifies the terms or conditions, if any, under which an easement may be revised or terminated.

(4) Specifies that in establishing such easements consideration shall be given to feasibility, contour, configuration of the parcel to be divided, and cost, and that such easements shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or a structure under applicable planning and zoning in force at the time such tentative map is filed.

(5) Specifies that the ordinance is not applicable to condominium projects which consist of the subdivision of airspace in an existing building where no new structures are added.

For the purposes of this section, "solar energy systems" shall be defined as set forth in Section 801.5 of the Civil Code.

For purposes of this section, "feasibility" shall have the same meaning as set forth in Section 66473.1 for the term "feasible".

SEC. 10. Section 17052.5 of the Revenue and Taxation Code is amended to read:

17052.5. (a) (1) There shall be allowed as a credit against the amount of "net tax" (as defined in subdivision (e)), an amount equal to the amount determined in paragraph (2) or (3).

(2) Except as provided in paragraph (3), the amount of the credit allowed by this section shall be 55 percent of the cost (including installation charges and costs associated with the acquisition of a solar easement as specified in paragraph (6), but excluding interest charges) incurred by the taxpayer of any solar energy systems on premises in California which are owned and controlled by the taxpayer at the time of installation. Such credit shall not exceed three thousand dollars ($3,000).

(3) With regard to premises in California which are owned and controlled by the taxpayer, other than single-family dwellings, on which the cost (including installation charges, but excluding interest charges and costs associated with the acquisition of a solar easement) exceeds six thousand dollars ($6,000), the amount of the credit allowed by this section shall be the greater amount of three thousand dollars ($3,000) or 25 percent of the cost of the solar energy system.

(4) Condominium owners, who install solar energy systems on such California premises which is owned cooperatively by them, shall be eligible to receive the credit provided by this section, in proportion to the number of households served by the systems.

(5) Energy conservation measures applied in conjunction with solar energy systems to reduce the total cost or backup energy requirements of such systems shall be considered part of the systems, and shall be eligible for the tax credit. Eligible conservation measures applied in conjunction with solar space heating shall include, but not be limited to, ceiling, wall, and floor insulation above that required by law at the time of original construction.

Eligible conservation measures applied in conjunction with solar water heating shall include, but not be limited to, water heater insulation jackets, and shower and faucet flow-reducing devices. Energy conservation measures which shall be eligible for the tax credit when applied in conjunction with solar energy systems shall be defined by the Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(6) The compensation paid to the owner of burdened property in connection with the acquisition of a solar easement as defined in Section 801.5 of the Civil Code, and the fees for the recording of such an easement shall be considered part of solar energy systems, and shall be eligible for the tax credit.

(b) The credit for such cost shall be in lieu of any deduction under this part to which the taxpayer otherwise may be entitled, if any.

(c) The basis of any system for which a credit is allowed shall either be reduced to its salvage value at the end of its useful life, or reduced by the amount of the credit, whichever results in the lesser basis.

(d) In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(e) For the purposes of this section, the term "net tax" means the tax imposed under either Section 17041 or 17048 minus the credit for dependent care services provided for in Section 17052.6, the credits for personal exemption provided for in Section 17054, and the credits for taxes paid other states provided for in Chapter 12 (commencing with Section 18001).

(f) The tax credit provided by this section shall not apply to trusts or estates subject to tax under this part.

(g) The term "solar energy system" means equipment—

(1) Which uses solar energy to heat or cool or produce electricity; and

(2) Which has a useful life of at least three years.

(h) In the case where the credit allowed under this section exceeds the "net tax" for the taxable year, that

portion of the credit which exceeds such "net tax" may be carried over to the "net tax" in succeeding taxable years, with respect to which this section shall remain in effect for purposes of carrying over excess credit, until such credit is used. The credit shall be applied first to the earliest years possible.

(i) On or before January 1, 1978, the Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(j) Subject to the dollar limitations provided in paragraphs (2) and (3) of subdivision (a), if a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of solar energy systems, then to the extent such credit is allowed for a solar energy system as defined in this section, the state credit provided by this section shall be reduced so that the combined effective credit shall not exceed 55 percent of such costs, notwithstanding the carryover provisions of subdivision (f).

SEC. 10.5. Section 17052.5 of the Revenue and Taxation Code is amended to read:

17052.5. (a) (1) There shall be allowed as a credit against the amount of "net tax" (as defined in subdivision (e)), an amount equal to the amount determined in paragraphs (2) and (3).

(2) Except as provided in paragraph (3), the amount of the credit allowed by this section shall be 55 percent of the cost (including installation charges and costs associated with the acquisition of a solar easement as specified in paragraph (6), but excluding interest charges) incurred by the taxpayer of any solar energy systems on premises in California which are owned by the taxpayer at the time of installation. Such credit shall not exceed three thousand dollars ($3,000). The owner of the premises on which the solar energy system is installed may claim the tax credit for costs incurred; however, an owner-builder or owner-developer of new

homes may elect not to claim the solar energy tax credit for any or all systems installed on new homes. If an owner-builder or owner-developer irrevocably elects not to claim the tax credit for a solar energy system, the original purchaser of the new home on which the system is installed may claim the credit provided that the purchaser can confirm the election, if necessary, by a written document signed by the owner-builder or owner-developer.

The solar energy tax credit shall be claimed in the state income tax return for the taxable year in which the solar energy system was installed; however, if an owner-builder or owner-developer irrevocably elects not to claim the tax credit for a solar energy system, the original purchaser of the new home on which the system is installed may claim the credit for the taxable year during which the purchaser's escrow closed or the taxable year during which the purchaser acquired legal title to the home.

(3) With regard to premises in California which are owned by the taxpayer, other than single-family dwellings, on which the cost (including installation charges but excluding interest charges and costs associated with the acquisition of an easement) exceeds twelve thousand dollars ($12,000), the amount of the credit allowed by this section shall be 25 percent of the cost of the solar energy system.

(4) If a solar energy system serves two or more single-family dwellings, the owners of the dwellings shall be eligible to receive the credit in proportion to the number of single-family dwellings served. The amount of the credit shall be determined by dividing the cost (including installation charges but excluding interest charges) of the solar energy system by the number of single-family dwellings served by the system, and applying the formula described in either paragraph (2) or (3) to the per dwelling cost.

(5) Energy conservation measures applied in conjunction with solar energy systems to reduce the total cost or backup energy requirements of such systems shall be considered part of the systems, and shall be eligible for

the tax credit. Qualified energy conservation measures installed within six months of the solar energy system are considered to be installed "in conjunction with" the solar energy system, even if the period spans two taxable years. In cases involving more than six months between the installations of the energy conservation measures and the solar energy system, the taxpayer must be able to provide persuasive evidence that the energy conservation measures were in fact installed in conjunction with a solar energy system. Eligible conservation measures applied in conjunction with solar space heating shall include, but not be limited to, ceiling, wall, and floor insulation above that required by law at the time of original construction. Eligible conservation measures applied in conjunction with solar water heating shall include, but not be limited to, water heater insulation jackets, and shower and faucet flow-reducing devices. Energy conservation measures which shall be eligible for the tax credit when applied in conjunction with solar energy systems shall be defined by the Energy Resources Conservation and Development Commission as part of the solar energy system eligibility criteria.

(6) The compensation paid to the owner of burdened property in connection with the acquisition of a solar easement as defined in Section 801.5 of the Civil Code, and the fees for the recording of such an easement shall be considered part of solar energy systems, and shall be eligible for the tax credit.

(7) The basis amount of any solar energy system eligible for the credit provided under this section shall be reduced by any grant provided by a public entity for such system.

(b) The credit for such cost shall be in lieu of any deduction under this part to which the taxpayer otherwise may be entitled, if any.

(c) The basis of any system for which a credit is allowed shall either be reduced to its salvage value at the end of its useful life, or reduced by the amount of the credit, whichever results in the lesser basis. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(d) With the exception of a husband and wife, if there is more than one owner of a premises on which a solar energy system is installed, each owner shall be eligible to receive the solar energy tax credit in proportion to his or her ownership interests in the premises. In the case of a husband or wife who files a separate return, the credit may be taken by either or equally divided between them.

(e) The tax credit provided by this section shall not apply to trusts or estates subject to tax under this part.

(f) In the case where the credit allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds such "net tax" may be carried over to the "net tax" in succeeding taxable years, with respect to which this section shall remain in effect for purposes of carrying over excess credit, until such credit is used. The credit shall be applied first to the earliest years possible.

(g) The Energy Resources Conservation and Development Commission shall, after one or more public hearings, establish guidelines and criteria for solar energy systems which shall be eligible for the credit provided by this section. Such guidelines and criteria may include, but shall not be limited to, minimum requirements for safety, reliability and durability of solar energy systems. The Franchise Tax Board shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(h) (1) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of solar energy systems, then to the extent such credit is allowed for a solar energy system as defined in this section, the state credit provided in paragraph (2) of subdivision (a) shall be reduced so that the combined effective credit shall not exceed 55 percent of such costs, notwithstanding the carryover provisions of subdivision (f).

(2) If a federal income tax credit is enacted for costs incurred by a taxpayer for the purchase and installation of solar energy systems, then to the extent such credit is allowed for a solar energy system as defined in this section, the state credit provided in paragraph (3) of subdivision (a) shall be reduced by the amount of such

federal credit.

(i) For purposes of this section:

(1) "Installed" means placed in position in a functionally operative state.

(2) "Net tax" means the tax imposed under either Section 17041 or 17048 minus all credits except the credits provided by Section 17061, (relating to excess state disability insurance withheld), Section 18555.1, (relating to excess income tax withheld), Section 17053.5, (relating to the renters' credit).

(3) "Owner" includes duly recorded holders of legal title, lessees with at least three years remaining on their lease, a person purchasing premises under a contract of sale, or who holds shares or membership in a cooperative housing corporation, which holding is a requisite to the exclusive right of occupancy to the premises.

(4) "Premises" means land, buildings, or mobilehomes.

(5) "Single-family dwelling" means a building used for residential purposes, and includes individual units of a condominium, cooperative or other multiple dwelling unit.

(6) (A) "Solar energy system" means the use of solar devices for the individual function of:

(i) Domestic, recreational, therapeutic, or service water heating;

(ii) Space conditioning;

(iii) Production of electricity;

(iv) Process heat;

(v) Solar mechanical energy; and

(vi) Wind energy for the production of electricity or mechanical work.

The term "solar energy system" shall include, but is not limited to, passive thermal systems, semipassive thermal systems, active thermal systems, photovoltaic systems and wind-driven systems.

(B) Eligible solar energy systems shall have a useful life of not less than three years.

(7) "Solar device" means the equipment associated with the collection, transfer, distribution, storage and control of solar energy. In the case of a solar device

associated with two or more solar energy systems, the credit allowed for the solar device may be taken for any one of the systems, or divided equally between them.

(8) "Passive thermal system" means a system which utilizes the structural elements of the building, and is not augmented by mechanical components, to provide for collection, storage, and distribution of solar energy for heating or cooling.

(9) "Active thermal system" means a system which utilizes solar devices thermally isolated from the living space to provide for collection, storage, and distribution of solar energy for heating or cooling.

(10) "Semipassive thermal system" means a system which utilizes the structure of a building and is augmented by mechanical components to provide for collection, storage, and distribution of solar energy for heating or cooling.

SEC. 10.7. The provisions of Sections 10 and 10.5, as the case may be under Section 11.5, of this act shall have no force or effect in the computation of taxes for taxable years and income years which begin after December 31, 1980; provided, however, that any unused credit may be used beyond that date on the same basis and to the same extent as permitted under the law immediately prior to January 1, 1981.

Sections 10 and 10.5, as the case may be under Section 11.5, of this act shall remain in effect only until January 1, 1981, and as of such date are repealed, unless a later enacted statute, which is chaptered before such date, deletes or extends such date.

SEC. 11. The provisions of Section 66473.1 of the Government Code shall not apply to any tentative subdivision map which has been received and accepted as complete for processing prior to the effective date of this act.

SEC. 11.5. It is the intent of the Legislature, if this bill and Assembly Bill No. 3623 are both chaptered and amend Section 17052.5 of the Revenue and Taxation Code, and this bill is chaptered after Assembly Bill No. 3623, that Section 17052.5 of the Revenue and Taxation Code, as amended by Section 1 of Assembly Bill No. 3623

be further amended on the operative date of this act in the form set forth in Section 10.5 of this act to incorporate the changes in Section 17052.5 proposed by this bill. Therefore, Section 10.5 of this act shall become operative only if Assembly Bill No. 3623 is chaptered before this bill and amends Section 17052.5, and in such case Section 10.5 of this act shall become operative on the operative date of this act and Section 10 of this act shall not become operative.

SEC. 12. If any provision of this act or the application thereof to any person or circumstances is held invalid or unconstitutional, the remaining provisions shall not be affected but shall remain in full force and effect. To this end, the provisions of this act are severable.

Senate Bill No. 2003

CHAPTER 760

An act to amend Sections 21080, 21080.5, and 25519 of, and to add Sections 21080.7 and 25541.5 to, the Public Resources Code, relating to energy.

[Approved by Governor September 13, 1978. Filed with Secretary of State September 14, 1978.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2003, Holmdahl. Power facilities and site certification.

(1) Under the California Environmental Quality Act, all public agencies, state and local, are generally required to prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report on any discretionary project, as defined, they propose to carry out or approve which may result in a substantial, or potentially substantial, adverse change in the environment or, if they determine that a proposed project will not have such effect, to adopt a negative declaration.

Such act exempts from its provisions actions undertaken by a public agency for any powerplant site or facility, if the powerplant site and related facility will be the subject of an environmental impact report or negative declaration prepared by the State Energy Resources Conservation and Development Commission, the Public Utilities Commission, or the city or county in which the powerplant and related facility would be located.

This bill would exempt from the California Environmental Quality Act actions undertaken by a public agency for any thermal powerplant site or facility if the powerplant site and related facility will be the subject of a negative declaration or document prepared pursuant to a regulatory program certified pursuant to Section 21080.5 of the Public Resources Code provided that the environmental impact of an action, if any, is included in such impact report, negative declaration, or other document. It would require documents on a site or related facility, prepared by the commission under such a regulatory program in place of an environmental impact report or negative declaration, to be used by any other public agency in the same manner as it would use an environmental impact report or negative declaration prepared by a lead agency.

The bill would change the regulatory program exemption under such act to include programs involving the issuance to a public agency of a lease, permit, license, certificate, or other entitlement for use. The bill would also exempt any project involving the construction of housing or neighborhood commercial facilities in an urbanized area if the lead agency meets the conditions specified.

(2) Under the Warren-Alquist State Energy Resources Conserva-

tion and Development Act, the State Energy Resources Conservation and Development Commission is vested with responsibility for thermal powerplant and electrical transmission line site and related electrical facilities certification.

Such act requires the commission to comply with the environmental impact reporting procedures established pursuant to the California Environmental Quality Act with respect to such certification and to complete the environmental impact report within 1 year after receipt of an application for certification.

This bill would delete these provisions and provide instead that the commission shall be the lead agency for all projects requiring certification and projects exempted from certification pursuant to Section 25541 of the Public Resources Code and require the commission to prepare an environmental impact report within one year after receipt of the application if the Secretary of the Resources Agency does not certify the commission regulation program under (1) above.

This bill would require the commission to adopt regulations not later than January 31, 1979, with respect to power facility and site certification, and to submit a regulatory program to the Secretary of the Resources Agency for certification which could be amended from time to time if necessary for program certification.

(3) The bill would make additional changes in Sections 21080 and 25519 of the Public Resources Code, proposed by Senate Bills 2072 and 1836, respectively, to be operative only if this bill and Senate Bill 2072 or 1836 are both chaptered and effective January 1, 1979, and this bill is chaptered after Senate Bill 2072 or 1836.

The people of the State of California do enact as follows:

SECTION 1. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166).

(b) This division shall not apply to the following:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been

proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions, necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, steam, water (except ground water), or power for such a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report or negative declaration or other document or documents prepared pursuant to a regulatory program certified pursuant to Section 21080.5 which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located; provided that such environmental impact report, negative declaration, or other document, or documents, shall include the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares or other charges by public agencies which the public agency finds are for the purpose of (1) meeting operating expenses, including employee wage rates and fringe benefits, (2) purchasing or leasing supplies, equipment or materials, (3) meeting financial reserve needs and requirements, (4) obtaining funds for capital projects, necessary to maintain service within existing service areas, or (5) obtaining funds necessary to maintain such intra-city transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

(9) Actions taken prior to August 31, 1979, by a public agency to implement the transition from the property taxation system in effect prior to June 1, 1978, to the system provided for by Article XIII A of the California Constitution. Such actions shall be limited to projects defined in subdivision (a) or (b) of Section 21065 which initiate or increase fees, rates, or charges charged for any existing public service, program, or activity; reduce or eliminate the availability of an existing public service, program, or activity; close publicly owned or operated facilities; or reduce or eliminate the availability of an existing publicly owned transit service, program, or activity.

(c) In the event that a lead agency determines that a proposed

project, not otherwise exempt from the provisions of this division, does not have a significant effect on the environment, such lead agency shall adopt a negative declaration to that effect.

SEC. 2. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166).

(b) This division shall not apply to the following:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions, necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except ground water), steam, or power for such a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report or negative declaration or other document, or documents, prepared pursuant to a regulatory program certified pursuant to Section 21080.5 which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located; provided that such environmental impact report, negative declaration, or other document, or documents, shall include the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for such Olympic games.

(8) The establishment, modification, structuring, restructuring, or

approval of rates, tolls, fares or other charges by public agencies which the public agency finds are for the purpose of (1) meeting operating expenses, including employee wage rates and fringe benefits, (2) purchasing or leasing supplies, equipment or materials, (3) meeting financial reserve needs and requirements, (4) obtaining funds for capital projects, necessary to maintain service within existing service areas, or (5) obtaining funds necessary to maintain such intra-city transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

(9) Actions taken prior to August 31, 1979, by a public agency to implement the transition from the property taxation system in effect prior to June 1, 1978, to the system provided for by Article XIII A of the California Constitution. Such actions shall be limited to projects defined in subdivision (a) or (b) of Section 21065 which initiate or increase fees, rates, or charges charged for any existing public service, program, or activity; reduce or eliminate the availability of an existing public service, program, or activity; close publicly owned or operated facilities; or reduce or eliminate the availability of an existing publicly owned transit service, program, or activity.

(c) In the event that a lead agency determines that a proposed project, not otherwise exempt from the provisions of this division, does not have a significant effect on the environment, such lead agency shall adopt a negative declaration to that effect.

SEC. 2.3. Section 21080.5 of the Public Resources Code is amended to read:

21080.5. (a) When the regulatory program of a state agency, board, or commission requires a plan or other written documentation, containing environmental information and complying with the requirements of paragraph (3) of subdivision (d) of this section, to be submitted in support of any of the activities listed in subdivision (b), such plan or other written documentation may be submitted in lieu of the environmental impact report required by this division; provided, that the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.

(b) The provisions of this section shall apply only to regulatory programs or portions thereof which involve:

(1) The issuance to a person of a lease, permit, license, certificate, or other entitlement for use; or

(2) The adoption or approval of standards, rules, regulations or plans for use in the regulatory program.

(c) A regulatory program certified pursuant to this section is exempt from the provisions of Chapter 3 (commencing with Section 21100) and Chapter 4 (commencing with Section 21150) of this division and Section 21167.

(d) In order to qualify for certification pursuant to this section, a regulatory program shall require utilization of an interdisciplinary

approach which will ensure the integrated use of the natural and social sciences in decisionmaking and shall meet all of the following criteria;

(1) The enabling legislation of the regulatory program shall:

(i) Include protection of the environment among its principal purposes.

(ii) Contain authority for the administering agency to promulgate rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation.

(2) The rules and regulations adopted by the administering agency shall:

(i) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

(ii) Include guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program.

(iii) Require the administering agency to consult with all public agencies which have jurisdiction, by law, with respect to the proposed activity.

(iv) Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process.

(v) Require the filing of a notice of the decision by the administering agency on the proposed activity with the Secretary of the Resources Agency. Such notices shall be available for public inspection, and a list of such notices shall be posted on a weekly basis in the office of the Resources Agency. Each such list shall remain posted for a period of 30 days.

(vi) Require notice of the filing of the plan or other written documentation to be made to the public and to any person who requests, in writing, such notification. The notification shall be made in a manner that will provide the public or any such person with sufficient time to review and comment on such filing.

(3) The plan or other written documentation required by the regulatory program shall:

(i) Include a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse environmental impact.

(ii) Be available for a reasonable time for review and comment by other public agencies and the general public.

(e) The Secretary of the Resources Agency shall certify a regulatory program which the secretary determines meets all the qualifications for certification set forth in this section, and withdraw certification on determination that the regulatory program has been altered so that it no longer meets such qualifications. Certification

and withdrawal of certification shall occur only after compliance with Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2 of the Government Code.

In determining whether or not a regulatory program meets the qualifications for certification set forth in this section, the inquiry of the Secretary of the Resources Agency shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The inquiry shall not extend to individual decisions to be reached under such regulatory program, including the nature of specific alternatives or mitigation measures which might be proposed to lessen any significant adverse environmental effects of the activity.

In the event that the Secretary of the Resources Agency determines that the regulatory program submitted for certification does not meet the qualifications for certification set forth in this section, the secretary shall adopt findings setting forth the reasons for such determination.

(f) After a regulatory program has been certified pursuant to this section, any proposed change in such program which could affect compliance with the qualifications for certification specified in subdivision (d) may be submitted to the Secretary of the Resources Agency for review and comment. The scope of the secretary's review shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The review shall not extend to individual decisions to be reached under such regulatory program, including specific alternatives or mitigation measures which might be proposed to lessen any significant adverse environmental effects of the activity. The secretary shall have 30 days after receipt of such proposed change to notify the state agency, board, or commission whether the proposed change will alter the regulatory program so that it no longer meets the qualification for certification established in this section and will result in a withdrawal of certification as provided in this section.

(g) Any action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency, board, or commission approving or adopting a proposed activity under a regulatory program which has been certified pursuant to this section on the basis that the plan or other written documentation prepared pursuant to paragraph (3) of subdivision (d) does not comply with the provisions of this section shall be commenced no later than 30 days from the date of the filing of notice of the approval or adoption of the activity.

(h) Any action or proceeding to attack, review, set aside, void or annul a determination of the Secretary of the Resources Agency to certify a regulatory program pursuant to this section on the basis that the regulatory program does not comply with the provisions of this section shall be commenced within 30 days after certification by the secretary.

In any action brought under this subdivision, the inquiry shall extend only to whether there was a prejudicial abuse of discretion by the Secretary of the Resources Agency. Abuse of discretion is established if the secretary has not proceeded in a manner required by law or if the determination is not supported by substantial evidence.

(i) For purposes of this section, any county agricultural commissioner shall be considered a state agency.

SEC. 2.5. Section 21080.7 is added to the Public Resources Code, to read:

21080.7. (a) No environmental impact report or negative declaration shall be required for any project involving the construction of housing or neighborhood commercial facilities in an urbanized area if the lead agency does all of the following:

(1) Finds, after giving notice pursuant to subdivision (b) or (c) of Section 21092 and following the procedure prescribed by law or regulation which would be necessary to make a determination pursuant to Section 21080.1,

(i) That such project is consistent with a specific plan which has been adopted pursuant to Article 8 (commencing with Section 65450), Article 9 (commencing with Section 65500), and Article 10 (commencing with Section 65550) of Chapter 3 of Title 7 of the Government Code or, in the coastal zone, a local coastal program certified pursuant to Article 2 (commencing with Section 30510) of Chapter 6 of Division 20,

(ii) That such plan or program was adopted pursuant to the procedure established by Article 9 (commencing with Section 65500) of Chapter 3 of Title 7 of the Government Code not more than five years prior to the finding made pursuant to this section, and,

(iii) That such plan or program has been the subject of an environmental impact report, and

(iv) That the environmental impact report is sufficiently detailed so that the significant adverse effects of the project on the environment and measures necessary to mitigate or avoid any such effects can be determined, including significant physical effects on existing structures and neighborhoods of historical or aesthetic significance if any exist in the area covered by the plan or program, and measures necessary to mitigate such effects.

(2) Makes one or more of the findings as required pursuant to Section 21081.

(3) Files a notice of the decision on the proposed activity with the county clerk. Such notices shall be available for public inspection, and a list of such notices shall be posted on a weekly basis in the office of the county clerk. Each such list shall remain posted for a period of 30 days.

(b) As used in this section:

(1) "Neighborhood commercial facilities" means those commercial facilities which are an integral part of a project involving

the construction of housing and which will serve the residents of such housing.

(2) "Urbanized area" means a central city or cities and surrounding closely settled territory, as defined by the United States Department of Commerce Bureau of the Census in the Federal Register, Volume 39, Number 85, for Wednesday, May 1, 1974, at pages 15202-15203 and as periodically updated.

SEC. 3. Section 25519 of the Public Resources Code is amended to read:

25519. (a) In order to obtain certification for a site and related facility, an application for certification of such site and related facility shall be filed with the commission. Such application shall be in a form prescribed by the commission and shall be filed with the commission not later than 18 months before any construction is to commence. Such application shall be for a site and related facility which has been found to be acceptable by the commission pursuant to Section 25516, or for an additional facility at a site which has been designated a potential multiple-facility site pursuant to Section 25514.5 and found to be acceptable pursuant to Sections 25516 and 25516.5. An application for an additional facility at a potential multiple-facility site shall be subject to the conditions and review specified in Section 25520.5. An application may not be filed for a site and related facility, if there is no suitable alternative for the site and related facility which was previously found to be acceptable by the commission, unless the commission has approved the notice based on the one site as specified in Section 25516.

(b) The commission, upon its own motion or in response to the request of any party, may require the applicant to submit any information, document, or data, in addition to the attachments required by subdivision (i), which it determines is reasonably necessary to make any decision on the application.

(c) The commission shall be the lead agency as provided in Section 21165 for all projects which require certification pursuant to this chapter and for projects which are exempted from such certification pursuant to Section 25541. Unless the commission's regulatory program governing site and facility certification and related proceedings are certified by the Resources Agency pursuant to Section 21080.5, an environmental impact report shall be completed within one year after receipt of the application. If the commission prepares a document or documents in the place of an environmental impact report or negative declaration under a regulatory program certified pursuant to Section 21080.5, any other public agency which must make a decision which is subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000), on a site or related facility, shall use the document or documents prepared by the commission in the same manner as they would use an environmental impact report or negative declaration prepared by a lead agency.

(d) If the site and related facility specified in the application is proposed to be located in the coastal zone, the commission shall transmit a copy of the application to the California Coastal Commission for its review and comments.

(e) If the site and related facility specified in the application is proposed to be located in the Suisun Marsh or the jurisdiction of the San Francisco Bay Conservation and Development Commission, the commission shall transmit a copy of the application to the San Francisco Bay Conservation and Development Commission for its review and comments.

(f) Upon receipt of an application, the commission shall forward the application to local governmental agencies having land use and related jurisdiction in the area of the proposed site and related facility. Such local agencies shall review the application and submit comments on, among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects of the design, construction, or operation of the proposed site and related facility.

(g) Upon receipt of an application, the commission shall cause a summary of the application to be published in a newspaper of general circulation in the county in which the site and related facilities, or any part thereof, designated in the application, is proposed to be located. The commission shall transmit a copy of the application to each federal and state agency having jurisdiction or special interest in matters pertinent to the proposed site and related facilities and to the Attorney General.

(h) The adviser shall require that adequate notice is given to the public and that the procedures specified by this division are complied with.

(i) For any proposed site and related facility requiring a certificate of public convenience and necessity, the commission shall transmit a copy of the application to the Public Utilities Commission and request the comments and recommendations of the Public Utilities Commission on the economic, financial, rate, system reliability, and service implications of the proposed site and related facility. In the event the commission requires modification of the proposed facility, the commission shall consult with the Public Utilities Commission regarding the economic, financial, rate, system reliability, and service implications of such modifications.

(j) The commission shall transmit a copy of the application to any governmental agency not specifically mentioned in this act, but which it finds has any information or interest in the proposed site and related facilities, and shall invite the comments and recommendations of each such agency. The commission shall request any relevant laws, ordinances, or regulations which any such agency has promulgated or administered.

(k) An application for certification of any site and related facilities

shall contain a listing of every federal agency from which any approval or authorization concerning the proposed site is required, specifying the approvals or authorizations obtained at the time of the application and the schedule for obtaining any approvals or authorizations pending.

SEC. 4. Section 25519 of the Public Resources Code is amended to read:

25519. (a) In order to obtain certification for a site and related facility, an application for certification of such site and related facility shall be filed with the commission. Such application shall be in a form prescribed by the commission and shall be for a site and related facility which has been found to be acceptable by the commission pursuant to Section 25516, or for an additional facility at a site which has been designated a potential multiple-facility site pursuant to Section 25514.5 and found to be acceptable pursuant to Sections 25516 and 25516.5. An application for an additional facility at a potential multiple-facility site shall be subject to the conditions and review specified in Section 25520.5. An application may not be filed for a site and related facility, if there is no suitable alternative for the site and related facility which was previously found to be acceptable by the commission, unless the commission has approved the notice based on the one site as specified in Section 25516.

(b) The commission, upon its own motion or in response to the request of any party, may require the applicant to submit any information, document, or data, in addition to the attachments required by subdivision (i), which it determines is reasonably necessary to make any decision on the application.

(c) The commission shall be the lead agency as provided in Section 21165 for all projects which require certification pursuant to this chapter and for projects which are exempted from such certification pursuant to Section 25541. Unless the commission's regulatory program governing site and facility certification and related proceedings are certified by the Resources Agency pursuant to Section 21080.5, an environmental impact report shall be completed within one year after receipt of the application. If the commission prepares a document or documents in the place of an environmental impact report or negative declaration under a regulatory program certified pursuant to Section 21080.5, any other public agency which must make a decision which is subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000), on a site or related facility, shall use the document or documents prepared by the commission in the same manner as they would use an environmental impact report or negative declaration prepared by a lead agency.

(d) If the site and related facility specified in the application is proposed to be located in the coastal zone, the commission shall transmit a copy of the application to the California Coastal Commission for its review and comments.

(e) If the site and related facility specified in the application is proposed to be located in the Suisun Marsh or the jurisdiction of the San Francisco Bay Conservation and Development Commission, the commission shall transmit a copy of the application to the San Francisco Bay Conservation and Development Commission for its review and comments.

(f) Upon receipt of an application, the commission shall forward the application to local governmental agencies having land use and related jurisdiction in the area of the proposed site and related facility. Such local agencies shall review the application and submit comments on, among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects of the design, construction, or operation of the proposed site and related facility.

(g) Upon receipt of an application, the commission shall cause a summary of the application to be published in a newspaper of general circulation in the county in which the site and related facilities, or any part thereof, designated in the application, is proposed to be located. The commission shall transmit a copy of the application to each federal and state agency having jurisdiction or special interest in matters pertinent to the proposed site and related facilities and to the Attorney General.

(h) The adviser shall require that adequate notice is given to the public and that the procedures specified by this division are complied with.

(i) For any proposed site and related facility requiring a certificate of public convenience and necessity, the commission shall transmit a copy of the application to the Public Utilities Commission and request the comments and recommendations of the Public Utilities Commission on the economic, financial, rate, system reliability, and service implications of the proposed site and related facility. In the event the commission requires modification of the proposed facility, the commission shall consult with the Public Utilities Commission regarding the economic, financial, rate, system reliability, and service implications of such modifications.

(j) The commission shall transmit a copy of the application to any governmental agency not specifically mentioned in this act, but which it finds has any information or interest in the proposed site and related facilities, and shall invite the comments and recommendations of each such agency. The commission shall request any relevant laws, ordinances, or regulations which any such agency has promulgated or administered.

(k) An application for certification of any site and related facilities shall contain a listing of every federal agency from which any approval or authorization concerning the proposed site is required, specifying the approvals or authorizations obtained at the time of the application and the schedule for obtaining any approvals or

authorizations pending.

SEC. 5. Section 25541.5 is added to the Public Resources Code, to read:

25541.5. The commission shall, not later than January 31, 1979, adopt regulations pursuant to this chapter which comply with all the requirements of this chapter and Section 21080.5, and shall submit a regulatory program to the Secretary of the Resources Agency for certification pursuant to Section 21080.5. After certification by the Secretary of the Resources Agency, the commission shall amend such regulatory program from time to time, as necessary to permit the Secretary to continue to certify the program.

SEC. 6. It is the intent of the Legislature, if this bill and Senate Bill No. 2072 are both chaptered and become effective January 1, 1979, both bills amend Section 21080 of the Public Resources Code, and this bill is chaptered after Senate Bill No. 2072, that the amendments to Section 21080 proposed by both bills be given effect and incorporated in Section 21080 in the form set forth in Section 2 of this act. Therefore, Section 2 of this act shall become operative only if this bill and Senate Bill No. 2072 are both chaptered and become effective January 1, 1979, both amend Section 21080, and this bill is chaptered after Senate Bill No. 2072, in which case Section 1 of this act shall not become operative.

SEC. 7. It is the intent of the Legislature, if this bill and Senate Bill No. 1836 are both chaptered and become effective January 1, 1979, both bills amend Section 25519 of the Public Resources Code, and this bill is chaptered after Senate Bill No. 1836, that the amendments to Section 25519 proposed by both bills be given effect and incorporated in Section 25519 in the form set forth in Section 4 of this act. Therefore, Section 4 of this act shall become operative only if this bill and Senate Bill No. 1836 are both chaptered and become effective January 1, 1979, both amend Section 25519, and this bill is chaptered after Senate Bill No. 1836, in which case Section 3 of this act shall not become operative.

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AMENDED IN CONFERENCE
SENATE AUGUST 31, 1978; ASSEMBLY AUGUST 31, 1978
AMENDED IN ASSEMBLY AUGUST 23, 1978
AMENDED IN ASSEMBLY AUGUST 17, 1978

SENATE BILL No. 1767

Introduced by Senator Alquist

March 16, 1978

An act to amend Section 25705 of ~~, and to add Section 25705.5 to,~~ the Public Resources Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1767, as amended, Alquist. Powerplants and related facilities: site certification.

The present law, generally, provides for the certification of powerplants and related facilities by the State Energy Resources Conservation and Development Commission. Prior to submitting an application for the certification of a powerplant and related facilities, the applicant is required to file a notice of intent to file an application for certification.

Under existing law, if the commission determines that all reasonable conservation, allocation, and service restriction measures will not alleviate an energy supply emergency and upon specified declaration by the Governor or Legislature, it may authorize the construction and use of generating facilities with a designated maximum capacity under terms and conditions it specifies to promote the public interest.

This bill would delete such a limitation on the maximum allowable generating capacity and, instead, require the commission to authorize the construction and use of generating facilities, if the above conditions are satisfied. ~~This bill would, also, provide for a shortening of siting process with respect to~~

~~powerplants and related facilities under such provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 25705 of the Public Resources Code is amended to read:

25705. If the commission determines that all reasonable conservation, allocation, and service restriction measures may not alleviate an energy supply emergency, and upon a declaration by the Governor or by an act of the Legislature that a threat to public health, safety, and welfare exists and requires immediate action, the commission shall authorize the construction and use of generating facilities under such terms and conditions as specified by the commission to protect the public interest.

Within 60 days after the authorization of construction and use of such generating facilities, the commission shall issue a report detailing the full nature, extent, and estimated duration of the emergency situation and making recommendations to the Governor and the Legislature for further energy conservation and energy supply measures to alleviate the emergency situation as alternatives to use of such generating facilities.

~~SEC. 2. Section 25705.5 is added to the Public Resources Code, to read:~~

~~25705.5. (a) Upon a declaration by the Governor or by an act of the Legislature that due to an energy shortage a threat to public health, safety, and welfare exists and requires immediate action, any applicant may petition the commission for a shortened siting process with respect to a particular powerplant and related facilities. The commission shall grant such petition only if it makes the findings that such site and related facilities satisfy both of the following:~~

~~(1) They are needed, according to the forecast of the commission adopted pursuant to Chapter 1 (commencing with Section 25300) of this division.~~

~~(2) They cannot be processed under Chapter 6 (commencing with Section 25500) of this division in sufficient time to allow construction of the powerplant and related facilities to meet the demand set forth in the forecast referred to in paragraph (1) of this subdivision.~~

~~(b) If the petition referred to in subdivision (a) is granted by the commission, then, except as otherwise agreed between the commission and the applicant petitioning the commission under this section, the commission shall, with respect to such powerplant and related facilities, issue its final report on the notice, as specified in Section 25516, within six months from the date of filing of such notice, and shall issue its final report and decision on the application, as specified in Section 25523, within six months from the date of filing of the application for certification.~~

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Nat'l Conference of State
Legislatures Energy Policy
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