

1975

**Additions to
the Mineral Laws
of Wyoming**

THE GEOLOGICAL SURVEY OF WYOMING
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TABLE OF CONTENTS

	Page
<u>Title 9.</u> Administration of the Government	
Article 1. State Land Use Planning Act	
9-849 thru 9-850.	1-2
Article 2. State Land Use Planning	
9-851 thru 9-855.	2-5
Article 3. Local Land Use Planning	
9-856 thru 9-857.	6
Article 4. Land Information Service	
9-858 thru 9-859.	7
Article 5. Review Procedures	
9-860 thru 9-861.	7
Article 6. Land Use Planning Grants	
9-862	7-9
<u>Title 34.</u> Property, Conveyances and Security Transactions	
Tax Title Limitations Act	
34-62.1 thru 34-62.5.	9-11
<u>Title 35.</u> Public Health and Safety	
Article 4. Land Quality	
35-502.3.	12
35-502.17	12
35-502.20	12
35-502.23	13
35-502.24	13
35-502.24:1	15
35-502.29 thru 35-502.31.	16-17
35-502.33	18
Article 6. Variances	
35-502.45	18
Article 7. Complaints	
35-502.46	20
Article 8. Permits	
35-502.47	20
Article 9. Penalties	
35-502.49	21
Article 11. Miscellaneous Provisions	
35-502.53	21
35-502.55	21
35-502.56	21
Industrial Development & Siting Act	
35-502.75 thru 35-502.94.	22-41
<u>Title 39.</u> Taxation and Revenue	
39-224.	41
Coal Tax for Impact Assistance	
39-227.1.	42
Severance Tax Clarification	
39-227.1:1.	43
39-227.2.	44
39-227.4.	44
39-227.10	44-45

9-849. Short title. This act shall be known as the "State Land Use Planning Act".

9-850. Definitions. As used in this act:

(a) "Advisory committee" means that committee established under this act to advise the commission on long and short range land use planning issues;

(b) "Areas of critical or more than local concern" means those areas defined and designated by the commission where uncontrolled or incompatible large scale development could result in damage to the environment, life or property, where the short or long term public interest is of more than local significance. Such areas are subject to definition by the commission as to their extent and shall include but are not limited to: fragile or historic lands, natural hazard lands, renewable resource lands, new town lands and such additional areas as the commission determines to be of more than local concern. However, no area of critical or more than local concern shall be designated by the commission without at least one (1) public hearing within the physical boundaries of the area to be so designated;

(c) "Commission" means the state land use commission;

(d) "Office" means the office of land use administration located within the office of the governor;

(e) "Director" means the administrative head of the office of land use administration;

(f) "Goal" means a desired condition as it relates to land use. Historical land use of the majority of the land in a region shall be a determining factor in defining goals;

(g) "Guidelines" means a checklist of methods through which a land use policy is established;

(h) "Land use planning" means the process which guides the growth and development of an area and assures the best and wisest use of that area's resources now and in the future;

(j) "Large scale development" means any private or public development which because of its magnitude of land area or the magnitude of its effect on the surrounding environment is likely to affect a wide area or population;

(k) "Local government" means any county, city or town, or any combination of the above as formed under the provisions of the Wyoming Joint Powers Act;

(m) "Local land use plan" means any written statement of land use policies, goals and objectives adopted by local governments. Such plans shall relate to an explanation of the methods for implementation, however, these plans shall not require any provisions for zoning. Any local land use plan may contain maps, graphs, charts, illustrations or any other form of written or visual communication;

(n) "Long range" means a period of time of more than one (1) year in the future;

(o) "Objective" means a desired level of achievement or measurable step towards achievement of a goal;

(p) "Person" means any individual, partnership, corporation, association, municipality, governmental subdivision, public or private organization;

(q) "Policy" means the method which should be applied to obtain a desired goal;

(r) "Region" means any combination of local governments formed under the Wyoming Joint Powers Act or any land areas designated by the commission as critical or of more than local concern;

(s) "State land use plan" means any written statement of policies, goals and objectives adopted by the commission relating to land use within the state, which shall include a summary of the policies, goals and objectives of each county-wide plan. The state land use plan shall contain maps, graphs, charts, illustrations or any other form of written or visual communication;

(t) "Zoning" means a form of regulatory control granted to local governments which may be used to guide and to develop specific allowable land use;

(u) "This act" means W.S. 9-849 through 9-862.

9-851. Advisory committee created; membership; terms; meetings; expenses.

(a) The governor shall appoint a land use advisory committee consisting of twenty-seven (27) members, one (1) member shall be appointed from each county from a list of not more than five (5) names of any qualified individuals nominated by the county commissioners of that county, and four (4) members shall be appointed at large. The primary function of the committee shall be advisory in short and long range planning and other assignments designated by the commission. No state or federal agency employees shall be appointed as members of the advisory committee.

(b) The advisory committee may require any state agency to assist and cooperate in carrying out the intent and purposes of this act.

(c) For the initial appointment to the advisory committee, the governor shall appoint twenty-seven (27) members nine (9) of which shall be for a two (2) year term, nine (9) of which shall be for a three (3) year term and nine (9) of which shall be for a four (4) year term. Thereafter all appointments shall be for four (4) year terms. Vacancies for any reason shall be filled by the governor for the unexpired portion of the term from the county in which the vacancy occurs or the state at large if the vacancy is a member who is appointed at large and in accordance with the provisions of subsection (a) of this section.

(d) The advisory committee shall meet within thirty (30) days after the effective date of this act to elect a chairman from the advisory committee whose term as chairman shall be for two (2) years. A vice chairman and a secretary shall also be elected from the advisory committee. Such officers shall be elected every two (2) years thereafter. The chairman shall also be an ex-officio member of the commission. Thereafter the advisory committee shall meet at least twice annually, with the chairman or a majority of the committee calling special meetings at their discretion. Before any advisory committee recommendations are forwarded to the commission, a quorum of fourteen (14) members shall have acted upon the recommendation. Written records shall be required of all meetings and proceedings.

(e) Advisory committee members shall be reimbursed for per diem, mileage and expenses for attending meetings in the same manner and amount as state employees.

9-852. State land use commission.

(a) There is hereby created the Wyoming state land use commission, for the purpose of guiding land use planning within the state. The commission shall consist of nine (9) members appointed by the governor. Each member of the advisory committee shall within thirty (30) days after the effective date of this act, submit to the governor a list of two (2) names of persons residing within his respective county. From this list the governor shall appoint seven (7) members of the commission, one (1) from each judicial district of the state. The remaining two (2) members shall be appointed at large. No state or federal agency employees shall be appointed as members of the land use commission. No person shall serve on the advisory committee and the land use commission at the same time.

(b) The governor shall, within thirty (30) days after receipt of the list of names from the members of the advisory committee, appoint the members of the commission. Initial appointments to the commission shall be three (3) members for two (2) year terms, three (3) members for three (3) year terms and three (3) members for four (4) year terms. Thereafter all appointments shall be made only for a limited term to end on the expiration date of this act. Any vacancies shall be filled by the governor for the unexpired portion of the term, from nominees from the judicial district in which the vacancy occurs, in accordance with the applicable provisions of subsection (a) of this section.

(c) The commission shall meet within thirty (30) days after the initial appointments to elect a chairman, vice-chairman and secretary from among its members. Such officers shall be elected annually thereafter.

(d) The commission shall have at least four (4) regularly scheduled meetings each year with the chairman or a majority of the members calling special meetings whenever deemed necessary. For the purpose of conducting commission business five (5) members constitute a quorum. A majority of those appointed shall be necessary for the adoption of any motion. Written records shall be required of all meetings and proceedings.

(e) Commission members shall be reimbursed for per diem, mileage, and expenses for attending meeting in the same manner and amount as state employees.

9-853. Powers, duties, functions and regulatory authority of the commission.

(a) The commission shall have the following powers and duties:

(i) To keep the governor and citizens informed on a continuing basis of potential land use problems and the status of land use planning in the state;

(ii) To adopt, modify, enforce or revise rules and regulations necessary for the implementation of the purposes and provisions of this act;

(iii) To accept, receive, procure and negotiate for any grants, gifts, loans or other funds from any source for the purposes of this act;

(iv) To contract with other governmental agencies and nongovernmental professional groups or individuals for services;

(v) To employ with the consent of the governor a director of the office of land use administration, as established in W.S. 9-854, and define his duties pursuant to W.S. 9-855;

(vi) To adopt, within twelve (12) months following the first meeting of the commission, and after holding public hearings, statewide land use goals, policies and guidelines with the assistance of the advisory committee, in accordance with the best interests of the state, counties, cities, towns and regions. The guidelines shall include definitions of land uses such as, but not limited to, agricultural, residential, commercial, industrial, open space, transportation, utilities, recreational, historic, scenic and water storage;

(vii) To develop a state land use plan after public hearings held throughout the state, within two and one-half (2 1/2) years after the adoption of statewide land use goals, policies and guidelines;

(viii) To obtain and analyze on a continuing basis a statewide inventory to include, but not be limited to data relating to: land and natural resources; population densities and trends; industrial development and plant siting; economic characteristics and projections; environmental conditions and trends and directions and extent of urban and rural growth;

(ix) To identify, after public hearing and, with the assistance of the advisory committee, those areas in the state determined to be of critical or more than local concern and establish developmental guidelines for such areas;

(x) To assist local governments in the planning for the development and regulation in the areas determined to be of critical or more than local concern;

(xi) To define, when deemed necessary, with the assistance of the advisory committee, regions for land use planning;

(xii) To cooperate with federal agencies and with other states, provided that such cooperation is performed in such a manner as to assure that no federal intervention or control shall take place in the initial or continuing state or local land use planning process;

(xiii) To coordinate land use planning activities with other state agencies, boards, commissions and departments;

(xiv) Provide technical assistance, information and education to the state, counties, municipalities, regions and political subdivisions of the state, relative to land use planning.

9-854. Office of land use administration. There is hereby created within the governor's office, "the office of land use administration".

9-855. Appointments and duties of director; staff; salaries and qualifications.

(a) The commission, with the consent of the governor, shall appoint a director of the office who will serve at the pleasure of the commission and the governor, as the executive and administrative head. The director shall, within budgetary limitations, and subject to the approval of the governor and the commission, employ such staff as deemed necessary to carry out the functions and responsibilities of the office. Qualifications of the director shall be determined by the commission.

(b) In addition to any other duties imposed by law, the director shall perform any and all acts necessary to administer and enforce the provisions of this act, and any rules, regulations and orders of the commission; and carry out the policies and guidelines established by the commission.

9-856. Development of local land use plans.

(a) All local governments shall develop a local land use plan within their jurisdiction. The plans shall be consistent with established state guidelines and be subject to review and approval by the commission.

(b) All incorporated cities and towns shall have the option to develop a land use plan in accordance with the requirements of W.S. 9-857(a), or cooperate with the county to develop such a plan under W.S. 9-857(b).

(c) All counties shall develop a countywide land use plan which shall incorporate the land use plans of all incorporated cities and towns within the county.

(d) All counties shall within twelve (12) months of the adoption of statewide land use goals, policies and guidelines by the commission, submit their preliminary land use plans, which shall include the land use plans of the cities and towns, to the commission in accordance with the goals, policies and guidelines of the commission. Thereafter the counties shall have a period of six (6) months to submit and gain approval of their completed local land use plans. However upon application of the local government and for cause shown the commission may grant an additional six (6) month extension. The commission shall accept the land use plan of Fremont County as complete even though the lands under the direct jurisdiction of the Wind River Indian Reservation are not included in the countywide land use plan.

(e) In the event a local government does not submit or is unable to develop or gain approval of a local land use plan within the time specified in subsection (d) of this section, the commission shall develop an appropriate local land use plan utilizing goals established by the local governmental units.

9-857. Organization.

(a) The duty, procedures, requirements for public hearings and responsibility for land use planning at the local level shall be exercised by the cities and towns pursuant to the provisions of W.S. 15.1-71 et seq. and by the respective counties pursuant to W.S. 18-289.1 et seq.

(b) For the purpose of development of local land use plans, the local government within each city, town and county may cooperate in the development of land use plans not inconsistent with established goals, policies and guidelines in accordance with the powers granted by the Wyoming Joint Powers Act under W.S. 9-18.7 and 9-18.13 through 9-18.20.

9-858. Information service created. The office shall cause to be provided an updated land use information inventory of data sources in the state, establish a reference and referral service, including a statewide incoming toll-free telephone system, to answer inquiries about land use information, and arrange for the providing and furnishing of land use data to local, state, regional and federal agencies at reasonable cost. This information service shall make available to the local planning units the most current information and data within one (1) year of the effective date of this act.

9-859. Authority. The office shall be required to order, acquire and develop an adequate data base for land use planning. All such information shall be maintained and available for public disclosure. All state agencies, boards, commissions and departments shall be required to adhere to the standards for the collection, storage and maintenance of land use data within their agency, board, commission or department, as established after consultation with those groups and development of standards. The commission shall review all relevant land use data programs of all federal, state, regional and local agencies in order to facilitate cooperation and coordination.

9-860. Review by local government. Administrative review of local land use decisions made by any officer, department, board, agency or commission may be taken by any person aggrieved by any such decision to the appropriate local government as provided by law. Appeal may be taken from any decision of an administrative agency to the district court for review in accordance with the provisions of the Wyoming Administrative Procedure Act.

9-861. Review by state commission. Pursuant to the rules and regulations promulgated by the commission, any person aggrieved by a decision of the office regarding development in areas designated as critical or of more than local concern may seek review of the office's decision by the commission which shall, after opportunity for public hearing in accordance with the Wyoming Administrative Procedure Act, make a final decision on the matter. The commission shall affirm, modify or reverse any decision of the office. Any person aggrieved by a final decision or final order of the commission may appeal to the district court for review in accordance with the provisions of the Wyoming Administrative Procedure Act.

9-862. Land use by planning grants.

(a) Commencing July 1, 1975 each local government may apply to the director for a planning grant. Each planning grant shall be in such amount as the commission determines to be reasonably necessary to carry out a land use planning program.

(b) The planning grants to local governments shall not exceed the lesser of ten thousand dollars (\$10,000.00) per fiscal year or fifty percent (50%) of the cost of the land use planning program. However, the

maximum expenditure to all local governments within one (1) county shall not exceed ten thousand dollars (\$10,000.00) per fiscal year.

(c) Each planning grant shall consist of funds to be drawn from the general fund and expendable by the recipient throughout the planning grant period as determined by the commission, but in no event shall the planning grant period exceed twelve (12) months, nor shall the last day of the planning grant period be later than the last day of the earliest fiscal year during which the planning grant funds shall be expendable.

(d) Each planning grant shall be renewable upon reapplication to the director in the manner prescribed in this section and all renewed planning grants shall be in such amount as the commission determines to be reasonably necessary to carry out a planning program, subject however, to the same limitations upon amount and duration as apply to original planning grants.

(e) All original applications and all renewal applications shall be submitted to the director, who shall evaluate and then submit each application to the commission for approval or disapproval.

(f) All original and renewal applications for planning grants shall set forth such information as the director in consultation with the commission, may require by rules and regulations.

(g) Every application and renewal application shall be approved or disapproved by the commission within sixty (60) days after receipt thereof by the director. The director may, within twenty (20) days after receipt of an application or renewal application, request additional information from the applicant. In the event the request for additional information is made, the application shall be deemed submitted when the additional information has been submitted.

(h) Each approval of an application or renewal application for a planning grant shall specify the commencement and termination dates of the planning grant period.

(j) Nothing contained in this act shall be construed to limit the number of applications which an applicant may submit.

(k) Not less than ninety (90) days prior to the end of the planning grant period, each planning grant recipient shall submit to the director a planning grant report. Each report shall set forth such information as the director, in consultation with the commission, may require by rules and regulations.

Section 2. There is hereby appropriated out of any funds in the state treasury not otherwise appropriated, the sum of six hundred forty-seven thousand five hundred twenty-nine dollars (\$647,529.00) or so much thereof as may be necessary to carry out the purposes of this act.

Section 3. In the event the powers, duties and responsibilities of any state agency conflict with the powers, duties and responsibilities of the state land use commission as established by this act, the state planning coordinator pursuant to W.S. 9-144.3(b) shall have the responsibility of deciding which body shall act.

Section 4. If any portion of this act is declared invalid by a court of competent jurisdiction, such decision shall be limited to the portions found invalid, and shall not affect or invalidate the remaining portions of this act, which shall remain in full force and effect.

Section 5. This act is effective sixty (60) days after adjournment of the session of the legislature at which it was enacted.

Page 260 **Creation of Tax Title Limitations Act**
(Sections 34-62.1 through 34-62.5)

Section 1. W.S. 34-62.1 through 34-62.5 are created to read:

34-62.1. Definitions. As used in this act:

(a) "Tax deed" means any conveyance executed by or on behalf of the state, or any county, municipality, or other taxing or assessment unit thereof, which conveys or purports to convey real estate pursuant to any sale, foreclosure, forfeiture or other proceeding to satisfy the lien or indebtedness of any tax or special assessment;

(b) "Former owner" means any person whose interest or estate has been conveyed or purportedly conveyed, or extinguished or purportedly extinguished, by execution of any tax deed, and any other persons claiming by, through or under him;

(c) "Grantee" means the grantee named in any tax deed, and any other persons claiming by, through or under him;

(d) "Possession" refers to possession, and to the extent of possession, as determined by the rules applicable in determining the existence of adverse possession under a written instrument constituting color of title, and includes possession by tenant or agent.

34-62.2. Two-year limitation.

(a) No action, suit or other proceeding shall be commenced by the former owner to set aside, declare invalid or redeem from a tax deed or the sale, forfeiture, foreclosure or other proceeding upon which it is based or to recover possession, quiet title or otherwise litigate or contest the title of the grantee, if:

for a continuous period of not less than six (6) months immediately preceding the date of this affidavit; and that the facts concerning the possession of such real estate from the date of recording the tax deed to the date of this notice are, insofar as known to me, as follows:

.....
.....

Subscribed and sworn to before me this day of, 19....

.....
Notary Public in and for

.....County.....(state)

(b) In any action, suit or proceeding in which the tax deed, any proceedings upon which it is based, or the title of the grantee is contested or drawn in question, a certified copy of the record of any affidavit of possession and claim under tax deed which has been of record for not less than sixty (60) days constitutes prima facie evidence of the facts recited therein and of the application of this act.

34-62.4. Liberal construction; legislative purposes. This act shall be liberally construed to effectuate the legislative purpose of giving stability and effect to record titles, of confirming and clarifying the titles of persons in possession, of providing a means of correcting procedural and jurisdictional defects without necessity of resort to further proceedings, and of rendering tax titles marketable and protecting purchasers thereof against remote claims.

34-62.5. Act cumulative, retroactive; effective date. Nothing in this act shall be construed to extend the period of any other applicable statute of limitations or to permit the commencement of any proceeding or the enforcement of any claim or interest which is barred by lapse of time or for any other reason. This act shall apply to tax deeds heretofore or hereafter recorded, but the commencement of any action, suit or proceeding shall not be precluded by this act until two (2) years after its effective date. No affidavit shall be recorded pursuant to this act until two (2) years after its effective date. This act shall not apply to tax deeds issued only covering severed oil, gas, hydrocarbons and other minerals and estates therein.

Section 2. This act is effective ninety (90) days after adjournment of the session of the legislature at which it was enacted.

Page 269 Section 35-502.3 revised.

35-502.3. Definitions.

(e) Specific definitions for land quality:

(xv) "Exploration by dozing" means the removal of overburden by trenching with a bulldozer or other earth moving equipment to expose possible indications of mineralization;

Page 276 Section 35-502.17 revised. New subparagraph created.

35-502.17. Establishment of standards.

(b) In recommending such standards or requirements the administrator shall:

(i) Consider all the facts and circumstances bearing upon the reasonableness of the emissions involved, including:

(E) The social welfare and aesthetic value.

Page 278 Section 35-502.20 revised. New subsection created, one repealed.

35-502.20. Compliance generally; exceptions.

(c) An operator presently operating under a permit issued by the state land commissioner in accordance and in full compliance with the Open Cut Land Reclamation Act of 1969 will be issued a permit upon submission to the administrator of:

(ii) A reclamation plan which fulfills all of the requirements of this act and is reviewed by the advisory board.

(d) The provisions of this article, shall not apply to any of the following activities:

(i) Building or expansion of utilities, soil conservation conveyances and foundation excavations for the purpose of constructing buildings and other structures not used in mining operations;

(ii) Excavations by an agency of federal, state, or local government or its authorized contractors for highway and railroad cuts and for the purpose of providing fill, sand, gravel, and other materials for use in connection with any public project if reclamation requirements of federal, state or local governments are consistent with all provisions of this act or regulations promulgated thereunder;

(j) The council, after consultation with the administrator and the advisory board, may modify or suspend certain requirements of W.S. 35-502.24(a) and (b), by rules and regulations, for surface mining operations involving not more than four thousand (4,000) tons of overburden and two (2) acres of affected land in any one (1) year, if the application requirements insure reclamation in accordance with the purposes of this act.

Page 280- Sections 35-502.23 and 35-502.24 revised. New
283 paragraphs created.

35-502.23. Permit defined; no mining operation without valid permit; when validity terminated. A mining permit is the certification that the tract of land described therein may be mined by an operator licensed to do so in conformance with an approved reclamation plan. No mining operation may be commenced or conducted on land for which there is not in effect a valid mining permit to which the operator possesses the rights. A mining permit once granted remains valid and in force from the date of its issuance until the termination of all mining and reclamation operations, except as otherwise provided in this act.

35-502.24. Application for permit; generally; denial; limitations.

(b) The application shall be accompanied by a reclamation plan dealing with the extent to which the mining operation will disturb, change, or deface the lands to be affected, the proposed future use or uses and the plan whereby the operator will reclaim the affected lands to the proposed future use or uses. The reclamation plan shall be consistent with the objectives and purposes of this act and of the rules and regulations promulgated hereunder. The reclamation plan shall include the following:

(x) For a surface mining operation granted a new permit after July 1, 1973 and prior to March 1, 1975, except for an operation legally operating under the 1969 Open Cut Reclamation Act, an instrument of consent from the surface landowner, if different from the mineral owner, to the mining plan and reclamation plan. If consent cannot be obtained as to either or both, the applicant may request a hearing before the environmental quality council. The council shall issue an order in lieu of consent if it finds:

(xi) For an application filed after March 1, 1975, an instrument of consent from the resident or agricultural landowner, if different from the owner of the mineral estate, granting the applicant permission to enter and commence surface mining operation, and also written approval of the applicant's mining and reclamation plan. As used in this paragraph, "resident or agricultural landowner" means a natural person or persons who, or a corporation of which the majority stockholder or stockholders:

(A) Hold legal or equitable title to the land surface directly or through stockholdings, such title having been acquired prior to January 1, 1970, or having been acquired through descent, inheritance or by gift or conveyance from a member of the immediate family of such owner; and

(B) Have their principal place of residence on the land, or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by the surface mining operation, or receive directly a significant portion of their income from such farming or ranching operations.

(xii) For any application filed after March 1, 1975 including any lands privately owned but not covered by the provisions of W.S. 35-502.24 (b)(xi) an instrument of consent from the surface landowner, if different from the owner of the mineral estate, to the mining and reclamation plan. If consent cannot be obtained as to the mining plan or reclamation plan or both, the applicant may request a hearing before the environmental quality council. The council shall issue an order in lieu of consent if it finds:

(A) That the mining plan and the reclamation plan have been submitted to the surface owner for approval;

(B) That the mining plan and the reclamation plan is detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress;

(C) That the use does not substantially prohibit the operations of the surface owner;

(D) The proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible;

(xiii) The procedures proposed to avoid constituting a public nuisance, endangering the public safety, human or animal life, property, wildlife and plant life in or adjacent to the permit area including a program of fencing all stockpiles, roadways, pits and refuse or waste areas to protect the surface owner's on-going operations;

(xiv) The methods of diverting surface water around the affected lands where necessary to effectively control pollution or unnecessary erosion;

(xv) The methods of reclamation for effective control of erosion, siltation, and pollution of affected stream channels and stream banks by the mining operations;

(xvi) A statement of the source, quality and quantity of water, if any, to be used in the mining and reclamation operations;

(xvii) A projected timetable for accomplishment of the reclamation plan.

(f) Any interested person has the right to file written objections to the application with the administrator within twenty (20) days after the last publication of the above notice. If written objections are filed, the council shall hold a public hearing within twenty (20) days after the final date for filing objections unless a different period is stipulated to by the parties. The council shall publish notice of the time, date and location of the hearing in a newspaper of general circulation in the locality of the proposed operation once a week for two (2) consecutive weeks immediately prior to the hearing. The hearing shall be conducted as a contested case in accordance with the Wyoming Administrative Procedure Act, and right of judicial review will be afforded as provided in said act.

(g) The requested permit shall be granted if it is established that the application complies with the requirements of this act and all applicable federal and state laws. The director shall not deny a permit except for one (1) or more of the following reasons:

(xi) If information in the application or information obtained through the director's investigation shows that reclamation cannot be accomplished consistent with the purposes and provisions of this act;

(xii) If the applicant has been and continues to be in violation of the provisions of this act;

(xiii) No permit shall be denied on the basis that the applicant has been in actual violation of the provisions of this act if the violation has been corrected or discontinued.

Page 283 Section 35-502.24:1 created.

ENVIRONMENTAL QUALITY

AN ACT to create W.S. 35-502.24:1; and to amend W.S. 35-502.3(e)(xv), 35-502.17(b)(i) by creating a new subparagraph (E), 35-502.20(c)(ii), (d)(i) and (ii) and by creating a new subsection (j), 35-502.23, 35-502.24(b)(x) introductory paragraph, and by creating a new paragraph (xi) and renumbering the following paragraphs and by creating new paragraphs (xv) and (xvi), (f) and (g) by creating new paragraphs (xi) and (xii), 35-502.29, 35-502.30, 35-502.31(a), (b)(i) and (ii), (c), (g) and (h), 35-502.33(a)(ii), 35-502.45 by creating a new subsection (d), renumbering remaining subsections, and (e) as renumbered, 35-502.46(a), (b), (c) and by creating a new subsection (f), 35-502.47 by creating a new subsection (c), 35-502.49(b), 35-502.53(a) and 35-502.55; and to repeal W.S. 35-502.56(c), 35-502.20(f) and 35-502.33(a)(i) relating to environmental quality; providing for regulations for water impounding; adding social welfare and aesthetic value to factors considered in air quality regulations; providing for advisory board review of reclamation plans; providing for suspension of certain requirements for surface mining operations; giving the director authority to revoke or suspend licenses to mine; requiring mining permits before mining operations are commenced; providing powers of the administrator; clarifying exemptions from mining permit requirements; providing landowner's consent to applications filed after March 1, 1975; providing reasonable time for hearing on objections to mining permits; requiring approval of reclamation plan to restore surface; allowing the optional use of conference, conciliation and persuasion;

allowing ten days for appeal of cease and desist order; providing for optional venue in Laramie County; providing confidentiality of trade secrets; repealing ordinance limitation; providing authority for permits to construct air and water pollution facilities; providing that the administrator set the amount of bond for the surface owner's protection; providing property exempt from ad valorem taxation; providing severability; and providing an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 35-502.24:1 is created to read:

35-502.24:1. Water impoundments.

(a) In any plan for the creation of a permanent water impoundment the applicant must adequately demonstrate that:

(i) The size of the impoundment, contouring and revegetation, if any, are suitable for its intended purpose and use;

(ii) Final grading will provide adequate safety and access for proposed water users;

(iii) The impoundment dam construction will be so designed to insure permanent stability and to prevent safety hazards.

Section 2. W.S. 35-502.3(e)(xv), 35-502.17(b)(i) by creating a new subparagraph (E), 35-502.20(c)(ii), (d)(i) and (ii) and by creating a new subsection (j), 35-502.23, 35-502.24 (b)(x) introductory paragraph and by creating a new paragraph (xi) and renumbering the following paragraphs and by creating new paragraphs (xv) and (xvi), (f) and (g) by creating new paragraphs (xi) and (xii), 35-502.29, 35-502.30, 35-502.31(a), (b)(i) and (ii), (c), (g) and (h), 35-502.33(a)(ii), 35-502.45 by creating a new subsection (d), renumbering remaining subsections, and (e) as renumbered, 35-502.46(a), (b), (c) and by creating a new subsection (f), 35-502.47 by creating a new subsection (c), 35-502.49(b), 35-502.53(a) and 35-503.55 are amended

Page 284- Sections 35-502.29 through 35-502.31 revised
285

35-502.29. License revocation or suspension.

(a) The director shall revoke an operator's license:

(i) If at any time he becomes aware of the existence of any fact, reason, or condition that would have caused it to deny an application for a mining permit whether or not such condition existed at the time of the application;

(ii) If he determines that the operator intentionally misstated or failed to provide any fact that would have resulted in the denial of a license and which good faith compliance with the policies, purposes and provisions of this act would have required him to provide.

(b) The director may suspend the license if he determines the

operator is in substantial violation of the terms of the license or of the provisions of this act. The suspension shall be lifted when the violations have been corrected to the director's satisfaction. No suspension shall be unreasonably prolonged.

(c) Unless an emergency exists, the revocation or suspension of a license shall become effective upon thirty (30) days' notice to the applicant. In the case of an emergency, the director may cause such revocation or suspension to become effective immediately upon receipt of notice.

35-502.30. Special license to explore for minerals. A special license to explore for minerals by dozing may be issued by the administrator for a one (1) year period without a permit.

35-502.31. Same; application; standards; fee; bond; denial; appeal.

(a) Any person desiring to engage in mineral exploration by dozing shall apply to the administrator for a special license. The application shall be in accordance with rules and regulations adopted by the administrator, pursuant to the standards set forth in subsection (b), after consultation with the advisory board and shall be accompanied by a fee of twenty-five dollars (\$25.00).

(b) After consultation with the advisory board, the administrator shall establish rules and regulations pursuant to the following reclamation standards for exploration by dozing:

(i) Backfilling the topsoil disturbed by dozing to its approximate original contour;

(ii) Revegetation of the land affected by dozing, including species to be used;

(c) After reviewing the application for special license to explore by dozing the administrator shall set the amount of the bond necessary to insure complete reclamation and issue the special license to explore.

(g) A bond posted under the terms of this section shall be released upon completion of the exploration, by dozing, the reclamation program, and an inspection by the administrator. Failure to comply with the provisions of this section will result in forfeiture of the bond.

(h) If the proposed exploration by dozing will substantially affect forty (40) or more acres in any four (4) contiguous sixteenth sections, the application shall conform to the reclamation standards and requirements governing surface mining, and the provisions of this section shall not apply.

35-502.33. Protection of the surface owner.

(a) In those instances in which the surface owner is not the owner of the mineral estate proposed to be mined by mining operations a permit shall not be issued without the execution of a bond or undertaking to the state, whichever is applicable, for the use and benefit of the surface owner or owners of the land, in an amount sufficient to secure the payment for any damages to the surface estate, to the crops and forage, or to the tangible improvements of the surface owner. This amount shall be determined by the administrator and shall be commensurate with the reasonable value of the surrounding land, and the effect of the overall operation of the landowner. This bond is in addition to the performance bond required for reclamation by this act. As damage is determined it shall be paid. Financial loss resulting from disruption of the surface owner's operation shall be considered as part of the damage. A bond for surface damage shall not be required when the agreement negotiated between the surface owner and the mineral owner or developer waives any requirement therefor. Payment of damages shall be paid annually unless otherwise agreed to by the surface owner and the operator.

35-502.45. Applications; authority to grant; hearing; limitations; renewals; judicial review; emergencies.

(d) A variance may be granted by the council from standards established by the council for sulfur oxide emissions, if the council determines that the state of the technology for removal of sulfur oxides from the stack gasses is insufficiently advanced to achieve the objective level without causing undue economic hardship on the owner of the facility or the consumer of the product produced by the facility or if the council determines that the developing technology offers promise that superior equipment might, in the near future, be available which would render presently available equipment obsolete and that the best interests of the state would be served by the issuance of the variance. In considering such a variance, the council must consider the health and well being of the citizens in the vicinity of the facility and the effect upon livestock and agricultural production in the area. In no event shall the variance permit emissions less stringent than existing federal standards covering the emission of sulfur oxides. Each application for a variance will be issued on a case by case basis considering the state of the technology at the time of each application.

(e) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections (b), (c) and (d) of this section, it shall be for not more than one (1) year.

(f) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint by an aggrieved party is made to the director on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the council finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty (60) days prior to the expiration of the variance.

(g) Any variance or renewal thereof granted by the director pursuant to this section shall become final unless within thirty (30) days after date of notice as provided in subsection (a) of this section an aggrieved party as defined by this act in writing may request a hearing before the council. Upon the filing of such a request for a hearing, the variance shall be stayed pending the council's final determination thereon.

(h) If, after a hearing held pursuant to this section, the council finds that a variance is required, it shall affirm or modify the order previously issued by the director or issue an appropriate order for variance as it deems necessary. If, after a hearing held pursuant to this section, the council finds that there is no need for a variance, it shall rescind the issuance of a variance.

(j) In connection with any hearing held pursuant to this section, the council has the power and upon application by any aggrieved party, it has the duty to compel the attendance of witnesses, and the production of evidence on behalf of all parties.

(k) Any aggrieved party adversely affected by a variance or renewal of same or the denial of same may obtain judicial review thereof in the manner prescribed by the Wyoming Administrative Procedure Act.

(m) Failure to comply with the conditions imposed by any variance shall be cause for modification or termination of the variance by the director.

(n) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of W.S. 35-502.15 to any person or property.

(o) Nothing in this section shall be construed to permit an application for a water variance. The application for water permits must be made solely under the provisions of W.S. 35-502.19.

Page 290 Section 35-502.46 revised; new subsection created.

35-502.46. Complaint; investigations; conference; cease and desist order; hearing; referee.

(a) If the director or the administrators have cause to believe that any persons are violating any provision of this act or any rule, regulation, standard, permit, license, or variance issued pursuant hereto, or in case any written complaint is filed with the department alleging a violation, the director, through the appropriate administrator, shall cause a prompt investigation to be made. If, as a result of the investigation, it appears that a violation exists, the administrator of the proper division may, by conference, conciliation and persuasion, endeavor promptly to eliminate the source or cause of the violation.

(b) In case of failure to correct or remedy an alleged violation, the director shall cause to be issued and served upon the person alleged to be responsible for any such violation a written notice which shall specify the provision of this act, rule, regulation, standard, permit, license, or variance alleged to be violated and the facts alleged to constitute a violation thereof, and may require the person so complained against to cease and desist from the violation within the time the director may determine.

(c) Any order is final unless, not later than ten (10) days after the date the notice is served, the person or persons named therein request, in writing, a hearing before the council. Upon the filing of a request the order complained of shall be stayed pending the council's final determination thereon.

(f) Nothing in this section shall be interpreted to in any way limit or contravene any other remedy available under this act; nor shall this section be interpreted a condition precedent to any other enforcement action under this act.

Page 291 New subsection created for 35-502.47.

35-502.47. Issuance of permits.

(c) A permit to construct is required before construction or modification of any industrial facility capable of causing or increasing air or water pollution in excess of standards, established by the department is commenced.

35-502.49. Violations of act; penalties.

(b) Any person who violates this act, rule, regulation, and thereby causes the death of fish, aquatic life or game or bird life is, in addition to other penalties provided by this act, liable to pay to the state, an additional sum for the reasonable value of the fish, aquatic life, game or bird life destroyed. Any monies so recovered shall be placed in the general fund of Wyoming, state treasurer's office. All actions pursuant to this article shall be brought in the county in which the violation occurred or in Laramie county by the attorney general in the name of the people of Wyoming.

35-502.53. Records available to the public; restrictions.

(a) Any records, reports or information obtained under this act or the rules, regulations and standards promulgated hereunder are available to the public. Upon a showing satisfactory to the director by any person that his records, reports or information or particular parts thereof, other than emission and pollution data, to which the director and administrators have access under this act if made public would divulge trade secrets, the director and administrators shall consider the records, reports or information or particular portions thereof confidential in the administration of this act.

35-502.55. Property exempt from ad valorem taxation. The following property is exempt from ad valorem taxation pursuant to the provisions of this act and includes facilities, installations, machinery or equipment attached or unattached to real property and designed, installed and utilized primarily for the elimination, control or prevention of air, water or land pollution, or in the event such facility, installation, equipment or machinery shall also serve other beneficial purposes and use, such portion of the assessed valuation thereof as may be reasonably calculated to be necessary for and devoted to elimination, control or prevention of air, water and land pollution. The state board of equalization shall determine such exempt portion, and shall not include as exempt any portion of any facilities which have value as the specific source of marketable byproducts.

Section 3. W.S. 35-502.56(c), 35-502.20(f) and 35-502.33(a)(i) are repealed.

Section 4. If any portion of this act is declared invalid by a court of competent jurisdiction, such decision shall be limited to the portions found invalid, and shall not affect or invalidate the remaining portions of this act, which shall remain in full force and effect.

Section 5. This act is effective immediately upon passage.

INDUSTRIAL DEVELOPMENT

AN ACT to create W.S. 35-502.75 through 35-502.94 relating to industrial facilities siting; prohibiting construction of industrial facilities without a permit; providing exceptions; creating an office and council; providing criteria for siting decisions; imposing a filing fee; providing for notice, hearing and appeal; providing penalties; providing for this act to supersede other state laws, rules and regulations in conflict; providing for severability; and providing an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 35-502.75 through 35-502.94 are created to read:

35-502.75. Citation. This act is the "Industrial Development Information and Siting Act".

35-502.76. Definitions. As used in this act:

(a) "Office" means the state office of industrial siting administration;

(b) "Council" means the industrial siting council;

(c) "Industrial facility" or "facility" means:

(i) Any energy generating and conversion plant:

(A) Designed for, or capable of, generating one hundred (100) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of environmental quality added to an existing plant) increasing the initial design capacity of the facility by at least one hundred (100) megawatts of electricity;

(B) Designed for, or capable of, producing one hundred million (100,000,000) cubic feet of synthetic gas per day or more or any addition (except pollution control facilities approved by the department of environmental quality added to an existing plant) increasing the initial design capacity of the facility by at least one hundred million (100,000,000) cubic feet of synthetic gas per day;

(C) Designed for, or capable of, producing fifty thousand (50,000) barrels of liquid hydrocarbon products per day or more by any extraction process or any addition thereto (except pollution control facilities approved by the department of environmental quality added to an existing plant) increasing the initial design capacity of the facility by at least fifty thousand (50,000) barrels of liquid hydrocarbon products per day by any extraction process; or

(D) Designed for, or capable of, enriching uranium minerals from U308 (yellow cake) in quantities exceeding five hundred (500) pounds of U308 per day.

(ii) Any industrial facility with an estimated construction cost of at least fifty million dollars (\$50,000,000.00). The council shall adjust this amount, up or down, each year using recognized construction cost indices as determined by the council to be relevant to the actual change in construction cost applicable to the general type of construction covered under this act.

(d) "Applicant" means any person who applies for a permit pursuant to the provisions of this act;

(e) "Advisory member" means an advisory member of the council provided by W.S. 35-502.78(f);

(f) "Director" means the director of the office;

(g) "Impacted area" means an area of Wyoming in which sudden or prolonged population growth may occur or may cause environmental, social or economic stresses of such nature that the total local, state and federal resources available are not sufficient to resolve them properly and effectively as determined by the council;

(h) "Commence to construct" means:

(i) Any clearing of land, excavation, construction or other action that would affect the environment of the site of any facility, but does not include changes needed for temporary use of sites for less than ninety (90) days, changes required to conduct required studies and tests under this act, or any other state or federal act or regulation or routes for nonutility purposes or for uses in securing geological data but not limited to necessary borings or drillings to ascertain foundation conditions;

(ii) The nuclear fracturing of underground formation, if any such activity is related to the possible future development of a facility subject to this act, but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation or experimentation.

(j) "Local government" means any county, city, town or school district, or any combination of the above as formed under the provisions of the Wyoming Joint Powers Act;

(k) "Permit" means the permit issued by the council and required for the construction or operation of any industrial facility or facilities;

(m) "Person" includes an individual, group, firm, partnership, corporation, cooperative, association or other entity excluding the state, federal government and local government;

(n) "This act" means W.S. 35-502.75 through 35-502.94.

35-502.77. Office of industrial siting administration created. There is hereby created within the governor's office, "the state office of industrial siting administration".

35-502.78. Industrial siting council created; composition; terms; compensation.

(a) There is hereby created the industrial siting council consisting of seven (7) members who are residents of Wyoming.

(b) The terms of the members selected under subsection (a) of this section shall be for six (6) years, except that on the initial appointment three (3) members shall serve for six (6) years, two (2) members shall serve for four (4) years and two (2) members shall serve for two (2) years as designated by the initial appointment.

(c) Members shall be appointed by the governor with the advice and consent of the senate. When a vacancy occurs the governor shall appoint a new member for the remaining portion of the unexpired term. Not more than four (4) members shall be of the same political party.

(d) The council shall meet within thirty (30) days after the initial appointments to elect a chairman, vice-chairman and secretary from among its members. Officers shall be elected annually thereafter. The council shall have at least four (4) regularly scheduled meetings each year and may meet at the call of the chairman or upon request of a majority of the members at other times. For the purpose of conducting council business four (4) members constitutes a quorum but no action taken is valid unless approved by at least four (4) members.

(e) Council members appointed pursuant to subsection (c) of this section shall be reimbursed for per diem, mileage and expenses and receive salary for attending meetings and hearings of the council in the same manner and amount as members of the Wyoming legislature.

(f) The administrative head of each state agency enumerated in W.S. 35-502.84(b), or the designated representative, shall attend meetings of the council and serve in an advisory capacity to facilitate and expedite the decision making process of the council. The council may request any administrative head to pursue, evaluate and submit reports relative to any study which may be required in the evaluation of an application for a permit.

(g) If construction of a facility would have required approval from any state agency but for the provisions of this act, the council shall authorize that agency to review that portion of the application formerly subject to the jurisdiction of the agency and request the agency to render a decision relative thereto which is binding on the council but only as to that portion of the application formerly subject to the jurisdiction of the agency. The finding in the certificate of the public service commission as to the present or future public convenience and necessity of the proposed facility shall be binding on the council, but such finding shall not be binding on the council with respect to issuance or denial of a permit under this act.

35-502.79. Appointment and duties of director; staff; rules and regulations.

(a) The council, with the consent of the governor, shall appoint a director of the office who will serve at the pleasure of the council and the governor as the executive and administrative head of the office. Qualifications of the director shall be determined by the council. The director with the approval of the council shall employ such staff as deemed necessary by the director to carry out the functions and responsibilities of the office.

(b) The council shall promulgate rules and regulations pursuant to the Wyoming Administrative Procedure Act, implementing this act. The director shall administer and enforce the provisions of this act and any rules, regulations and orders approved or issued by the council.

35-502.80. Permit from council required prior to commencing construction of facility; amendments; exceptions.

(a) No person shall commence to construct a facility, as defined in this act, in the state without first having obtained a permit issued with respect to such facility by the council. Any facility, with respect to which a permit is required, shall thereafter be constructed, operated and maintained in conformity with such permit and any terms, conditions and modifications contained therein. A permit may only be issued pursuant to this act.

(b) A permit may be transferred, subject to the approval of the council, to a person who agrees to comply with the terms, conditions and modifications contained therein.

(c) The council may allow the amendment of a permit or application for a permit if the holder or applicant thereof is unable to comply with the terms and conditions thereof due to circumstances beyond his control and if the holder thereof demonstrates to the council at its next meeting that the requested change is in compliance with local ordinances and applicable land use plans and will not significantly add to adverse environmental, social and economic impact in the county.

(d) The application and permit provisions of this act may be waived by the council in the event the applicant establishes by clear and convincing proof that an emergency exists created by the loss or damage to an existing facility controlled by a legal obligation to serve the public which seriously threatens the health, safety and welfare of the public.

(e) If after the applicant has submitted his application in compliance with W.S. 35-502.80(a) and has furnished the council clear and convincing proof that the proposed facility is in compliance with all local ordinances and land use plans, and there is evidence that the facility would alleviate environmental, social and economic impact in the county of the proposed facility, the council may waive all further provisions of this act.

35-502.81. Application for permit; form; initial fee.

(a) An application for a permit shall be filed with the office, in such form as prescribed by rules and regulations, and shall contain the following information:

(i) The name and address of the applicant, and, if the applicant is a partnership, association or corporation, the names and addresses of all managers, partners and executives directly responsible for operations in Wyoming;

(ii) Specific description of the nature and location of the facility;

(iii) Estimated time of commencement of construction and construction time;

(iv) Estimated number and job classifications, of employees of the applicant, or contractor or subcontractor of the applicant, during the construction phase, and during the operating life of the facility. Estimates shall include the number of employees who will be utilized but who do not currently reside within the area to be affected by the facility;

(v) Future additions and modifications to the facility which the applicant may wish to be approved in the permit;

(vi) A statement of why the proposed location was judged superior;

(vii) A copy of any studies which may have been made of the environmental impact of the facility;

(viii) Inventory of estimated discharges including physical, chemical, biological and radiological characteristics;

(ix) Inventory of estimated emissions and proposed methods of control;

(x) Inventory of estimated solid wastes and proposed disposal program;

(xi) The procedures proposed to avoid constituting a public nuisance, endangering the public health and safety, human or animal life, property, wildlife or plant life, or recreational facilities which may be adversely affected by the estimated emissions or discharges;

(xii) Preliminary evaluations of or plans and proposals for alleviating social economic or environmental impacts upon local government or any special districts which may result from the proposed facility, which evaluations, plans and proposals shall cover the following:

- (A) Scenic resources;
- (B) Recreational resources;
- (C) Archeological and historical resources;
- (D) Land use patterns;
- (E) Economic base;
- (F) Housing;
- (G) Transportation;
- (H) Anticipated growth of satellite industries;
- (J) Sewer and water facilities;
- (K) Solid waste facilities;
- (M) Police and fire facilities;
- (N) Educational facilities;
- (O) Health and hospital facilities;
- (P) Water supply;
- (Q) Other relevant areas.

(xfii) Estimated construction cost of the facility;

(xiv) What other state or federal permits and approvals are required by the facility, if the permits and approvals have been applied for, and, if not, when the permits and approvals will be applied for;

(xv) Compatibility of the facility with state or local land use plans, if any;

(xvi) Such other information as the applicant may consider relevant or may be required by rule or regulation.

(b) At the time of filing an application, or as subsequently required by the director, an applicant shall pay an initial fee to be determined by the director based upon the estimated cost of investigating, reviewing, processing and serving notice of an application. The fee shall be credited to an account within the earmarked revenue fund and shall be used by the office as required to investigate, review, process and serve notice of the application. Unused fees shall be refunded to the applicant. The maximum initial fee chargeable shall not exceed one-half of one percent (0.5%) of the estimated construction cost of the facility or one hundred thousand dollars (\$100,000.00), whichever is less.

(c) The director shall provide the applicant with a full financial accounting, including but not limited to all materials, labor and overhead costs relating to the expenditures of the initial fee at the time of the council's initial decision as provided in W.S. 35-502.82(e).

35-502.82. Study and evaluation; service of notice or application.

(a) Not less than twenty (20) nor more than thirty (30) days following receipt of an application for a permit, the director shall:

(i) Serve notice of the application upon the governing bodies of local government which will be primarily affected by the proposed facility;

(ii) Cause a summary of the application to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility;

(iii) File a copy of the application with the county clerk of the county or counties in which the proposed facility will be constructed.

(b) Not less than forty (40) nor more than sixty (60) days after receipt of an application for a permit, the director shall:

(i) Schedule and conduct a public hearing;

(ii) Notify the applicant and local governments of the hearing;

(iii) Cause notice of the hearing to be published in one (1) or more newspapers of general circulation within the area to be primarily affected by the proposed facility; and

(iv) Hold the hearing at a community as close as practicable to the proposed facility. The provisions of W.S. 35-502.85, 35-502.86 and 35-502.88 apply to the hearing.

(c) The applicant may present such evidence as necessary to demonstrate to the council:

(i) That the proposed facility comply with all applicable law;

(ii) That the facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the affected area; and

(iii) That the facility will not substantially impair the health, safety or welfare of the inhabitants.

(d) The council shall also hear and receive evidence presented by any other state department or agency relative to the environmental, social and economic conditions and projected changes therein. The council shall within sixty (60) days after the date of the public hearings make its initial determination.

(e) The council shall issue an order at the time of the initial determination authorizing one (1) of the following actions:

(i) Approving the application and issuing a permit with no conditions;

(ii) Approving the application and issuing a permit conditioned upon commencing the construction at a reasonable time specified by the council;

(iii) Approving the application and issuing a permit conditioned upon specified changes in the application; or

(iv) Rejecting the application pending further study as required by the council if the applicant is not able to demonstrate to the council that the requirements of subsection (c) of this section have been met.

(f) Notice of the council's initial decision shall be given as provided by W.S. 35-502.82(a), to the applicant and to parties to the hearing within ten (10) days following the decision.

35-502.83. Fees for additional study.

(a) If additional study is required by the council, the applicant shall pay an additional fee to be determined by the director, after consultation with the applicant and approved by the council based upon the estimated cost of an intensive study and evaluation of the proposed facility as

hereafter provided. Fees shall be deposited in an account within the earmarked revenue fund and shall be used by the office as required to conduct the study and hearings on the application, utilizing to the fullest extent necessary the staff and resources of all state agencies, boards and commissions. An applicant may withdraw his application prior to payment of fee for additional study. Fees not required for additional study shall be refunded to the applicant. Subject to subsection (b) of this section, the fee chargeable shall be based upon the estimated cost of the facility according to the following schedule:

(i) One-half of one percent (0.5%) up to one hundred million dollars (\$100,000,000.00); plus

(ii) One-quarter of one percent (0.25%) over one hundred million dollars (\$100,000,000.00).

(b) Total fees paid under this act for one (1) facility shall not exceed one million dollars (\$1,000,000.00).

(c) The director shall provide the applicant with a full financial accounting, including but not limited to all materials, labor and overhead costs relating to the expenditures of the additional fee at the time of the council's decision as provided in W.S. 35-502.87.

35-502.84. Studies; evaluation and report on proposed facility.

(a) Before commencing the study the director shall prepare and review, with the applicant, a study design within thirty (30) days after the initial decision. Thereafter, the office shall commence an intensive investigation, study and evaluation of the proposed facility and its effects as specified in the preliminary decision called for in W.S. 35-502.82(d)(iv). Further study may be assigned if specific areas of study are needed. The office shall utilize to the necessary extent the staff and resources of all state agencies, boards and commissions relative to the following factors in so far as the aforesaid preliminary decision has specifically found such factors to be relevant and necessary, which may be supplemented by regulation. The following is a list of topics which the council may designate as necessary for further study:

(i) The purpose of the facility:

(A) Consumer demand and future energy needs;

(B) Tax base including the potential short and long range demands on any tax revenues generated by the facility for the extension or expansion of public services within the impacted area;

(C) Efficient use of energy form;

(D) Diversification of employment and job availability.

- (ii) Land use impacts:
- (A) Area of land required and ultimate use;
 - (B) Consistency with state, intrastate regional, county and local land use plans if any;
 - (C) Compatibility with existing and projected nearby land utilization;
 - (D) Alternative uses of the site;
 - (E) Impact on population already in the area; population attracted by construction or operation of the facility itself; impact of availability of energy from this facility on growth patterns and population dispersal;
 - (F) Geologic suitability of the site or route;
 - (G) Construction practices;
 - (H) Extent of erosion, scouring, wasting of land at the site;
 - (J) Corridor design and construction precautions for transmission lines or aqueducts;
 - (K) Scenic impacts;
 - (M) Effects on natural systems, wildlife, plant life;
 - (N) Impacts on important historic architectural, archeological and cultural areas and features;
 - (O) Extent of recreation opportunities and related compatible uses;
 - (P) Public recreation plan for the project if any;
 - (Q) Public facilities and accommodation.

(iii) Water resources impacts:

- (A) Hydrologic studies of adequacy of water supply and impact of facility on stream flow, lakes, reservoirs and underground waters;
- (B) Hydrologic studies of impact of facilities on ground waters and underground waters;

(C) Cooling system evaluation including consideration of alternatives;

(D) Inventory of effluents including physical, chemical, biological and radiological characteristics;

(E) Hydrologic studies of effects of effluents on receiving waters, including mixing characteristics of receiving waters, changed evaporation due to temperature differentials and effect of discharge on bottom sediments;

(F) Relationship to water quality standards;

(G) Effects of changes in quantity and quality on water use by others, including both withdrawal and in situ uses; relationship to projected uses; relationship to water rights;

(H) Effects on plant and animal life, including algae, macroinvertebrates and fish population;

(J) Monitoring programs.

(iv) Air quality impacts:

(A) Meteorology, wind direction and velocity, ambient temperature ranges, precipitation values, inversion occurrence, other effects on dispersion;

(B) Topography and factors affecting dispersion;

(C) Standards in effect and projected for emissions, design capability to meet standards;

(D) Emissions and controls:

(1) Stack design;

(2) Particulates;

(3) Sulfur oxides;

(4) Oxides of nitrogen;

(5) Heavy metals, trace elements, radioactive materials and other toxic substances.

(E) Relationship to present and projected air quality of the area;

(F) Monitoring program.

(v) Solid wastes impact:

- (A) Solid waste inventory;
- (B) Disposal program;
- (C) Relationship of disposal practices to environmental quality criteria;
- (D) Capacity of disposal sites to accept projected waste loadings.

(vi) Radiation impacts:

- (A) Land use controls over development and population;
- (B) Wastes and associated disposal program for solid, liquid, radioactive and gaseous wastes;
- (C) Analysis and studies of the adequacy of engineering safeguards and operating procedures;
- (D) Monitoring, adequacy of devices and sampling techniques.

(vii) Noise impacts:

- (A) Construction period levels;
- (B) Operational levels;
- (C) Relationship of present and projected noise levels to existing noise standards;
- (D) Monitoring, adequacy of devices and methods.

(viii) Social and economic impacts:

- (A) Economic base;
- (B) Housing;
- (C) Transportation;
- (D) Anticipated growth of satellite industries;
- (E) Sewer and water facilities;
- (F) Solid waste facilities;
- (G) Police and fire facilities;

- (H) Educational facilities;
- (J) Health and hospital facilities;
- (K) Rate of population growth.

(b) The office shall obtain information and recommendations from the following state agencies relative to the impact of the proposed facility on each agency's area of expertise insofar as such information and recommendations are specifically required by the preliminary decision as relevant and necessary:

- (i) Wyoming highway department;
- (ii) Public service commission;
- (iii) Department of economic planning and development;
- (iv) Game and fish department;
- (v) Department of health and social services;
- (vi) Department of education;
- (vii) Office of state engineer;
- (viii) Wyoming recreation commission;
- (ix) Wyoming state geologist;
- (x) Wyoming department of agriculture;
- (xi) Department of environmental quality;
- (xii) Wyoming state conservation commission;
- (xiii) The University of Wyoming.

(c) The information required by subsection (b) of this section shall include opinions as to the advisability of granting or denying the permit, but only as to the areas subject to the jurisdiction of the agency.

(d) The study shall be completed and a report submitted to the council within one hundred eighty (180) days. The council may grant two (2) extensions not to exceed sixty (60) days in unusual circumstances.

(e) Upon receipt of the office's report submitted under subsection (d) of this section, the council shall set a hearing date not more than sixty (60) days after such receipt. The hearing shall be held at a community as close as is practicable to the proposed facility as provided in W.S. 35-502.85.

(f) On an application for an amendment of a permit, the council shall hold a hearing in the same manner as a hearing is held on an application for a permit if in the opinion of the council the proposed change in the facility would result in any material increase in any environmental, social or economic impact of the facility or a change in the location of all or a portion of such facility except as otherwise provided in the original application for alternate locations for the facility.

35-502.85. Parties to permit proceeding; waiver by failure to participate.

(a) The parties to a permit proceeding include:

(i) The applicant;

(ii) Each local government entitled to receive service of a copy of the application under W.S. 35-502.82(a)(i);

(iii) Any person residing in a local government entitled to receive service of a copy of the application under W.S. 35-502.82(a)(i) and any nonprofit organization with a Wyoming chapter, concerned 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 the areas in which the facility is to be located. In order to be a party the person or organization must file with the office a notice of intent to be a party not less than ten (10) days before the date set for the hearing.

(b) Any party identified in W.S. 35-502.85(a)(iii) waives his right to be a party if he does not participate orally at the hearing.

(c) Any person may make a limited appearance in the proceeding by filing a statement in writing with the office not more than five (5) days after the date set for the hearing. A statement filed by a person making a limited appearance shall become part of the record and shall be made available to the public. No person making a limited appearance under this subsection is a party to the proceeding.

35-502.86. Record of hearing; procedure; and rules of evidence. Any studies, investigations, reports or other documentary evidence, including those prepared by the office, which any party wishes the council to consider or which the council itself expects to utilize or rely upon, shall be made a part of the record. A complete record shall be made of the hearing and of all testimony taken. The contested case procedures of the Wyoming Administrative Procedure Act shall apply to the hearing.

35-502.87. Decision of council; findings necessary for permit conditions imposed; service of decision on parties.

(a) Within sixty (60) days of completion of hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon such terms, conditions or modifications of the construction, operation or maintenance of the facility as the council may deem appropriate. The council shall grant a permit either as proposed or as modified by the council if it finds and determines:

(i) The nature of the probable environmental impact is acceptable, including a specification of the predictable adverse effect on the

normal environment, public health and safety, aesthetics, scenic, historic and recreational value, forest and parks, air quality, water supply and quality, fish, wildlife and agricultural resources;

(ii) That by the design and location of the facility, any adverse environmental impact is reduced to the extent deemed acceptable considering:

(A) The state of available technology;

(B) The nature and economics of the various alternatives;

(C) Preservation of historic sites, forest and parks, fish and wildlife, air quality, water supply and quality, agriculture resources and land areas possessing sensitive ecological conditions; and

(D) Other pertinent considerations.

(iii) That the facility is compatible with the public health and safety;

(iv) That the facility is compatible with the state, intrastate regional, county and local land use plans, if any, and with existing and projected nearby land utilization;

(v) That the facility is designed in compliance with applicable state and local laws and regulations issued thereunder, except that the council may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, such law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics;

(vi) That the department of environmental quality has determined that the proposed facility or cumulative effects intensified by the facility will not violate state and federally established standards and implementation plans. The judgments of the department are conclusive on all questions related to the satisfaction of state and federal standards;

(vii) That the facility represents an acceptable impact upon the environmental, social and economic well being of the municipality and people in the area where the facility is proposed to be located, considering the factors enumerated in W.S. 35-502.81(a)(xii).

(b) No permit shall be granted if:

(i) The estimated emissions or discharges of the proposed facility will exceed state or federal standards, either individually or because of the cumulative effect with other sources;

(ii) The location of the facility conflicts with or violates state, intrastate regional, county and local land use plans;

(iii) The cumulative effect of the facility on the environmental, social and economic conditions in the area in conjunction with other facilities will substantially impair the health, safety and welfare of people even though paragraph (i) of this subsection is not applicable.

(c) If the council determines that the location of all or part of the proposed facility should be modified, it may condition its permit upon such modification, provided that the local governments, and persons residing therein, affected by the modification, have been given reasonable notice of the modification.

(d) The council shall issue with its decision, an opinion stating in detail its reasons for the decision. If the council decides to grant a permit for the facility, it shall issue the permit embodying the terms and conditions in detail, including the time specified to commence construction, which time shall be determined by the council's decision as to the reasonable capability of the local government, most substantially affected by the proposed facility, to implement the necessary procedures to alleviate the impact. A copy of the decision shall be served upon each party.

(e) A permit may be issued conditioned upon the applicant furnishing a bond to the office in an amount determined by the director from which local governments may recover expenditures in preparation for impact to be caused by a facility if the permit holder does not complete the facility proposed. The permit holder shall not be liable under the bond if the holder is prevented from completing the facility proposed by circumstances beyond his control.

(f) A copy of the study, findings and the council's decision shall be served upon parties to the hearing and local governments to be substantially affected by the proposed facility and filed with the county clerk of the county or counties to be primarily affected by the proposed facility. Notice of the decision shall be published in one (1) or more newspapers of general circulation within the area to be affected by the proposed facility.

35-502.88. Review of grant or denial of permit.

(a) Any party as defined in W.S. 35-502.85 aggrieved by the final decision of the council on an application for a permit may obtain judicial review by the filing of a petition in any state district court in which the major portion of the proposed facility is to be located within thirty (30) days after the issuance of a final decision. The petition for appeal by any party must include an express assumption of the cost of preparation of the complete written transcripts and record for the court. Upon receipt of a petition, the office shall deliver to the court a copy of the complete written transcript of the record of the proceeding before it and a copy of the council's decision and opinion entered therein which shall constitute the record on judicial review. At the same time the office shall deliver an itemized statement of the cost of preparing the complete written transcript and record for the court who shall pay the office this cost within forty-five (45) days or forfeit the right as a party. A copy of the transcript, decision and opinion shall remain on file with the office and shall be available for public inspection.

(b) When a decision is issued after a hearing on an application for a permit, the decision is final for purposes of judicial review. The judicial review procedure shall be the same as that for contested cases under the Wyoming Administrative Procedure Act.

35-502.89. Additional requirements by other governmental agencies not permitted after issuance of permit; exceptions. Notwithstanding any other provision of law, no state, intrastate regional agency or local government may require any approval, consent, permit, certificate or other condition for the construction, operation or maintenance of a facility authorized by a permit issued pursuant to the provisions of this act except that the department of environmental quality shall retain authority which it has or which it may be granted to determine compliance of the proposed facility with state and federal standards and implementation plans and to enforce those standards and the public service commission shall retain authority which it has or may be granted relative to certificates of convenience and necessity, rates, interchange of services and safety regulations. Nothing in this act shall prevent the application of state laws for the protection of employees engaged in the construction, operation or maintenance of such facility.

35-502.90. Revocation or suspension of permit.

(a) A permit may be revoked or suspended for:

(i) Any material false statement in the application or in accompanying statements or studies required of the applicant, if a true statement would have warranted the council's refusal to grant a permit;

(ii) Failure to comply with the terms or conditions of the permit after notice of the failure from the office and reasonable opportunity to correct the failure; or

(iii) Violation of the provisions of this act, the regulations issued thereunder or orders of the council or office.

35-502.91. Monitoring of facilities. The council and the office, utilizing to the fullest extent possible the staff and resources of all state agencies, boards and commissions, shall have continuing authority and responsibility for monitoring the operations of all facilities which have been granted permits under this act, for assuring continuing compliance with this act and permits issued hereunder, and for discovering and preventing noncompliance with this act and the permits.

35-502.92. Penalties for violation of act; civil action by attorney general.

(a) No person shall:

(i) Commence to construct a facility after the effective date of this act without first obtaining a permit required under this act;

(ii) Construct, operate or maintain a facility, after having first obtained a permit, other than in specific compliance with the permit; or

(iii) Cause any of the aforementioned acts to occur.

(b) Any person violating the provisions of subsection (a) of this section is liable to a civil penalty of not more than ten thousand dollars (\$10,000.00) for each violation. Each day of a continuing violation constitutes a separate offense. The penalty shall be recoverable in a civil suit brought by the attorney general on behalf of the state in the district court in and for the county of Laramie.

(c) Whoever knowingly and wilfully violates subsection (a) of this section shall be fined not more than ten thousand dollars (\$10,000.00) for each violation or imprisoned for not more than one (1) year, or both. Each day of a continuing violation shall constitute a separate offense.

(d) In addition to any penalty provided in subsections (b) or (c) of this section, whenever the office determines that a person is violating any of the provisions of this section, it shall refer the matter to the attorney general who may bring a civil action on behalf of the state in the district court in and for the county of Laramie for injunctive or other appropriate relief against the violation and to enforce the act or a permit issued hereunder, and upon a proper showing a permanent or preliminary injunction or temporary restraining order shall be granted without bond.

(e) All fines collected pursuant to subsection (b) of this section shall be deposited in the state general fund.

35-502.93. Annual long-range plan submitted; contents.

(a) Each person operating a facility as defined by W.S. 35-502.76(c)(i) shall furnish annually to the office for its review, a long-range plan for the construction, expansion and operation of the facility. The plan shall be submitted on April 1 of each year. The plan shall include the following:

(i) The general location, size and type of all facilities to be owned and operated by the person whose construction is projected to commence during the ensuing five (5) years, as well as those facilities to be removed from service during the planning period in conjunction with the facilities authorized by the original permit;

(ii) A description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental, social and economic problems at the earliest possible stage in the planning process;

(iii) Additional information that the office on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this act.

(b) The plans shall be held in strictest confidence by the office and council.

(c) Plans submitted under this section are advisory only and the office may allow reasonable deviations from the plan with no penalty attaching thereto.

35-502.94. Waiver of permit; exemptions; information required.

(a) A permit is not required for facilities defined by W.S. 35-502.76(c)(ii) and (iii) under construction or in operation as of ninety (90) days after adjournment of the session of the legislature at which this act was enacted or for which all applications for permits, certificates or approvals necessary for the activity have been granted or approved by state or federal agencies prior to said date.

(b) A permit is not required for facilities defined by W.S. 35-502.76(c)(i) under construction or in operation as of March 1, 1975, or for which all applications for permits, certificates or approvals necessary for the activity have been granted or approved by state or federal agencies prior to March 1, 1975.

(c) Nonmineral processing facilities to be constructed in existing industrial parks, as designated by local governments, are exempt from payment of fees and certification procedures but shall furnish the information required by W.S. 35-502.81(a)(ii), (iii) and (iv) to the office if included in W.S. 35-502.76(c)(ii).

(d) State and local governmental units and agencies are exempt from the application and permit procedures of this act, but prior to commencing any activity which will result in an annual daily average employment as provided in W.S. 35-502.76, such units and agencies shall furnish to the office information required by W.S. 35-502.81(a)(ii), (iii) and (iv) if included in W.S. 35-502.76(c)(ii).

(e) Construction of railroads, electric transmission lines not exceeding one hundred fifteen thousand (115,000) volts, oil and gas pipelines, coal slurry pipelines and natural gas pipelines, and construction or operation of oil and gas producing, drilling and field processing facilities are not activities subject to the application and permit procedures of this act but the owner or operator thereof shall furnish the information required by W.S. 35-502.81(a)(ii), (iii), (iv) and (vii).

Section 2. If any provision of this act is in conflict with any other law of this state, or any rule or regulation promulgated thereunder, this act shall govern and control, and such other law, rule or regulation shall be deemed superseded for the purpose of this act.

Section 3. 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.

Section 4. The provisions of W.S. 35-502.77 through 35-502.79 are effective immediately upon passage. The balance of this act is effective ninety (90) days after adjournment of the session of the legislature at which it was enacted.

Page 309 Section 39-224 amended.

39-224. Valuation.

(a) Based upon the information received or procured pursuant to W.S. 39-223, the department of revenue and taxation shall annually fix the value of the gross product, in appropriate unit measures of all mines and mining claims from which hydrocarbons, fissionable materials, fossil fuels, minerals or other valuable deposits are produced, at the fair cash market value of the product at the mine or mining claim where produced, after the mining or production process is completed.

(b) The mining or production process is deemed completed when the mine product is removed from the pit, shaft, mine or well, and prior to any additional beneficiation or further processing is placed in bins, tanks, tipples, silos, stockpiles or other storage prior to transportation to market, or in the case of natural gas, in the pipeline for transportation to market.

(c) If the product as defined in subsection (b) of this section is sold at the mine or mining claim, the fair cash market value shall be deemed to be the price established by bona fide arms-length sale.

(d) In the event the product as defined in subsection (b) of this section is not sold at the mine or mining claim by bona fide arms-length sale, or if the product of the mine is used without sale, the department of revenue and taxation shall determine the fair cash market value by application of recognized appraisal techniques.

Page 310 Section 39-227.1 amended.

COAL TAX FOR IMPACT ASSISTANCE

AN ACT to amend W.S. 39-227.1 by amending subsection (c) and by creating new subsections (f) and (g), 39-227.2, 39-227.4, 39-227.10 by amending subsections (a) and (b) and by creating new subsections (c) through (f), relating to the mineral severance tax; providing for the levy of an annual severance excise tax upon the privilege of extracting coal; providing for a coal tax severance account; providing for disbursement of the account for water, sewer and highway projects; authorizing applications by qualified recipients; and providing an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 39-227.1 by amending subsection (c) and by creating new subsections (f) and (g), 39-227.2, 39-227.4, 39-227.10 by amending subsections (a) and (b) and by creating new subsections (c) through (f) are amended to read:

39-227.1. Excise tax on extraction of minerals; amount generally; value of gross product.

(c) The tax levies provided for in subsections 39-227.1(a) and (b) shall be levied separately and shall not be construed as being cumulative or in addition to the excise tax created by the passage of the constitutional amendment creating the permanent Wyoming mineral trust fund in 1974.

(f) In addition to the other taxes provided by law, there shall be a severance tax upon the privilege of extracting or producing coal in the state of Wyoming of a percentage of the value of the coal produced according to the following schedule:

(i) For coal produced in the calendar year 1974, a tax of four tenths of one percent (0.4%) of the value of the coal produced;

(ii) For coal produced in the calendar year 1975, a tax of eight tenths of one percent (0.8%) of the value of the coal produced;

(iii) For coal produced in the calendar year 1976, a tax of one and two tenths percent (1.2%) of the value of the coal produced;

(iv) For coal produced in the calendar year 1977, a tax of one and six tenths percent (1.6%) of the value of the coal produced;

(v) For coal produced in the calendar year 1978 and all subsequent years until the expiration of this tax, a tax of two percent (2%) of the value of the coal produced.

(g) The tax levied in subsection (f) of this section shall expire on January 1 next following the year in which the taxes collected pursuant to subsection (f) total one hundred twenty million dollars (\$120,000,000.00).

Page 310 Section 39-227.1:1 created (Severance Tax Clarification).

SEVERANCE TAX CLARIFICATION

AN ACT to create 39-227.1:1; to amend W.S. 39-224; and to repeal W.S. 39-227.1(a), (b), (c) and (d) relating to excise tax on extraction of minerals; removing the present provision; and substituting a new provision on an excise tax on extraction of minerals; providing fixation of values of gross products when mining or production process is completed; defining when production process is completed; providing for fair cash market values; and providing an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 39-227.1:1 is created to read:

39-227.1:1. Excise tax on extraction of minerals; amount generally; value of gross product.

(a) There is hereby levied an excise tax payable to the department of revenue and taxation, in an amount equal to two percent (2%) of the value of the gross product extracted, upon the privilege of extracting any gold, silver or other precious metals, soda, saline, uranium, bentonite, or other valuable deposit, except trona, coal, petroleum, natural gas, oil shale, or any other fossil fuel minerals.

(b) There is hereby levied an excise tax on the privilege of severing or extracting trona, coal, petroleum, natural gas, oil shale, or any other fossil fuel, of two percent (2%) of the value of the gross product extracted. The proceeds from the tax are payable to the department of revenue and taxation and shall be deposited in the permanent Wyoming mineral trust fund.

(c) In addition to the excise tax provided for in subsection (b) of this section, there is hereby levied upon the privilege of extracting trona, coal, petroleum, natural gas, oil shale or any other fossil fuel minerals, an excise tax of two percent (2%) of the value of the gross product extracted. The proceeds from the tax are payable to the department of revenue and taxation and shall be deposited in the general fund. This subsection does not apply to a property or lease whose average daily production of crude petroleum and petroleum condensates, including natural gas liquids per well, did not exceed ten (10) barrels per day during the preceding calendar

year. "Average daily production" means the qualified maximum total production of domestic crude petroleum and petroleum condensates, including natural gas liquids, produced from a property during the preceding calendar year, divided by a number equal to the number of calendar days in that year times the number of wells which produced crude petroleum and petroleum condensates including natural gas liquids from that property in that year. To qualify as maximum total production, each well on the property must have been maintained at the maximum feasible rate of production, in accordance with recognized conservation practices and not significantly curtailed by reason of mechanical failure or other disruption in production.

(d) For the purpose of this section, the value of the gross product is the value fixed by the department of revenue and taxation pursuant to W.S. 39-224 and does not include gross production otherwise exempt by law.

Section 2. W.S. 39-224 is amended.

Page 310 Section 39-227.2 revised

39-227.2. Same; when payable; computation of amount. The tax levy provided for by W.S. 39-227.1 through 39-227.11, is payable to the department of revenue and taxation of Wyoming annually, on July 1, and is delinquent if unpaid by September 1. The amount of the tax shall be computed upon the gross production for the preceding calendar year, as described in W.S. 39-227.1.

Page 311 Section 39-227.4 revised.

39-227.4. Same; computation and certification of value of gross production; notice of tax due. The department of revenue and taxation shall compute the value of the gross production returned, shall compute the amount of tax levied, and shall notify each taxpayer of the amount of tax due by the first weekday in June of each year.

Page 312 Section 39-227.10 amended; new subsections created.

39-227.10. Same; disposition of money received and collected.

(a) All revenue received and collected under the provisions of W.S. 39-227.1 through 39-227.11 shall be transferred to the state treasurer.

(b) The constitutional portion of the revenue derived from the excise taxes on extraction of minerals levied by W.S. 39-227.1(a) shall be transferred by the state treasurer to the permanent Wyoming mineral trust fund and the balance of the excise tax levied in W.S. 39-227.1(a) and (b)

transferred to the general fund.

(c) All revenue received under the provisions of W.S. 39-227.1(f) shall be deposited in the Wyoming coal tax revenue account within the earmarked revenue fund. Any unexpended balance in the coal tax revenue account may be invested by the state treasurer and interest earned shall be credited to the Wyoming coal tax revenue account.

(d) The monies in the Wyoming coal tax revenue account shall be administered by the Wyoming farm loan board and disbursed by the board for use in areas which are directly or indirectly impacted by the production of coal, to assist in financing public water, sewer, highway, road or street projects. Not less than sixty percent (60%) of the revenues to the coal tax revenue account shall be used to finance state highway, county road or city street projects.

(e) For the purposes set forth in subsection (d) above, the Wyoming farm loan board may make grants, or may pledge or otherwise contract with, any county, city, town, sewer district, water district or other political subdivision of the state, or the state highway department, with respect to the use of the revenues derived or to be derived from the excise tax levied pursuant to W.S. 39-277.1(f). Any recipient of such revenues or a pledge of future revenues, may, with the approval of the Wyoming farm loan board, pledge wholly or in part, for the payment of any obligation to the Wyoming community development authority, or other obligee, the monies derived or to be derived from the excise tax, subject to any existing pledges or other contractual limitations theretofore imposed.

(f) All applications for project assistance shall be made directly to the Wyoming farm loan board, in whatever form the board may prescribe. The board may submit any application to the state highway department, the department of economic planning and development or any other state agency for review and recommendation before approving or disapproving the application. Before any application is approved, the farm loan board shall determine by proper investigation:

(i) That the applicant has fully utilized or will fully utilize all local revenue sources reasonably available for financing the project for which application is made;

(ii) That such local revenue sources are insufficient to finance the project; and

(iii) That the project applied for is necessary.

Section 2. If any portion of this act is declared invalid by a court of competent jurisdiction, such decision shall be limited to the portions found invalid and shall not affect or invalidate the remaining portions of this act, which shall remain in full force and effect.

Section 3. This act is effective immediately upon passage.