

## SENATE Substitute for HOUSE BILL No. 2369

By Committee on Utilities

5-6

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9 AN ACT concerning energy; relating to conservation and electric gen-  
10 eration, transmission and efficiency and air emissions; amending  
11 K.S.A. 19-101a, 55-1,117, 65-3012 and 66-104d and K.S.A. 2008 Supp.  
12 65-3005, 65-3008a, 66-1,184, 74-99d07 and 74-99d14 and repealing  
13 the existing sections; also repealing K.S.A. 19-101a, as amended by  
14 section 7 of 2009 Senate Bill No. 336, and 19-101m.  
15

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

17 New Section 1. Sections 1 through 7, and amendments thereto, shall  
18 be known and may be cited as the renewable energy standards act.

19 New Sec. 2. As used in the renewable energy standards act:

20 (a) "Affected utility" means any electric public utility, as defined in  
21 K.S.A. 66-101a, and amendments thereto, but does not include any por-  
22 tion of any municipally owned or operated electric utility.

23 (b) "Commission" means the state corporation commission.

24 (c) "Net renewable generation capacity" means the gross generation  
25 capacity of the renewable energy resource over a four-hour period when  
26 not limited by ambient conditions, equipment, operating or regulatory  
27 restrictions less auxiliary power required to operate the resource, and  
28 refers to resources located in the state or resources serving ratepayers in  
29 the state.

30 (d) "Peak demand" means the demand imposed by the affected util-  
31 ity's retail load in the state.

32 (e) "Renewable energy credit" means a credit representing energy  
33 produced by renewable energy resources issued as part of a program that  
34 has been approved by the state corporation commission.

35 (f) "Renewable energy resources" means net renewable generation  
36 capacity from:

37 (1) Wind;

38 (2) solar thermal sources;

39 (3) photovoltaic cells and panels;

40 (4) dedicated crops grown for energy production;

41 (5) cellulosic agricultural residues;

42 (6) plant residues;

43 (7) methane from landfills or from wastewater treatment;

- 1 (8) clean and untreated wood products such as pallets;
- 2 (9) (A) existing hydropower;
- 3 (B) new hydropower, not including pumped storage, that has a name-
- 4 plate rating of 10 megawatts or less;
- 5 (10) fuel cells using hydrogen produced by one of the above-named
- 6 renewable energy resources; and
- 7 (11) other sources of energy, not including nuclear power, that be-
- 8 come available after the effective date of this section, and that are certified
- 9 as renewable by rules and regulations established by the commission pur-
- 10 suant to section 7, and amendments thereto.

11 New Sec. 3. (a) The commission shall establish by rules and regula-

12 tions a portfolio requirement for all affected utilities to generate or pur-

13 chase electricity generated from renewable energy resources or purchase

14 renewable energy credits. For the purposes of calculating the capacity

15 from renewable energy credit purchases, the affected utility shall use its

16 actual capacity factor from its owned renewable generation from the im-

17 mediately previous calendar year. Renewable energy credits may only be

18 used to meet a portion of portfolio requirements for the years 2011, 2016

19 and 2020, unless otherwise allowed by the commission. Such portfolio

20 requirement shall provide net renewable generation capacity that shall

21 constitute the following portion of each affected utility's peak demand:

- 22 (1) Not less than 10% of the affected utility's peak demand for cal-
- 23 endar years 2011 through 2015, based on the average demand of the prior
- 24 three years of each year's requirement;
- 25 (2) not less than 15% of the affected utility's peak demand for cal-
- 26 endar years 2016 through 2019, based on the average demand of the prior
- 27 three years of each year's requirements; and
- 28 (3) not less than 20% of the affected utility's peak demand for each
- 29 calendar year beginning in 2020, based on the average demand of the
- 30 prior three years of each year's requirement.

31 (b) The portfolio requirements described in subsection (a) shall apply

32 to all power sold to Kansas retail consumers whether such power is self-

33 generated or purchased from another source in or outside of the state.

34 The capacity of all net metering systems interconnected with the affected

35 utilities under the net metering and easy connection act in section 8 et

36 seq., and amendments thereto, shall count toward compliance.

37 (c) Each megawatt of eligible capacity in Kansas installed after Jan-

38 uary 1, 2000, shall count as 1.10 megawatts for purposes of compliance.

39 (d) The commission shall establish rules and regulations required in

40 this section within 12 months of the effective date of this act.

41 New Sec. 4. The commission shall allow affected utilities to recover

42 reasonable costs incurred to meet the new renewable energy resource

43 requirements required in the renewable energy standards act.

1 New Sec. 5. For each affected utility, the commission shall deter-  
2 mine whether investment in renewable energy resources required to  
3 meet the renewable portfolio requirement, as required by section 3, and  
4 amendments thereto, causes the affected utility's total revenue require-  
5 ment to increase one percent or greater. The retail rate impact shall be  
6 determined net of new nonrenewable alternative sources of electricity  
7 supply reasonably available at the time of the determination.

8 New Sec. 6. (a) The commission shall establish rules and regulations  
9 for the administration of the renewable energy standards act, including  
10 reporting and enforcement mechanisms necessary to ensure that each  
11 affected utility complies with this standard and other provisions governing  
12 the imposition of administrative penalties assessed after a hearing held  
13 by the commission. Administrative penalties should be set at a level that  
14 will promote compliance with the renewable energy standards act, and  
15 shall not be limited to penalties set forth in K.S.A 66-138 and 66-177,  
16 and amendments thereto.

17 (b) For the calendar years 2011 and 2012, the commission is not  
18 required to assess penalties if the affected utility can demonstrate it made  
19 a good faith effort to comply with the portfolio standards requirement.  
20 The commission shall exempt an affected utility from administrative pen-  
21 alties for an individual compliance year if the utility demonstrates that  
22 the retail rate impact described in section 5, and amendments thereto,  
23 has been reached or exceeded and the utility has not achieved full com-  
24 pliance with section 3, and amendments thereto. In imposing penalties,  
25 the commission shall have discretion to consider mitigating circum-  
26 stances. Under no circumstances shall the costs of administrative penalties  
27 be recovered from Kansas retail customers.

28 (c) The commission shall establish rules and regulations required in  
29 this section within 12 months of the effective date of this act.

30 New Sec. 7. (a) The commission shall establish rules and regulations  
31 for the administration of a certification process for use of renewable en-  
32 ergy resources described in subsection (f)(11) of section 2, and amend-  
33 ments thereto, for purposes of fulfilling the requirements of section 3,  
34 and amendments thereto. Criteria for the certification process shall be  
35 determined by factors that include, but are not limited to: Fuel type,  
36 technology and the environmental impacts of renewable energy resources  
37 described in subsection (f)(11) of section 2, and amendments thereto.  
38 Use of renewable energy resources described in subsection (f)(11) of  
39 section 2, and amendments thereto, shall not cause undue or adverse air,  
40 water or land use impacts.

41 (b) The commission shall establish rules and regulations required in  
42 this section within 12 months of the effective date of this act.

43 New Sec. 8. Sections 8 through 16, and amendments thereto, shall

1 be known and may be cited as the net metering and easy connection act.  
2 New Sec. 9. As used in the net metering and easy connection act:  
3 (a) "Commission" means the state corporation commission.  
4 (b) "Customer-generator" means the owner or operator of a net me-  
5 tered facility which:  
6 (1) Is powered by a renewable energy resource;  
7 (2) is located on a premises owned, operated, leased or otherwise  
8 controlled by the customer-generator;  
9 (3) is interconnected and operates in parallel phase and synchroni-  
10 zation with an affected utility and is in compliance with the standards  
11 established by the affected utility;  
12 (4) is intended primarily to offset part or all of the customer-gener-  
13 ator's own electrical energy requirements;  
14 (5) contains a mechanism, approved by the utility, that automatically  
15 disables the unit and interrupts the flow of electricity back onto the sup-  
16 plier's electricity lines in the event that service to the customer-generator  
17 is interrupted.  
18 (c) "Peak demand" shall have the meaning ascribed thereto in section  
19 2, and amendments thereto.  
20 (d) "Renewable energy resources" shall have the meaning ascribed  
21 thereto in section 2, and amendments thereto.  
22 (e) "Utility" means investor-owned electric utility.  
23 New Sec. 10. Each utility shall:  
24 (a) Make net metering available to customer-generators on a first-  
25 come, first-served basis, until the total rated generating capacity of all net  
26 metered systems equals or exceeds one percent of the utility's peak de-  
27 mand during the previous year. The commission may increase the total  
28 rated generating capacity of all net metered systems to an amount above  
29 one percent after conducting a hearing pursuant to K.S.A. 66-101d, and  
30 amendments thereto;  
31 (b) offer to the customer-generator a tariff or contract that is identical  
32 in electrical energy rates, rate structure and monthly charges to the con-  
33 tract or tariff that the customer would be assigned if the customer were  
34 not an eligible customer-generator and shall not charge the customer-  
35 generator any additional standby, capacity, interconnection or other fee  
36 or charge that would not otherwise be charged if the customer were not  
37 an eligible customer-generator;  
38 (c) provide a residential class bidirectional meter to the customer-  
39 generator at no charge, but may charge the customer-generator for the  
40 cost of any additional metering or distribution equipment necessary to  
41 accommodate the customer-generator's facility; and  
42 (d) disclose annually the availability of the net metering program to  
43 each of its customers with the method and manner of disclosure being at

1 the discretion of the utility.

2 New Sec. 11. (a) If the electricity supplied by the utility exceeds the  
3 electricity generated by the customer-generator during a billing period,  
4 the customer-generator shall be billed for the net electricity supplied by  
5 the utility in accordance with normal practices for customers in the same  
6 rate class.

7 (b) If a customer-generator generates electricity in excess of the cus-  
8 tomer-generator's monthly consumption, all such net excess energy  
9 (NEG), expressed in kilowatt-hours, shall be carried forward from month-  
10 to-month and credited at a ratio of one-to-one against the customer-gen-  
11 erator's energy consumption, expressed in kilowatt-hours, in subsequent  
12 months.

13 (c) Any net excess generation credit remaining in a net-metering cus-  
14 tomer's account at the end of each calendar year shall expire.

15 New Sec. 12. Each utility shall allow:

16 (a) Residential customer-generators to generate electricity subject to  
17 net metering up to 25 kilowatts; and

18 (b) commercial, industrial, school, local government, state govern-  
19 ment, federal government, agricultural and institutional customer-gen-  
20 erators to generate electricity subject to net metering up to 200 kilowatts.

21 Customer-generators shall appropriately size their generation to their  
22 expected load.

23 New Sec. 13. (a) Net metered facilities must meet all applicable  
24 safety, performance, interconnection and reliability standards established  
25 by the national electrical code, the national electrical safety code, the  
26 institute of electrical and electronics engineers, underwriters laboratories,  
27 the federal energy regulatory commission and any local governing au-  
28 thorities. A utility may require that a customer-generator's system contain  
29 a switch, circuit breaker, fuse or other easily accessible device or feature  
30 located in immediate proximity to the customer-generator's metering  
31 equipment that would allow a utility worker the ability to manually and  
32 instantly disconnect the unit from the utility's electric distribution system.

33 (b) A utility may not require a customer-generator whose net meter-  
34 ing facility meets the standards in subsection (a) to comply with additional  
35 safety or performance standards or perform or pay for additional tests or  
36 purchase additional liability insurance. A utility shall not be liable directly  
37 or indirectly for permitting or continuing to allow an attachment of a net  
38 metered facility or for the acts or omissions of the customer-generator  
39 that cause loss or injury, including death, to any third party.

40 New Sec. 14. The commission shall, within 12 months from the ef-  
41 fective date of the net metering and easy connection act, establish rules  
42 and regulations necessary for the administration of the act, which shall  
43 include rules and regulations ensuring that simple contracts are used for

1 interconnection and net metering. For systems less than 25 kilowatts, the  
2 application process shall use an all-in-one document that includes a sim-  
3 ple interconnection request, simple procedures and a brief set of terms  
4 and conditions.

5 New Sec. 15. Reasonable costs incurred by a utility under the net  
6 metering and easy connection act shall be recoverable in the utility's rate  
7 structure.

8 New Sec. 16. The estimated generating capacity of all net metered  
9 facilities operating under the provisions of this act shall count toward the  
10 affected utility's compliance with the renewable energy standards act in  
11 sections 1 through 7, and amendments thereto.

12 New Sec. 17. As used in sections 17 through 21, and amendments  
13 thereto:

14 (a) "ASHRAE" means American society of heating, refrigerating and  
15 air-conditioning engineers, inc. standard 90.1-2007.

16 (b) "Energy star" means the joint program of the United States en-  
17 vironmental protection agency and the United States department of en-  
18 ergy which labels certain products that meet energy efficiency standards  
19 adopted for such products.

20 (c) "IECC" means the 2006 international energy conservation code.

21 (d) "New construction" means any building or structure which is con-  
22 structed by the state or any agency of the state and the construction of  
23 which commences on or after July 1, 2010.

24 New Sec. 18. Within 18 months after the effective date of this act,  
25 the secretary of administration shall adopt rules and regulations for state  
26 agencies for the purchase of products and equipment, including, but not  
27 limited to, appliances, lighting fixtures and bulbs, and computers, which  
28 meet energy efficiency guidelines which are not less than the guidelines  
29 adopted for such products to qualify as an energy star product if the  
30 projected cost savings for the useful life of such products and equipment  
31 is equal to or greater than the additional cost compared to functionally  
32 equivalent products and equipment of lower efficiency.

33 New Sec. 19. (a) The secretary of administration shall adopt rules  
34 and regulations, within 18 months of the effective date of this act, for  
35 state agencies for the conduct of an energy audit at least every five years  
36 on all state-owned real property. On or before the first day of the 2010  
37 regular session of the legislature and on or before the first day of each  
38 ensuing regular session of the legislature, the secretary of administration  
39 shall submit a written report to the joint committee on state building  
40 construction, the house committee on energy and utilities and the senate  
41 committee on utilities, or their successors, and an electronic copy to the  
42 legislature, identifying state-owned real property locations in which an  
43 excessive amount of energy is being used in accordance with rules and

1 regulations adopted, within 18 months after the effective date of this act,  
2 by the secretary of administration concerning energy efficiency perform-  
3 ance standards for state-owned real property.

4 (b) The secretary of administration shall not approve a new lease or  
5 a renewal or extension of an existing lease of non-state owned real prop-  
6 erty unless the lessor has submitted an energy audit for such real property  
7 that is the subject of such lease. Within 18 months after the effective date  
8 of this act, the secretary of administration shall adopt rules and regulations  
9 establishing energy efficiency performance standards which shall apply to  
10 leased space and improvements which the lessor shall be required to  
11 address based on such energy audit.

12 New Sec. 20. Within the limitations of appropriations therefor, the  
13 energy programs division of the state corporation commission shall de-  
14 velop and increase the participation of school districts and local govern-  
15 ments in the facilities conservation improvements program pursuant to  
16 K.S.A. 75-37,125, and amendments thereto.

17 New Sec. 21. Within 18 months after the effective date of this act,  
18 the secretary of administration shall adopt rules and regulations prescrib-  
19 ing energy efficiency performance standards requiring that all new con-  
20 struction and, to the extent possible, renovated state-owned buildings, be  
21 designed and constructed to achieve energy consumption levels that meet  
22 the levels established under the ASHRAE standard or the IECC, as ap-  
23 propriate, if such levels of energy consumption are life-cycle cost-effective  
24 for such buildings and also recommend that new and, to the extent pos-  
25 sible, renovated school and municipal buildings meet the same  
26 requirements.

27 Sec. 22. K.S.A. 2008 Supp. 66-1,184 is hereby amended to read as  
28 follows: 66-1,184. (a) Except as provided in subsection (b), every public  
29 utility which provides retail electric services in this state shall enter into  
30 a contract for parallel generation service with any person who is a cus-  
31 tomer of such utility, upon request of such customer, whereby such cus-  
32 tomer may attach or connect to the utility's delivery and metering system  
33 an apparatus or device for the purpose of feeding excess electrical power  
34 which is generated by such customer's energy producing system into the  
35 utility's system. No such apparatus or device shall either cause damage  
36 to the public utility's system or equipment or present an undue hazard  
37 to utility personnel. Every such contract shall include, but need not be  
38 limited to, provisions relating to fair and equitable compensation on such  
39 customer's monthly bill for energy supplied to the utility by such  
40 customer.

41 (b) (1) For purposes of this subsection:

42 (A) "Utility" means an electric public utility, as defined by K.S.A. 66-  
43 101a, and amendments thereto, any cooperative, as defined by K.S.A. 17-

1 4603, and amendments thereto, or a nonstock member-owned electric  
2 cooperative corporation incorporated in this state, or a municipally owned  
3 or operated electric utility;

4 (B) “school” means Cloud county community college and Dodge City  
5 community college.

6 (2) Every utility which provides retail electric services in this state  
7 shall enter into a contract for parallel generation service with any person  
8 who is a customer of such utility, if such customer is a residential customer  
9 of the utility and owns a renewable generator with a capacity of 25 kilo-  
10 watts or less, or is a commercial customer of the utility and owns a re-  
11 newable generator with a capacity of 200 kilowatts or less or is a school  
12 and owns a renewable generator with a capacity of 1.5 megawatts or less.  
13 Such generator shall be appropriately sized for such customer’s anticipa-  
14 ted electric load. A commercial customer who uses the operation of a  
15 renewable generator in connection with irrigation pumps shall not request  
16 more than 10 irrigation pumps connected to renewable generators be  
17 attached or connected to the utility’s system. At the customer’s delivery  
18 point on the customer’s side of the retail meter such customer may attach  
19 or connect to the utility’s delivery and metering system an apparatus or  
20 device for the purpose of feeding excess electrical power which is gener-  
21 erated by such customer’s energy producing system into the utility’s sys-  
22 tem. No such apparatus or device shall either cause damage to the utility’s  
23 system or equipment or present an undue hazard to utility personnel.  
24 Every such contract shall include, but need not be limited to, provisions  
25 relating to fair and equitable compensation for energy supplied to the  
26 utility by such customer. Such compensation shall be not less than 100%  
27 of the utility’s monthly system average cost of energy per kilowatt hour  
28 except that in the case of renewable generators with a capacity of 200  
29 kilowatts or less, such compensation shall be not less than 150% of the  
30 utility’s monthly system average cost of energy per kilowatt hour. A utility  
31 may credit such compensation to the customer’s account or pay such  
32 compensation to the customer at least annually or when the total com-  
33 pensation due equals \$25 or more.

34 (3) *A customer-generator of any investor owned utility shall have the*  
35 *option of entering into a contract pursuant to this subsection (b) or util-*  
36 *izing the net metering and easy connection act. The customer-generator*  
37 *shall exercise the option in writing, filed with the utility.*

38 (c) The following terms and conditions shall apply to contracts enter-  
39 ed into under subsection (a) or (b):

40 (1) The utility will supply, own, and maintain all necessary meters  
41 and associated equipment utilized for billing. In addition, and for the  
42 purposes of monitoring customer generation and load, the utility may  
43 install at its expense, load research metering. The customer shall supply,

1 at no expense to the utility, a suitable location for meters and associated  
2 equipment used for billing and for load research;

3 (2) for the purposes of insuring the safety and quality of utility system  
4 power, the utility shall have the right to require the customer, at certain  
5 times and as electrical operating conditions warrant, to limit the produc-  
6 tion of electrical energy from the generating facility to an amount no  
7 greater than the load at the customer's facility of which the generating  
8 facility is a part;

9 (3) the customer shall furnish, install, operate, and maintain in good  
10 order and repair and without cost to the utility, such relays, locks and  
11 seals, breakers, automatic synchronizer, and other control and protective  
12 apparatus as shall be designated by the utility as being required as suitable  
13 for the operation of the generator in parallel with the utility's system. In  
14 any case where the customer and the utility cannot agree to terms and  
15 conditions of any such contract, the state corporation commission shall  
16 establish the terms and conditions for such contract. In addition, the  
17 utility may install, own, and maintain a disconnecting device located near  
18 the electric meter or meters. Interconnection facilities between the cus-  
19 tomer's and the utility's equipment shall be accessible at all reasonable  
20 times to utility personnel. Upon notification by the customer of the cus-  
21 tomer's intent to construct and install parallel generation, the utility shall  
22 provide the customer a written estimate of all costs that will be incurred  
23 by the utility and billed to the customer to accommodate the intercon-  
24 nection. The customer may be required to reimburse the utility for any  
25 equipment or facilities required as a result of the installation by the cus-  
26 tomer of generation in parallel with the utility's service. The customer  
27 shall notify the utility prior to the initial energizing and start-up testing  
28 of the customer-owned generator, and the utility shall have the right to  
29 have a representative present at such test;

30 (4) the utility may require a special agreement for conditions related  
31 to technical and safety aspects of parallel generation; and

32 (5) the utility may limit the number and size of renewable generators  
33 to be connected to the utility's system due to the capacity of the distri-  
34 bution line to which such renewable generator would be connected, and  
35 in no case shall the utility be obligated to purchase an amount greater  
36 than 4% of such utility's peak power requirements.

37 (d) Service under any contract entered into under subsection (a) or  
38 (b) shall be subject to either the utility's rules and regulations on file with  
39 the state corporation commission, which shall include a standard inter-  
40 connection process and requirements for such utility's system, or the cur-  
41 rent federal energy regulatory commission interconnection procedures  
42 and regulations.

43 (e) In any case where the owner of the renewable generator and the

1 utility cannot agree to terms and conditions of any contract provided for  
2 by this section, the state corporation commission shall establish the terms  
3 and conditions for such contract.

4 (f) The governing body of any school desiring to proceed under this  
5 section shall, prior to taking any action permitted by this section, make a  
6 finding that either: (1) Net energy cost savings will accrue to the school  
7 from such renewable generation over a 20-year period; or (2) that such  
8 renewable generation is a science project being conducted for educational  
9 purposes and that such project may not recoup the expenses of the project  
10 through energy cost savings. Any school proceeding under this section  
11 may contract or enter into a finance, pledge, loan or lease-purchase agree-  
12 ment with the Kansas development finance authority as a means of fi-  
13 nancing the cost of such renewable generation.

14 (g) For the purpose of meeting the ~~governor's stated goal of produc-~~  
15 ~~ing 10% of the state's electricity by wind power by 2010 and 20% by 2020,~~  
16 ~~requirements of section 3, and amendments thereto,~~ the parallel genera-  
17 tion of electricity provided for in this section shall be included as part of  
18 the state's *renewable* energy generation ~~by wind power.~~

19 (h) *The provisions of the net metering and easy connection act shall*  
20 *not preclude the state corporation commission from approving net me-*  
21 *tering tariffs upon request of an electric utility for other methods of re-*  
22 *newable generation not prescribed in subsection (b)(1) of section 9, and*  
23 *amendments thereto.*

24 Sec. 23. K.S.A. 2008 Supp. 65-3005 is hereby amended to read as  
25 follows: 65-3005. (a) The secretary shall have the power to:

26 ~~(a)~~ (1) Adopt, amend and repeal rules and regulations implementing  
27 and consistent with this act.

28 ~~(b)~~ (2) Hold hearings relating to any aspect of or matter in the ad-  
29 ministration of this act concerning air quality control, and in connection  
30 therewith, compel the attendance of witnesses and the production of  
31 evidence.

32 ~~(c)~~ (3) Issue such orders, permits and approvals as may be necessary  
33 to effectuate the purposes of this act and enforce the same by all appro-  
34 priate administrative and judicial proceedings.

35 ~~(d)~~ (4) Require access to records relating to emissions which cause  
36 or contribute to air pollution.

37 ~~(e)~~ (5) Prepare and develop a comprehensive plan or plans for the  
38 prevention, abatement and control of air pollution originating in Kansas  
39 that affects air quality in Kansas or in other states or both.

40 ~~(f)~~ (6) Adopt rules and regulations governing such public notification  
41 and comment procedures as authorized by this act.

42 ~~(g)~~ (7) Encourage voluntary cooperation by persons or affected  
43 groups to achieve the purposes of this act.

- 1     ~~(h)~~ ~~(1)~~ (8) (A) Encourage local units of government to handle air  
2 pollution problems within their respective jurisdictions and on a coop-  
3 erative basis; ~~(2)~~ (B) provide technical and consultative assistance there-  
4 for; and ~~(3)~~ (C) enter into agreements with local units of government to  
5 administer all or part of the provisions of the Kansas air quality act in the  
6 units' respective jurisdictions.
- 7     ~~(i)~~ (9) Encourage and conduct studies, investigations and research  
8 relating to air contamination and air pollution and their causes, effects,  
9 prevention, abatement and control.
- 10    ~~(j)~~ (10) Encourage air contaminant emission sources to voluntarily  
11 implement strategies, including the development and use of innovative  
12 technologies, market-based principles and other private initiatives to re-  
13 duce or prevent pollution.
- 14    ~~(k)~~ (11) Determine by means of field studies and sampling the degree  
15 of air contamination and air pollution in the state and the several parts  
16 thereof.
- 17    ~~(l)~~ (12) Establish ambient air quality standards for the state as a whole  
18 or for any part thereof.
- 19    ~~(m)~~ (13) Collect and disseminate information and conduct educa-  
20 tional and training programs relating to air contamination and air  
21 pollution.
- 22    ~~(n)~~ (14) Advise, consult and cooperate with other agencies of the  
23 state, local governments, industries, other states, interstate or interlocal  
24 agencies, and the federal government, and with interested persons or  
25 groups.
- 26    ~~(o)~~ (15) Accept, receive and administer grants or other funds or gifts  
27 from public and private entities, including the federal government, for  
28 the purpose of carrying out any of the functions of this act. Such funds  
29 received by the secretary pursuant to this section shall be deposited in  
30 the state treasury to the account of the department of health and  
31 environment.
- 32    ~~(p)~~ (16) Enter into contracts and agreements with other state agen-  
33 cies or subdivisions, local governments, other states, interstate agencies,  
34 the federal government or its agencies or private entities as is necessary  
35 to accomplish the purposes of the Kansas air quality act.
- 36    ~~(q)~~ (17) Conduct or participate in intrastate or interstate emissions  
37 trading programs or other programs that demonstrate equivalent air qual-  
38 ity benefits for the prevention, abatement and control of air pollution in  
39 Kansas or in other states or both.
- 40    ~~(r)~~ (18) Prepare and adopt a regional haze plan as may be necessary  
41 to prevent, abate and control air pollution originating in Kansas that af-  
42 fects air quality in Kansas or in other states or both. Any regional haze  
43 plan prepared by the secretary shall be no more stringent than is required

1 by 42 U.S.C. 7491.

2 ~~(s)~~ (19) Participate in the activities of any visibility transport com-  
3 mission established under 42 U.S.C. 7492. The secretary shall report to  
4 the governor and the legislature on the activities of any such visibility  
5 transport commission annually.

6 (b) *It is a policy of the state to regulate the air quality of the state*  
7 *and implement laws and regulations that are applied equally and uni-*  
8 *formly throughout the state and consistent with those of the federal*  
9 *government.*

10 (1) *The secretary shall have the authority to promulgate rules and*  
11 *regulations to establish standards to ensure that the state is in compliance*  
12 *with the provisions of the federal clean air act, as amended (42 U.S.C.*  
13 *section 7401 et seq.). The standards so established shall not be any more*  
14 *stringent, restrictive or expansive than those required under the federal*  
15 *clean air act, as amended, nor shall the rules and regulations be enforced*  
16 *in any area of the state prior to the time required by the federal clean air*  
17 *act. If the secretary determines that more stringent, restrictive or expan-*  
18 *sive rules and regulations are necessary, the secretary may implement the*  
19 *rules and regulations only after approval by an act of the legislature. The*  
20 *restrictions of this subsection shall not apply to the parts of the state*  
21 *implementation plan developed by the secretary to bring a nonattainment*  
22 *area into compliance when needed to have a United States environmental*  
23 *protection agency approved state implementation plan.*

24 (2) *For any application for a permit required by federal or state law,*  
25 *the secretary shall not deny or delay the issuance of such permit when*  
26 *the requirements of this act have been met.*

27 Sec. 24. K.S.A. 2008 Supp. 65-3008a is hereby amended to read as  
28 follows: 65-3008a. (a) No permit shall be issued, modified, renewed or  
29 reopened without first providing the public an opportunity to comment  
30 and request a public hearing on the proposed permit action. The request  
31 for a public hearing on the issuance of a permit shall set forth the basis  
32 for the request and a public hearing shall be held if, in the judgment of  
33 the secretary, there is sufficient reason.

34 (b) The secretary shall affirm, modify or reverse the decision on such  
35 permit after the public comment period or public hearing, *and shall af-*  
36 *firm the issuance of any permit the terms and conditions of which comply*  
37 *with all requirements established by rules and regulations promulgated*  
38 *pursuant to the Kansas air quality act.* Any person who participated in  
39 the public comment process or the public hearing who otherwise would  
40 have standing under K.S.A. 77-611, and amendments thereto, shall have  
41 standing to obtain judicial review of the secretary's final action on the  
42 permit pursuant to the act for judicial review and civil enforcement of  
43 agency actions in the court of appeals. Any such person other than the

1 applicant for or holder of the permit shall not be required to have ex-  
2 hausted administrative remedies in order to be entitled to review. The  
3 court of appeals shall have original jurisdiction to review any such final  
4 agency action. The record before the court of appeals shall be confined  
5 to the agency record for judicial review and consist of the documentation  
6 submitted to or developed by the secretary in making the final permit  
7 decision, including the permit application and any addenda or amend-  
8 ments thereto, the permit summary, the draft permit, all written com-  
9 ments properly submitted to the secretary, all testimony presented at any  
10 public hearing held on the permit application, all responses by the ap-  
11 plicant or permit holder to any written comments or testimony, the sec-  
12 retary's response to the public comments and testimony and the final  
13 permit.

14 (c) When determined appropriate by the secretary, the procedures  
15 set out in subsection (a) may be required prior to the issuance, modifi-  
16 cation, renewal or reopening of an approval.

17 Sec. 25. K.S.A. 65-3012 is hereby amended to read as follows: 65-  
18 3012. (a) ~~Notwithstanding any other provision of this act, the secretary~~  
19 ~~may take such action as may be necessary to protect the health of persons~~  
20 ~~or the environment. (1) Upon receipt of information evidence that the~~  
21 ~~emission of emissions from an air pollution source or combination of air~~  
22 ~~pollution sources presents a (1) An imminent and substantial endanger-~~  
23 ~~ment to the public health of persons or welfare or to the environment;~~  
24 ~~or (2) for an imminent or actual violation of this act, any rules and reg-~~  
25 ~~ulations adopted under this act, any orders issued under this act or any~~  
26 ~~permit conditions required by this act, the secretary may issue a tempo-~~  
27 ~~rary order not to exceed seven days in duration, directing the owner or~~  
28 ~~operator, or both, to take such steps as necessary to prevent the act or~~  
29 ~~eliminate the practice.~~

30 (b) ~~The action the secretary may take under subsection (a) includes~~  
31 ~~but is not limited to:~~

32 ~~—(1) Issuing an order directing the owner or operator, or both, to take~~  
33 ~~such steps as necessary to prevent the act or eliminate the practice. Such~~  
34 ~~order may include, with respect to a facility or site, temporary cessation~~  
35 ~~of operation.~~

36 ~~—(2) Commencing (b) Upon issuance of the temporary order, the sec-~~  
37 ~~retary may commence an action in the district court to enjoin acts or~~  
38 ~~practices specified in subsection (a) or requesting request the attorney~~  
39 ~~general or appropriate county or district attorney to commence an action~~  
40 ~~to enjoin those acts or practices. Upon a showing by the secretary that a~~  
41 ~~person has engaged in those acts or practices, a permanent or temporary~~  
42 ~~injunction, restraining order or other order may be granted by any court~~  
43 ~~of competent jurisdiction.~~

1 (c) *The secretary may bring suit in any court of competent jurisdiction*  
2 *to immediately restrain the acts or practices specified in subsection*  
3 *(a). An action for injunction under this subsection shall have precedence*  
4 *over other cases in respect to order of trial.*

5 ~~(3) Applying to the district court in the county in which an order of~~  
6 ~~the secretary under subsection (b)(1) will take effect, in whole or in part,~~  
7 ~~for an order of that court directing compliance with the order of the~~  
8 ~~secretary. Failure to obey the court order shall be punishable as contempt~~  
9 ~~of the court issuing the order. The application under this subsection for~~  
10 ~~a court order shall have precedence over other cases in respect to order~~  
11 ~~of trial.~~

12 ~~—(c) In any civil action brought pursuant to this section in which a~~  
13 ~~temporary restraining order or preliminary injunction is sought, it shall~~  
14 ~~not be necessary to allege or prove at any stage of the proceeding that~~  
15 ~~irreparable damage will occur should the temporary restraining order or~~  
16 ~~preliminary injunction not be issued or that the remedy at law is inade-~~  
17 ~~quate, and the temporary restraining order or preliminary injunction shall~~  
18 ~~issue without such allegations and without such proof.~~

19 ~~—(d) Any order of the secretary pursuant to subsection (b)(1) is subject~~  
20 ~~to hearing and review in accordance with the Kansas administrative pro-~~  
21 ~~cedure act.~~

22 (d) *The owner or operator, or both, aggrieved by an order of the*  
23 *secretary issued pursuant to this section shall be immediately entitled to*  
24 *judicial review of such agency action by filing a petition for judicial review*  
25 *in district court. The aggrieved party shall not be required to exhaust*  
26 *administrative remedies. A petition for review under this subsection shall*  
27 *have precedence over other cases in respect to order of trial.*

28 Sec. 26. K.S.A. 66-104d is hereby amended to read as follows: 66-  
29 104d. (a) As used in this section, “cooperative” means any ~~cooperative,~~  
30 ~~as defined by K.S.A. 17-4603, and amendments thereto, which has fewer~~  
31 ~~than 15,000 customers and which provides power principally at retail~~  
32 ~~corporation organized under the electric cooperative act, K.S.A. 17-4601~~  
33 ~~et seq., and amendments thereto, or which becomes subject to the electric~~  
34 ~~cooperative act in the manner therein provided; or any limited liability~~  
35 ~~company or corporation providing electric service at wholesale in the state~~  
36 ~~of Kansas that is owned by four or more electric cooperatives that provide~~  
37 ~~retail service in the state of Kansas; or any member-owned corporation~~  
38 ~~formed prior to 2004.~~

39 (b) Except as otherwise provided in subsection (f), a cooperative may  
40 elect to be exempt from the jurisdiction, regulation, supervision and con-  
41 trol of the state corporation commission by complying with the provisions  
42 of subsection (c).

43 (c) To be exempt under subsection (b), a cooperative shall poll its

1 members as follows:

2 (1) An election under this subsection may be called by the board of  
3 trustees or shall be called not less than 180 days after receipt of a valid  
4 petition signed by not less than 10% of the members of the cooperative.

5 (2) The proposition for deregulation shall be presented to a meeting  
6 of the members, the notice of which shall set forth the proposition for  
7 deregulation and the time and place of the meeting. Notice to the mem-  
8 bers shall be written and delivered not less than 21 nor more than 45  
9 days before the date of the meeting.

10 (3) If the cooperative mails information to its members regarding the  
11 proposition for deregulation other than notice of the election and the  
12 ballot, the cooperative shall also include in such mailing any information  
13 in opposition to the proposition that is submitted by petition signed by  
14 not less than 1% of the cooperative's members. All expenses incidental  
15 to mailing the additional information, including any additional postage  
16 required to mail such additional information, must be paid by the sig-  
17 natories to the petition.

18 (4) If the proposition for deregulation is approved by the affirmative  
19 vote of not less than a majority of the members voting on the proposition,  
20 the cooperative shall notify the state corporation commission in writing  
21 of the results within 10 days after the date of the election.

22 (5) Voting on the proposition for deregulation shall be by mail ballot.

23 (d) A cooperative exempt under this section may elect to terminate  
24 its exemption in the same manner as prescribed in subsection (c).

25 (e) An election under subsection (c) or (d) may be held not more  
26 often than once every two years.

27 (f) Nothing in this section shall be construed to affect the single cer-  
28 tified service territory of a cooperative or the authority of the state cor-  
29 poration commission, as otherwise provided by law, over a cooperative  
30 with regard to service territory; charges, *fees or tariffs* for transmission  
31 services; sales of power for resale, *other than sales between a cooperative,*  
32 *as defined in subsection (a), that does not provide retail electric service*  
33 *and an owner of such cooperative; and* wire stringing and transmission  
34 line siting, pursuant to K.S.A. 66-131, 66-183, 66-1,170 et seq. or 66-  
35 1,177 et seq., and amendments thereto.

36 (g) (1) Notwithstanding a cooperative's election to be exempt under  
37 this section, the commission shall investigate all rates, joint rates, tolls,  
38 charges and exactions, classifications and schedules of rates of such co-  
39 operative if there is filed with the commission, not more than one year  
40 after a change in such cooperative's rates, joint rates, tolls, charges and  
41 exactions, classifications or schedules of rates, a petition *in the case of a*  
42 *retail distribution cooperative* signed by not less than 5% of all the co-  
43 operative's customers or 3% of the cooperative's customers from any one

- 1 rate class, *or, in the case of a generation and transmission cooperative,*  
2 *not less than 20% of the generation and transmission cooperative's mem-*  
3 *bers or 5% of the aggregate retail customers of such members.* If, after  
4 investigation, the commission finds that such rates, joint rates, tolls,  
5 charges or exactions, classifications or schedules of rates are unjust, un-  
6 reasonable, unjustly discriminatory or unduly preferential, the commis-  
7 sion shall have the power to fix and order substituted therefor such rates,  
8 joint rates, tolls, charges and exactions, classifications or schedules of rates  
9 as are just and reasonable.
- 10 (2) The cooperative's rates, joint rates, tolls, charges and exactions,  
11 classifications or schedules of rates complained of shall remain in effect  
12 subject to change or refund pending the state corporation commission's  
13 investigation and final order.
- 14 (3) Any customer of a cooperative wishing to petition the commission  
15 pursuant to subsection (g)(1) may request from the cooperative the  
16 names, addresses and rate classifications of all the cooperative's customers  
17 or of the cooperative's customers from any one or more rate classes. The  
18 cooperative, within 21 days after receipt of the request, shall furnish to  
19 the customer the requested names, addresses and rate classifications and  
20 may require the customer to pay the reasonable costs thereof.
- 21 (h) (1) If a cooperative is exempt under this section, not less than 10  
22 days' notice of the time and place of any meeting of the board of trustees  
23 at which rate changes are to be discussed and voted on shall be given to  
24 all members of the cooperative and such meeting shall be open to all  
25 members.
- 26 (2) Violations of subsection (h)(1) shall be subject to civil penalties  
27 and enforcement in the same manner as provided by K.S.A. 75-4320 and  
28 75-4320a, and amendments thereto, for violations of K.S.A. 75-4317 et  
29 seq. and amendments thereto.
- 30 (i) (1) Any cooperative exempt under this section shall maintain a  
31 schedule of rates and charges at the cooperative headquarters and shall  
32 make copies of such schedule of rates and charges available to the general  
33 public during regular business hours.
- 34 (2) Any cooperative which fails, neglects or refuses to maintain such  
35 copies of schedule of rates and charges under this subsection shall be  
36 subject to a civil penalty of not more than \$500.
- 37 (j) *A cooperative that has elected to be exempt under the provisions*  
38 *of subsection (b) shall include a provision in its notice to customers, either*  
39 *before or after a rate change, of the customer's right to request the com-*  
40 *mission to review the rate change, as allowed in subsection (g).*
- 41 (k) *Notwithstanding any provision of law to the contrary, a cooper-*  
42 *ative, as defined in subsection (a), shall be subject to the provisions of the*  
43 *renewable energy standards act.*

1       New Sec. 27. Within 18 months after the effective date of this act,  
2 the secretary of administration shall adopt rules and regulations that re-  
3 quire that the average fuel economy standard for state-owned motor ve-  
4 hicles purchased during fiscal year 2011 shall not be less than 10% higher  
5 than the average fuel economy standard of state-owned motor vehicles  
6 purchased during fiscal year 2008, if such higher average fuel economy  
7 standards are life-cycle cost effective for such motor vehicles purchased  
8 during fiscal year 2011. The head of each state agency shall provide in-  
9 formation to and cooperate with the secretary of administration for the  
10 purposes of implementing and administering this section and the rules  
11 and regulations adopted by the secretary of administration.

12       New Sec. 28. (a) The joint committee on energy and environmental  
13 policy established pursuant to K.S.A. 2008 Supp. 46-3701, and amend-  
14 ments thereto, in addition to the provisions of subsection (j) of K.S.A.  
15 2008 Supp. 46-3701, and amendments thereto, shall include recommen-  
16 dations concerning the use of moneys received by the state pursuant to  
17 the American recovery and reinvestment act of 2009, (U.S.C. 12501) for  
18 energy efficiency and conservation block grants, state energy programs,  
19 the weatherization assistance program and the alternative fueled vehicles  
20 pilot grant program in such joint committee's report to the 2010 and 2011  
21 legislature.

22       (b) The provisions of this section shall expire on January 1, 2011.

23       Sec. 29. K.S.A. 2008 Supp. 74-99d07 is hereby amended to read as  
24 follows: 74-99d07. (a) Except as otherwise provided by this act, the au-  
25 thority shall have all the powers necessary to carry out the purposes and  
26 provisions of this act, including, without limitation:

27       (1) Having the duties, privileges, immunities, rights, liabilities and  
28 disabilities of a body corporate and a political instrumentality of the state;

29       (2) having perpetual existence and succession;

30       (3) adopting, having and using a seal and altering the same at its  
31 pleasure;

32       (4) suing and being sued in its own name;

33       (5) adopting bylaws for the regulation of its affairs and the conduct  
34 of its business;

35       (6) adopting such rules and regulations as the authority deems nec-  
36 essary for the conduct of the business of the authority;

37       (7) employing consulting engineers, attorneys, accountants, construc-  
38 tion and financial experts, superintendents, managers and such other em-  
39 ployees and agents as the authority deems necessary and fixing the com-  
40 pensation thereof;

41       (8) making and executing all contracts and agreements necessary or  
42 incidental to the performance of the authority's duties and the execution  
43 of the authority's powers under this act;

- 1 (9) receiving and accepting from any federal agency grants, or any  
2 other form of assistance, for or in aid of the planning, financing, construc-  
3 tion, development, acquisition or ownership of any property, structures,  
4 equipment, facilities and works of public improvement necessary or use-  
5 ful for the accomplishment of the purposes for which the authority was  
6 created and receiving and accepting aid or contributions from any source  
7 of either money, property, labor or other things of value, to be held, used  
8 and applied only for the purposes for which such grants and contributions  
9 may be made;
- 10 (10) borrowing funds to carry out the purposes of the authority and  
11 mortgaging and pledging any lease or leases granted, assigned or sub-  
12 leased by the authority;
- 13 (11) purchasing, leasing, trading, exchanging or otherwise acquiring,  
14 maintaining, holding, improving, mortgaging, selling, leasing and dispos-  
15 ing of personal property, whether tangible or intangible, and any interest  
16 therein; and purchasing, leasing, trading, exchanging or otherwise ac-  
17 quiring real property or any interest therein, and maintaining, holding,  
18 improving, mortgaging, leasing and otherwise transferring such real prop-  
19 erty, so long as such transactions do not conflict with the mission of the  
20 authority as specified in this act;
- 21 (12) as provided by K.S.A. 2008 Supp. 74-99d09, and amendments  
22 thereto, incurring or assuming indebtedness and entering into contracts  
23 with the Kansas development finance authority, which is authorized to  
24 borrow money, issue bonds and provide financing for: (A) The construc-  
25 tion, upgrading or repair of transmission facilities of the Kansas electric  
26 transmission authority or the acquisition of right-of-way for such facilities,  
27 or both, and any such bonds shall be payable from and be secured by the  
28 pledge of revenues derived from the operation of such electric transmis-  
29 sion facilities; or (B) making loans to finance the construction, upgrading  
30 or repair of transmission facilities not owned by the Kansas electric trans-  
31 mission authority or the acquisition of right-of-way for such facilities, or  
32 both, upon such terms and conditions as required by the authority, in-  
33 cluding a requirement that any entity receiving a loan under this act shall  
34 maintain records and accounts relating to receipt and disbursements of  
35 loan proceeds, transportation costs and information on energy sales and  
36 deliveries and make the records available to the authority for inspection,  
37 and any such bonds shall be payable from and be secured by the pledge  
38 of revenues derived from the operation of such electric transmission  
39 facilities;
- 40 (13) depositing any moneys of the authority in any banking institution  
41 within or without the state or in any depository authorized to receive such  
42 deposits, one or more persons to act as custodians of the moneys of the  
43 authority, to give surety bonds in such amounts in form and for such

1 purposes as the board requires;

2 (14) recovering its costs through tariffs of the southwest power pool  
3 regional transmission organization, or its successor, and, if all costs are  
4 not recovered through such tariffs, through assessments against all elec-  
5 tric public utilities, electric municipal utilities and electric cooperative  
6 utilities receiving benefits of the construction or upgrade and having retail  
7 customers in this state. Each such utility's assessment shall be based on  
8 the benefits the utility receives from the construction or upgrade, as de-  
9 termined by the state corporation commission upon application by the  
10 authority. In determining allocation of benefits and costs to utilities, the  
11 commission may take into account funding and cost recovery mechanisms  
12 developed by regional transmission organizations and shall take into ac-  
13 count financial payments by transmission users and approved by the fed-  
14 eral energy regulatory commission or regional transmission organization.  
15 Each electric public utility shall recover any such assessed costs from the  
16 utility's customers in a manner approved by the commission and each  
17 electric municipal or cooperative utility shall recover such assessed costs  
18 from the utility's customers in a manner approved by the utility's govern-  
19 ing body;

20 (15) participating in and coordinating with the planning activities of  
21 the southwest power pool regional transmission organization, or its suc-  
22 cessor, and adjoining regional transmission organizations, or their suc-  
23 cessors; ~~and~~

24 (16) participating in and coordinating with the planning activities of  
25 the southwest power pool regional reliability organization, or its successor,  
26 and adjoining regional reliability organizations, or their successors; *and*

27 (17) *establish and charge reasonable fees, rates, tariffs or other*  
28 *charges, unless costs are recoverable under paragraph (14), for the use of*  
29 *all facilities owned, financed or administered by it and for all services*  
30 *rendered by it, and, if all costs are not recovered under paragraph (14),*  
31 *such costs shall be recovered through assessments against any entity or*  
32 *entities requesting use of facilities owned, financed or administered by*  
33 *the authority or for all requested services provided by the authority, or*  
34 *both.*

35 (b) On or before the first day of the regular legislative session each  
36 year, the authority shall submit to the governor and to the legislature a  
37 written report of the authority's activities for the preceding fiscal year.  
38 Such report shall include the report of any audit conducted pursuant to  
39 K.S.A. 2008 Supp. 74-99d10, and amendments thereto, of the preceding  
40 fiscal year.

41 (c) The authority shall continue until terminated by law. No such law  
42 terminating the authority shall take effect while the authority has bonds,  
43 debts or obligations outstanding unless adequate provision has been made

1 for the payment or retirement of such bonds, debts or obligations. Upon  
2 dissolution of the authority, all property, funds and assets thereof shall  
3 be disposed of as provided by law.

4 Sec. 30. K.S.A. 2008 Supp. 74-99d14 is hereby amended to read as  
5 follows: 74-99d14. (a) Subject to the provisions of this act, the authority  
6 shall have the power to:

7 (1) Plan, finance, construct, develop, acquire, own, dispose of, con-  
8 tract for maintenance of and contract with electric public utilities, electric  
9 cooperative utilities or electric municipal utilities for operation of trans-  
10 mission facilities of the authority and any real or personal property, struc-  
11 tures, equipment or facilities necessary or useful for the accomplishment  
12 of the purposes for which the authority was created, including the ob-  
13 taining of permits and the acquisition of rights of way; and

14 (2) participate in partnerships or joint ventures with individuals, cor-  
15 porations, governmental bodies or agencies, partnerships, associations or  
16 other entities to facilitate any activities or programs consistent with the  
17 public purpose and intent of this act, including partnerships or joint ven-  
18 tures for the purpose of financing all or any portion of a project pursuant  
19 to subsection (a)(2) of K.S.A. 2008 Supp. 74-99d09, and amendments  
20 thereto.

21 (b) (1) Except as otherwise provided in this act, the authority shall  
22 not exercise any of the rights or powers granted to it in this section, if  
23 private entities are performing the acts, are constructing or have con-  
24 structed the facilities or are providing the services contemplated by the  
25 authority and such private entities are willing to finance and own new  
26 infrastructure to meet an identified need and market.

27 (2) Prior to exercising any rights or powers granted to it in this sec-  
28 tion, the authority shall publish once in the Kansas register, and once in  
29 a newspaper and trade magazine in the area where the facilities or services  
30 are contemplated, a notice describing the acts, facilities or services con-  
31 templated by the authority and stating that private entities willing and  
32 able to perform the acts, finance and own and construct the facilities or  
33 provide the services described in the notice shall have a period of 90 days  
34 after the date of publication of the notice in the Kansas register within  
35 which to notify the authority of intention and ability to perform the acts,  
36 finance and construct the facilities or provide the services described in  
37 the notice. In the absence of notification by a private entity, the authority  
38 may proceed to perform the acts, construct the facilities or provide the  
39 services originally contemplated. If a private entity has given notice of  
40 intention to perform the acts, finance and construct the facilities or pro-  
41 vide the services contemplated by the authority, the authority may pro-  
42 ceed to perform the acts, construct the facilities or provide the services  
43 originally contemplated if the private entity fails to commence perform-

1   ance within 180 days after the date of notification of the authority of its  
2   intention. Actions deemed to constitute commencement of performance  
3   of the acts, construction of the facilities or provision of the services within  
4   the required time shall include, but not be limited to, holding of public  
5   meetings on siting of facilities, acquisition of land or commencement of  
6   proceedings for condemnation of land, application to acquire any federal,  
7   state, local or private permits, certificates or other authorizations or ap-  
8   provals necessary to perform the acts, construct the facilities or provide  
9   the services.

10   (3) Notwithstanding commencement of performance of the acts, con-  
11   struction of the facilities or provision of the services by a private entity,  
12   if the authority is not satisfied with subsequent progress in performance  
13   of the acts, construction of the facilities or provision of the services, the  
14   authority may again give notice as provided in subsection (b)(2) with re-  
15   spect to completion of performance of the acts, construction of the facil-  
16   ities or provision of the services. In the absence of notification by a private  
17   entity willing and able to complete performance of the acts, construction  
18   of the facilities or provision of the services, the authority may proceed to  
19   complete performance. If a private entity has given notice of intention to  
20   complete performance, the authority may proceed to perform the acts,  
21   construct the facilities or provide the services if the private entity fails to  
22   complete performance within 180 days after the date of notice by the  
23   entity.

24   (c) The authority shall not operate or maintain transmission facilities.

25   (d) The authority shall exercise the rights and powers granted to it in  
26   this act only with respect to transmission facilities which the southwest  
27   power pool regional transmission organization, or its successor, has de-  
28   termined are compatible with plans adopted by such organization and,  
29   *for electric transmission lines with an operating voltage of 60 kilovolts or*  
30   *more*, which have been approved by such organization.

31   New Sec. 31. (a) Any new coal-fired electricity generating facility in  
32   Kansas, construction of which commences on or after the effective date  
33   of this act, shall purchase Kansas coal for at least 5% of its coal require-  
34   ments. For the purposes of this section, "Kansas coal" shall have the  
35   meaning ascribed thereto in K.S.A. 2008 Supp. 79-32,228, and amend-  
36   ments thereto.

37   (b) The provisions of this section shall apply if the cost of the Kansas  
38   coal, including costs of transportation and handling at the new coal-fired  
39   electricity generating facility, is:

40   (1) Competitive to the cost of the out-of-state coal supply the owner  
41   or operator of the new coal-fired electricity generating facility is using to  
42   meet its remaining coal supply requirements;

43   (2) sold on comparable contractual terms and specification; and

1 (3) of an acceptable quality for use in the new coal-fired electricity  
2 generating facility.

3 This section shall not apply if the use or purchase of Kansas coal will  
4 result in the owner or operator of the new coal-fired electricity generating  
5 facility violating its air permit or a contractual obligation to which the  
6 owner or operator is subject.

7 New Sec. 32. Sections 32 through 39, and amendments thereto, shall  
8 be known and may be cited as the compressed air energy storage act.

9 New Sec. 33. As used in the compressed air energy storage act:

10 (a) "Commission" means the state corporation commission.

11 (b) "Department" means the department of health and environment.

12 New Sec. 34. (a) Within 18 months after the effective date of this  
13 act, the commission shall establish rules and regulations establishing  
14 requirements, procedures and standards for the safe and secure injection  
15 of compressed air into storage wells, which shall include maintenance of  
16 underground storage of compressed air. Such rules and regulations shall  
17 include, but not be limited to:

18 (1) Site selection criteria;

19 (2) design and development criteria;

20 (3) operation criteria;

21 (4) casing requirements;

22 (5) monitoring and measurement requirements;

23 (6) safety requirements, including public notification;

24 (7) closure and abandonment requirements, including the financial  
25 requirements of subsection (d); and

26 (8) long-term monitoring.

27 (b) The commission may adopt rules and regulations establishing fees  
28 for permitting, monitoring and inspecting operators of compressed air  
29 energy storage wells and underground storage. Fees collected by the com-  
30 mission under this section shall be remitted by the commission to the  
31 state treasurer in accordance with the provisions of K.S.A. 75-4215, and  
32 amendments thereto. Upon receipt of each such remittance, the state  
33 treasurer shall deposit the entire amount in the state treasury and credit  
34 it to the compressed air energy storage fund.

35 (c) The commission or the commission's duly authorized represen-  
36 tative may impose on any holder of a permit issued pursuant to this sec-  
37 tion such requirements relating to inspecting, monitoring, investigating,  
38 recording and reporting as the commission or representative deems nec-  
39 essary to administer the provisions of this section and rules and regula-  
40 tions adopted hereunder.

41 (d) Any company or operator receiving a permit under the provisions  
42 of the compressed air energy storage act shall demonstrate annually to  
43 the commission evidence, satisfactory to the commission, that the permit

1 holder has financial ability to cover the cost of closure of the permitted  
2 facility as required by the commission.

3 (e) The commission may enter into contracts for services from con-  
4 sultants and other experts for the purposes of assisting in the drafting of  
5 rules and regulations pursuant to this section.

6 (f) Rules and regulations adopted under the compressed air energy  
7 storage act shall apply to any compressed air energy storage well, whether  
8 in existence on the effective date of this act or thereafter.

9 New Sec. 35. Within 18 months after the effective date of this act,  
10 the department shall establish rules and regulations establishing require-  
11 ments, procedures and standards for the monitoring of air emissions com-  
12 ing from compressed air energy storage wells and storage facilities to  
13 ensure the wells and facilities comply with the Kansas air quality act.

14 New Sec. 36. The commission and the department may enter into a  
15 memorandum of understanding concerning implementation of the  
16 requirements and responsibilities under the compressed air energy stor-  
17 age act.

18 New Sec. 37. (a) The commission, upon a finding that a person has  
19 violated any provision of section 34, and amendments thereto, or rules  
20 and regulations adopted thereunder, may impose a penalty not to exceed  
21 \$10,000 per violation which shall constitute an economic deterrent to the  
22 violation for which it is assessed and, in the case of a continuing violation,  
23 every day such violation continues shall be deemed a separate violation.

24 (b) No penalty shall be imposed pursuant to this section except after  
25 an opportunity for hearing upon the written order of the commission to  
26 the person who committed the violation. The order shall state the viola-  
27 tion and the penalty to be imposed.

28 (c) Whenever the commission or the commission's duly authorized  
29 representative find that the soil or waters of the state are not being pro-  
30 tected from pollution resulting from the storage of compressed air, the  
31 commission or the commission's duly authorized representative shall issue  
32 an order prohibiting such storage. Any person aggrieved by such order  
33 may request in writing, within 15 days after service of the order, a hearing  
34 on the order. Upon receipt of a timely request, a hearing shall be con-  
35 ducted in accordance with the provisions of the Kansas administrative  
36 procedure act.

37 (d) Any action of the commission pursuant to this section is subject  
38 to review in accordance with the act for judicial review and civil enforce-  
39 ment of agency actions.

40 New Sec. 38. (a) In performing investigations or administrative func-  
41 tions relating to prevention of pollution of the soil or waters of the state,  
42 the commission or the commission's duly authorized representative may  
43 enter any property or facility which is subject to the provisions of section

1 34, and amendments thereto, for the purpose of observing, monitoring,  
2 collecting samples, examining records and facilities to determine compli-  
3 ance or noncompliance with state laws and rules and regulations relating  
4 to air pollution, water pollution, soil pollution or public health or safety.

5 (b) The representatives of the commission shall have the right of in-  
6 gress and egress upon any lands to clean up pollution from the storage  
7 of compressed air over which the commission has jurisdiction pursuant  
8 to section 34, and amendments thereto. Such representatives shall have  
9 the power to occupy such land if necessary to investigate and clean up  
10 such pollution or to investigate and plug any such compressed air energy  
11 storage well. Any representative entering upon any land to investigate and  
12 clean up such pollution or to investigate and plug any such compressed  
13 air energy storage well shall not be liable for any damages necessarily  
14 resulting therefrom, except damages to growing crops, livestock or im-  
15 provements on the land. Upon completion of activities on such land, such  
16 representative shall restore the premises to the original contour and con-  
17 dition as nearly as practicable.

18 New Sec. 39. (a) (1) There is hereby established in the state treasury  
19 the compressed air energy storage fund. Such fund shall be administered  
20 by the commission in accordance with the provisions of this section for  
21 the purpose of administering the provisions of the compressed air energy  
22 storage act.

23 (2) The commission shall remit to the state treasurer in accordance  
24 with the provisions of K.S.A. 75-4215, and amendments thereto, all mon-  
25 eys received by the commission for the purposes of the compressed air  
26 energy storage act. Upon receipt of the remittance the state treasurer  
27 shall deposit the entire amount in the state treasury and credit it to the  
28 fund. The commission is authorized to receive from any private or gov-  
29 ernmental source any funds made available for the purposes of the com-  
30 pressed air energy storage act.

31 (3) All expenditures from the compressed air energy storage fund  
32 shall be made in accordance with appropriation acts and upon warrants  
33 of the director of accounts and reports issued pursuant to vouchers ap-  
34 proved by the chairperson of the commission or a person designated by  
35 the chairperson.

36 (b) The commission is authorized to use moneys from the com-  
37 pressed air energy storage fund to pay the cost of:

38 (1) All activities related to permitting activities, including, but not  
39 limited to, development and issuance of permits, compliance monitoring,  
40 inspections, well closures, underground storage closure, long-term mon-  
41 itoring and enforcement actions;

42 (2) review and witnessing of test procedures;

43 (3) review and witnessing of routine workover or repair procedures;

- 1 (4) investigation of violations, complaints, pollution and events af-  
2 fecting public health;
- 3 (5) design and review of remedial action plans;
- 4 (6) contracting for services needed to supplement the commission's  
5 staff expertise in facility investigations;
- 6 (7) consultation needed concerning remedial action at a permitted  
7 facility;
- 8 (8) mitigation of adverse environmental impacts;
- 9 (9) emergency or long-term remedial activities;
- 10 (10) legal costs, including expert witnesses, incurred in administration  
11 of the provisions of the compressed air energy storage act; and
- 12 (11) costs of program administration.
- 13 (c) On or before the 10th of each month, the director of accounts  
14 and reports shall transfer from the state general fund to the compressed  
15 air energy storage fund interest earnings based on:
- 16 (1) The average daily balance of moneys in the compressed air energy  
17 storage fund for the preceding month; and
- 18 (2) the net earnings rate of the pooled money investment portfolio  
19 for the preceding months.
- 20 Sec. 40. K.S.A. 55-1,117 is hereby amended to read as follows: 55-  
21 1,117. (a) As used in this section, K.S.A. 65-171d and K.S.A. 55-1,118  
22 through 55-1,122, and amendments thereto:
- 23 (1) *"Company or operator" means any form of legal entity including,*  
24 *but not limited to, a corporation, limited liability company and limited or*  
25 *general partnerships.*
- 26 (2) "Secretary" means the secretary of health and environment.
- 27 ~~(2)~~ (3) "Underground porosity storage" means the storage of hydro-  
28 carbons in underground, porous and permeable geological strata which  
29 have been converted to hydrocarbon storage.
- 30 (b) For the purposes of protecting the health, safety and property of  
31 the people of the state, and preventing surface and subsurface water  
32 pollution and soil pollution detrimental to public health or to the plant,  
33 animal and aquatic life of the state, the secretary of health and environ-  
34 ment shall adopt separate and specific rules and regulations establishing  
35 requirements, procedures and standards for the following:
- 36 (1) Salt solution mining;
- 37 (2) the safe and secure underground storage of liquid petroleum gas  
38 and hydrocarbons, other than natural gas in underground porosity stor-  
39 age; and
- 40 (3) the safe and secure underground storage of natural gas in bedded  
41 salt.
- 42 (c) Such rules and regulations shall include, but not be limited to:
- 43 (1) Site selection criteria;

- 1 (2) design and development criteria;
  - 2 (3) operation criteria;
  - 3 (4) casing requirements;
  - 4 (5) monitoring and measurement requirements;
  - 5 (6) safety requirements, including public notification;
  - 6 (7) closure and abandonment requirements, including the financial
  - 7 requirements of subsection (f); and
  - 8 (8) long term monitoring.
- 9 (d) (1) The secretary may adopt rules and regulations establishing
- 10 fees for the following services:
- 11 (A) Permitting, monitoring and inspecting salt solution mining
  - 12 operators;
  - 13 (B) permitting, monitoring and inspecting underground storage of
  - 14 liquid petroleum gas and hydrocarbons, other than natural gas in under-
  - 15 ground porosity storage; and
  - 16 (C) permitting, monitoring and inspecting underground storage of
  - 17 natural gas in bedded salt.
- 18 (2) The fees collected under this section by the secretary shall be
- 19 remitted by the secretary to the state treasurer in accordance with the
- 20 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
- 21 each such remittance, the state treasurer shall deposit the entire amount
- 22 in the state treasury to the credit of the subsurface hydrocarbon storage
- 23 fund.
- 24 (e) The secretary or the secretary's duly authorized representative
- 25 may impose on any holder of a permit issued pursuant to this section such
- 26 requirements relating to inspecting, monitoring, investigating, recording
- 27 and reporting as the secretary or representative deems necessary to ad-
- 28 minister the provisions of this section and rules and regulations adopted
- 29 hereunder.
- 30 (f) Any company or operator receiving a permit under the provisions
- 31 of this act shall demonstrate annually to the department of health and
- 32 environment evidence, satisfactory to the department, that such permit
- 33 holders have financial ability to cover the cost of closure of such permitted
- 34 facility as required by the department.
- 35 (g) The secretary may enter into contracts for services from consult-
- 36 ants and other experts for the purposes of assisting in the drafting of rules
- 37 and regulations pursuant to this section.
- 38 (h) (1) For a period of two years from July 1, 2001, or until the rules
- 39 and regulations provided for in ~~paragraph (3) of subsection (a)~~ (b)(3) are
- 40 adopted, the injection of working natural gas into underground storage
- 41 in bedded salt is prohibited, except that cushion gas may be injected into
- 42 existing underground storage in bedded salt. Natural gas currently stored
- 43 in such underground storage may be extracted.

1 (2) Any existing underground storage of natural gas in bedded salt  
2 shall comply with the rules and regulations adopted under this section  
3 prior to the commencement of injection of working natural gas into such  
4 underground storage.

5 (3) Rules and regulations adopted under ~~paragraph (3)~~ of subsection  
6 ~~(a)~~ (b)(3) shall be adopted on or before July 1, 2003.

7 (i) No hydrocarbon storage shall be allowed in any underground for-  
8 mation if water within the formation contains less than 5,000 milligrams  
9 per liter chlorides.

10 Sec. 41. K.S.A. 19-101a is hereby amended to read as follows: 19-  
11 101a. (a) The board of county commissioners may transact all county  
12 business and perform all powers of local legislation and administration it  
13 deems appropriate, subject only to the following limitations, restrictions  
14 or prohibitions:

15 (1) Counties shall be subject to all acts of the legislature which apply  
16 uniformly to all counties.

17 (2) Counties may not affect the courts located therein.

18 (3) Counties shall be subject to acts of the legislature prescribing  
19 limits of indebtedness.

20 (4) In the exercise of powers of local legislation and administration  
21 authorized under provisions of this section, the home rule power con-  
22 ferred on cities to determine their local affairs and government shall not  
23 be superseded or impaired without the consent of the governing body of  
24 each city within a county which may be affected.

25 (5) Counties may not legislate on social welfare administered under  
26 state law enacted pursuant to or in conformity with public law No. 271—  
27 74th congress, or amendments thereof.

28 (6) Counties shall be subject to all acts of the legislature concerning  
29 elections, election commissioners and officers and their duties as such  
30 officers and the election of county officers.

31 (7) Counties shall be subject to the limitations and prohibitions im-  
32 posed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto,  
33 prescribing limitations upon the levy of retailers' sales taxes by counties.

34 (8) Counties may not exempt from or effect changes in statutes made  
35 nonuniform in application solely by reason of authorizing exceptions for  
36 counties having adopted a charter for county government.

37 (9) No county may levy ad valorem taxes under the authority of this  
38 section upon real property located within any redevelopment project area  
39 established under the authority of K.S.A. 12-1772, and amendments  
40 thereto, unless the resolution authorizing the same specifically authorized  
41 a portion of the proceeds of such levy to be used to pay the principal of  
42 and interest upon bonds issued by a city under the authority of K.S.A.  
43 12-1774, and amendments thereto.

- 1 (10) Counties shall have no power under this section to exempt from  
2 any statute authorizing or requiring the levy of taxes and providing sub-  
3 stitute and additional provisions on the same subject, unless the resolution  
4 authorizing the same specifically provides for a portion of the proceeds  
5 of such levy to be used to pay a portion of the principal and interest on  
6 bonds issued by cities under the authority of K.S.A. 12-1774, and amend-  
7 ments thereto.
- 8 (11) Counties may not exempt from or effect changes in the provi-  
9 sions of K.S.A. 19-4601 through 19-4625, and amendments thereto.
- 10 (12) Except as otherwise specifically authorized by K.S.A. 12-1,101  
11 through 12-1,109, and amendments thereto, counties may not levy and  
12 collect taxes on incomes from whatever source derived.
- 13 (13) Counties may not exempt from or effect changes in K.S.A. 19-  
14 430, and amendments thereto.
- 15 (14) Counties may not exempt from or effect changes in K.S.A. 19-  
16 302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.
- 17 (15) Counties may not exempt from or effect changes in K.S.A. 19-  
18 15,139, 19-15,140 and 19-15,141, and amendments thereto.
- 19 (16) Counties may not exempt from or effect changes in the provi-  
20 sions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-  
21 1226, and amendments thereto, or the provisions of K.S.A. 12-1260  
22 through 12-1270 and 12-1276, and amendments thereto.
- 23 (17) Counties may not exempt from or effect changes in the provi-  
24 sions of K.S.A. 19-211, and amendments thereto.
- 25 (18) Counties may not exempt from or effect changes in the provi-  
26 sions of K.S.A. 19-4001 through 19-4015, and amendments thereto.
- 27 (19) Counties may not regulate the production or drilling of any oil  
28 or gas well in any manner which would result in the duplication of reg-  
29 ulation by the state corporation commission and the Kansas department  
30 of health and environment pursuant to chapter 55 and chapter 65 of the  
31 Kansas Statutes Annotated, and amendments thereto, and any rules and  
32 regulations adopted pursuant thereto. Counties may not require any li-  
33 cense or permit for the drilling or production of oil and gas wells. Counties  
34 may not impose any fee or charge for the drilling or production of any  
35 oil or gas well.
- 36 (20) Counties may not exempt from or effect changes in K.S.A. 79-  
37 41a04, and amendments thereto.
- 38 (21) Counties may not exempt from or effect changes in K.S.A. 79-  
39 1611, and amendments thereto.
- 40 (22) Counties may not exempt from or effect changes in K.S.A. 79-  
41 1494, and amendments thereto.
- 42 (23) Counties may not exempt from or effect changes in subsection  
43 (b) of K.S.A. 19-202, and amendments thereto.

- 1 (24) Counties may not exempt from or effect changes in subsection  
2 (b) of K.S.A. 19-204, and amendments thereto.
- 3 (25) Counties may not levy or impose an excise, severance or any  
4 other tax in the nature of an excise tax upon the physical severance and  
5 production of any mineral or other material from the earth or water.
- 6 (26) Counties may not exempt from or effect changes in K.S.A. 79-  
7 2017 or 79-2101, and amendments thereto.
- 8 (27) Counties may not exempt from or effect changes in K.S.A. 2-  
9 3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, 65-  
10 1,178 through 65-1,199, 65-3001 through 65-3028, and amendments  
11 thereto.
- 12 (28) Counties may not exempt from or effect changes in K.S.A. 2008  
13 Supp. 80-121, and amendments thereto.
- 14 (29) Counties may not exempt from or effect changes in K.S.A. 19-  
15 228, and amendments thereto.
- 16 (30) Counties may not exempt from or effect changes in the wireless  
17 enhanced 911 act, in the VoIP enhanced 911 act or in the provisions of  
18 K.S.A. 12-5301 through 12-5308, and amendments thereto.
- 19 (31) Counties may not exempt from or effect changes in K.S.A. 2008  
20 Supp. 26-601, and amendments thereto.
- 21 (32) (A) Counties may not exempt from or effect changes in the Kan-  
22 sas liquor control act except as provided by paragraph (B).
- 23 (B) Counties may adopt resolutions which are not in conflict with the  
24 Kansas liquor control act.
- 25 (33) (A) Counties may not exempt from or effect changes in the Kan-  
26 sas cereal malt beverage act except as provided by paragraph (B).
- 27 (B) Counties may adopt resolutions which are not in conflict with the  
28 Kansas cereal malt beverage act.
- 29 (34) Counties may not exempt from or effect changes in the Kansas  
30 lottery act.
- 31 (35) Counties may not exempt from or effect changes in the Kansas  
32 expanded lottery act.
- 33 (36) *Counties may neither exempt from nor effect changes to the em-*  
34 *inent domain procedure act.*
- 35 (37) *Any county granted authority pursuant to the provisions of*  
36 *K.S.A. 19-5001 through 19-5005, and amendments thereto, shall be sub-*  
37 *ject to the limitations and prohibitions imposed under K.S.A. 19-5001*  
38 *through 19-5005, and amendments thereto.*
- 39 (38) *Except as otherwise specifically authorized by K.S.A. 19-5001*  
40 *through 19-5005, and amendments thereto, counties may not exercise any*  
41 *authority granted pursuant to K.S.A. 19-5001 through 19-5005, and*  
42 *amendments thereto, including the imposition or levy of any retailers'*  
43 *sales tax.*

1 (b) Counties shall apply the powers of local legislation granted in  
2 subsection (a) by resolution of the board of county commissioners. If no  
3 statutory authority exists for such local legislation other than that set forth  
4 in subsection (a) and the local legislation proposed under the authority  
5 of such subsection is not contrary to any act of the legislature, such local  
6 legislation shall become effective upon passage of a resolution of the  
7 board and publication in the official county newspaper. If the legislation  
8 proposed by the board under authority of subsection (a) is contrary to an  
9 act of the legislature which is applicable to the particular county but not  
10 uniformly applicable to all counties, such legislation shall become effective  
11 by passage of a charter resolution in the manner provided in K.S.A.  
12 19-101b, and amendments thereto.

13 (c) Any resolution adopted by a county which conflicts with the re-  
14 strictions in subsection (a) is null and void.

15 New Sec. 42. (a) The secretary shall timely approve a prevention of  
16 significant deterioration permit (PSD) to sunflower electric power cor-  
17 poration to be issued consistent with the settlement agreement executed  
18 May 4, 2009, by sunflower electric power corporation and the governor  
19 of the state of Kansas to resolve all claims or causes of action, or both,  
20 pending before various courts and administrative agencies consistent with  
21 article V of the settlement agreement.

22 (b) This section shall be part of and supplemental to the Kansas air  
23 quality act.

24 New Sec. 43. The provisions of this act are declared to be severable  
25 and if any provision, word, phrase or clause of the act or the application  
26 thereof to any person shall be held invalid, such invalidity shall not affect  
27 the validity of the remaining portions of this act.

28 Sec. 44. K.S.A. 19-101a, 19-101m, 55-1,117, 65-3012 and 66-104d  
29 and K.S.A. 2008 Supp. 65-3005, 65-3008a, 66-1,184, 74-99d07 and 74-  
30 99d14 are hereby repealed.

31 Sec. 45. On and after July 1, 2009, K.S.A. 19-101a, as amended by  
32 section 7 of 2009 Senate Bill No. 336, is hereby repealed.

33 Sec. 46. This act shall take effect and be in force from and after its  
34 publication in the Kansas register.

SESSION OF 2009

**SUPPLEMENTAL NOTE ON  
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2369**

As Recommended by Senate Committee on  
Utilities

**Brief\***

Senate Sub. for HB 2369 would enact new law and amend existing law related to energy. The bill would:

- Enact the Renewable Energy Standards Act;
- Enact the Net Metering and Easy Connection Act;
- Enact new law regarding fuel efficiency for state-owned motor vehicles and energy efficiency of state-owned and leased space and equipment;
- Amends the parallel generation statute;
- Amend the Kansas Air Quality Act in regard to its relationship to federal law and in regard to emergency authority;
- Amend existing law to authorize large electric cooperatives to be deregulated under certain circumstances;
- Direct the Joint Committee on Energy and Environmental Policy to study the use of federal stimulus funds allocated for energy issues;
- Amend the Kansas Electric Transmission Authority Act authorizing collection of fees for certain activities and clarifying other Authority powers;

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Amend existing law regarding entities that store hydrocarbons underground;
- Enact the Compressed Air Energy Storage Act;
- Require the purchase of Kansas coal by any new coal-fired electricity generating plant in Kansas, under certain circumstances; and
- Require the Secretary of Health and Environment to comply with the settlement reached between Sunflower Electric Power Corporation and the State.

The bill becomes effective upon publication in the *Kansas Register*.

Elements of the bill are described below.

### **Renewable Energy Standards Act**

The bill would enact the Renewable Energy Standards Act that would require electric public utilities, except municipally owned electric utilities, to generate or purchase specified amounts of electricity generated from renewable resources. The Kansas Corporation Commission (KCC) would have broad authority to adopt rules and regulations implementing the standards and establishing enforcement mechanisms including administrative fines.

Renewable energy could be generated by wind; solar thermal sources; photovoltaic cells and panels; dedicated crops grown for energy production; cellulosic agricultural residues; plant residues; methane from landfills or from wastewater treatment; clean and untreated wood products such as pallets; existing hydropower; new hydropower, not including pumped storage, that has a nameplate rating of 10 megawatts or less; fuel cells using hydrogen produced by one of the other

renewable energy resources; and other sources of energy, not including nuclear power, that become available after enactment of the bill and that are certified as renewable under rules and regulations of the KCC.

The renewable portfolio requirement would require net renewable generation capacity constituting not less than the following portions of each affected utility's peak demand based on the average of the three prior years:

- 10 percent for calendar years 2011 through 2015;
- 15 percent for calendar years 2016 through 2019; and
- 20 percent for each calendar year beginning in 2020.

Renewable energy credits could be used to meet a portion of the requirement in 2011, 2016, and 2020, unless otherwise authorized by the Commission.

Each megawatt of eligible renewable capacity installed in Kansas after January 1, 2000 would count as 1.10 megawatts for purposes of compliance with the renewable energy requirement. The capacity of any systems interconnected with the affected utilities under the Net Metering and Easy Connection Act (also part of the bill) or the parallel generation statute, would count toward compliance with the renewable energy requirement.

Utilities could recover in rates those costs incurred to meet the renewable energy requirement.

### **Net Metering and Easy Connection Act**

The bill would enact the Net Metering and Easy Connection Act and amend the parallel generation statute. The Act would require any investor-owned electric utility to make net metering available to customer-generators under certain circumstances. Renewable energy resources that could be used to generate electricity under the Net Metering Act would

be the same as those defined in the Renewable Energy Standards Act.

Customer-generators could utilize either the parallel generation statute or the Net Metering Act. The choice would have to be made in writing and filed with the company serving the customer-generator. The maximum capacity of generating equipment allowed for use by customer-generators under the Act would be 25 kilowatts for residential customers and 200 kilowatts for other customers.

The Act would provide that retail electric companies measure the net power produced and consumed by the customer-generator during a billing period by using a bidirectional meter provided to the customer-generator at no cost by the electric company. If the company provides the customer-generator with more power during a billing period than the customer generates, the customer would be billed for the net amount of electricity provided by the company. If the amount of electricity generated by the customer exceeds the amount provided by the company, the net excess electricity generated by the customer would be carried forward from month to month and credited at a ratio of 1:1 against the customer's energy consumption. Credits remaining at the end of the calendar year would expire. Electric companies would be able to recover in their rate structures those costs incurred under the Act.

Customers' generating equipment would have to meet specifications established by the Act including being appropriately sized to the customer-generator's electrical load and complying with specified safety, performance, interconnection and reliability standards. The utility could not require additional insurance if the net metering facility meets the safety and performance standards in the Act. A utility would not be liable, directly or indirectly, for permitting or continuing to allow an attachment of a net metered facility or for the acts or omissions of a customer-generator that cause loss or injury, including death, to any third party.

The Act would establish the maximum amount of net generation capacity that a supplier must accept on its system at one percent of the supplier's peak demand during the prior year. The KCC would be authorized to increase the limit after a hearing.

The KCC would be authorized in the parallel generation statute to approve net metering tariffs requested by electric utilities for other methods of renewable generation not described in the Net Metering Act.

The KCC would be required to adopt rules and regulations to implement the Net Metering Act. Suppliers would be able to recover costs incurred in connection with compliance with the Net Metering Act.

### **Energy Efficiency**

The bill requires the Secretary of Administration to adopt rules and regulations within 18 months of the effective date of the Act:

- Requiring the average fuel efficiency for state-owned vehicles purchased during 2011 to be at least 10 percent higher than the fuel efficiency of state-owned vehicles purchased in 2008 if such purchases would be life-cycle cost-effective;
- Establishing energy efficiency guidelines for state agencies for the purchase of products and equipment such as appliances, lighting fixtures and bulbs, and computers, that are at least as energy efficient as similar products that qualify for the Energy Star® program if the avoided energy cost over the life of the product is equal to or greater than the additional cost paid for the more efficient product;
- Establishing energy efficiency performance standards for state-owned and leased real property, and requiring state

agencies to conduct an energy audit at least every five years on all state-owned real property. The Secretary would be prohibited from approving, renewing or extending any building lease unless the lessor has submitted an energy audit for the building. Lessors would be required to address the performance standards based on the energy audit. On an annual basis, the Secretary would be required to submit a report to the Legislature, the Joint Committee on State Building Construction, the House Committee on Energy and Utilities, and the Senate Committee on Utilities, identifying properties where an excessive amount of energy is being used.

- Prescribing energy efficiency performance standards for construction of state buildings. All new and, to the extent possible, renovated, state-owned buildings would have to be designed and constructed to achieve energy consumption levels that are at least the levels specified by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) 90.1-2007 or the 2006 International Energy Conservation Code (IECC). Regulations adopted under these provisions would only apply if they are life-cycle cost-effective.

The Energy Office of the Kansas Corporation Commission (KCC) would be required to develop and increase participation of school districts and local governments in the Facility Conservation Improvement Program (FCIP) to the extent that funds are appropriated for that purpose.

### **Deregulation of Large Electric Cooperatives**

The bill would amend existing law to allow large electric cooperatives to remove themselves from the regulatory jurisdiction of the KCC regarding rates. Under the bill, the option to deregulate is expanded to cover the following entities:

- Electric cooperatives with more than 15,000 members that primarily sell power at retail;
- Limited liability companies or corporations that provide wholesale electric service and are owned by four or more electric cooperatives that provide retail service in Kansas; and
- Any member-owned corporation formed prior to 2004.

Those entities and other cooperatives would be under the jurisdiction of the KCC for purposes of the Renewable Energy Standards Act.

The bill would amend existing law to require that, in the case of a generation and transmission cooperative that elected to be deregulated, a petition signed by at least 20 percent of that cooperative's members or by five percent of the aggregate retail customers of such members would trigger a KCC review of a rate change. In addition, the bill would require cooperatives that deregulate to notify customers of their right to request KCC review of a rate change. The bill would add to the statute clarifying language regarding the portion of members of a retail distribution cooperative who must sign a rate review petition, but that portion of members would remain as in the existing law.

### **Kansas Air Quality Act Amendments**

The bill would amend the Kansas Air Quality Act to prohibit the Secretary of Health and Environment from promulgating rules and regulations that are more stringent than required by the federal Clean Air Act or rules and regulations authorized by that Act unless authorized by the Legislature to do so. The restriction in the bill does not apply to a plan for a nonattainment area under the federal Clean Air Act. The bill also would prohibit rules and regulations under the State Act from being enforced in any area of the State prior to the time

required under the federal Act. Counties would be prohibited from utilizing home rule authority to create exemptions from, or to change the application of, the Kansas Air Quality Act.

The Secretary would be prohibited from denying or delaying issuance of a permit required under the State Act if the requirements of that Act have been met by the applicant.

KSA 65-3012 would be amended to establish a procedure for addressing air pollution emissions that pose an imminent and substantial danger to public health or welfare or to the environment. The new provision authorizes the Secretary of Health and Environment to issue a temporary order directing the owner or operator of the pollution source to take steps necessary to prevent the offending act or to eliminate the offending practice. The order could not exceed 7 days in duration.

When the temporary order is issued, the Secretary would be authorized to file an action in district court to enjoin the offending activity. Alternatively, the Secretary could request the Attorney General or the appropriate county or district attorney to file for the injunction. In addition, the Secretary could bring suit in any court of competent jurisdiction to immediately restrain the offending acts or practices. The court could issue a temporary or permanent injunction if the Secretary shows that the offending condition or situation exists.

Persons aggrieved by an order of the Secretary issued under the new procedure would be entitled to review of the Secretary's action under the Act for Judicial Review and Civil Enforcement of Agency Actions. The aggrieved party would not be required to exhaust other or additional administrative remedies available within the agency. A petition for review under the new provision would have precedence over other cases in regard to order of trial.

## **Joint Committee on Energy and Environmental Policy**

The bill would require the Joint Committee on Energy and Environmental Policy to study and make recommendations regarding the use of moneys received under the American Recovery and Reinvestment Act of 2009 for energy efficiency, weatherization, energy conservation, alternative fuel vehicles and state energy programs. The results of these studies would be submitted to the Legislature in 2010 and 2011 as part of the Committee's annual report.

## **Kansas Electric Transmission Authority**

The bill would authorize the Kansas Electric Transmission Authority (KETA) to establish and charge reasonable fees, rates, tariffs or other charges for use of facilities owned, financed or administered by KETA and for services rendered by KETA, provided that such costs are not recoverable through tariffs authorized by the Southwest Power Pool or the Kansas Corporation Commission. Such fees could be charged only to the entity or entities that request services from KETA.

The amendment also would clarify that KETA's statutory rights and powers extend to electric transmission lines that have been deemed compatible with plans adopted by the Southwest Power Pool, as well as to transmission lines with an operating voltage of 60 kilovolts or more which have been approved by the Southwest Power Pool.

## **Underground Hydrocarbon Storage Wells**

The bill would amend the law regarding underground hydrocarbon storage wells by adding a definition for "company or operator." The term would be defined as any form of legal entity, including a corporation, limited liability company, and limited or general partnerships.

## **Compressed Air Energy Storage Act**

The bill would establish a system of regulation for the injection of compressed air into storage wells and the maintenance of underground storage of compressed air. The KCC would be required to adopt rules and regulations addressing issues such as site selection, design and operation criteria, and requirements for monitoring, safety and closure.

The KCC also would be authorized to establish rules and regulations establishing fees for permitting, monitoring and inspecting compressed air storage facility operators. Moneys received under the Act would be deposited in the Compressed Air Energy Storage Fund, which would be created by the Act, and used to pay the costs of regulation.

The Kansas Department of Health and Environment (KDHE) would be required to adopt rules and regulations related to air emissions from compressed air energy storage wells and storage facilities to ensure compliance with the Kansas Air Quality Act. The KCC and KDHE would be authorized to enter into a memorandum of understanding concerning implementation of the Act.

The bill would create financial penalties for violations of the Act.

All rules and regulations issued pursuant to the Act would have to be adopted within 18 months of enactment of the new law.

## **Kansas Coal Requirement**

Any new coal-fired electricity generation facility in Kansas constructed after the effective date of the Act would be required to purchase at least five percent of its coal from Kansas coal mines. This requirement would apply only if the Kansas coal is cost-competitive to out-of-state coal, is sold on comparable terms and specifications, and is of an acceptable quality for use

in the facility. The requirement would not apply if it would cause the facility to violate its air permit or a contractual obligation.

### **Settlement Agreement**

The bill would add a new provision in the Kansas Air Quality Act to require the Secretary of Health and Environment to approve the air quality permit for Sunflower Electric Power Corporation's proposed new facility at Holcomb consistent with the settlement agreement executed May 4, 2009 between Sunflower and the State of Kansas. The settlement would resolve actions pending before various courts and administrative agencies.

### **Background**

The Senate substitute bill was recommended by the Senate Utilities Committee after the former Governor vetoed Sen. Sub. for Sub. HB 2014 and the current Governor reached a settlement agreement with Sunflower Electric Power Corporation regarding issuance of an air quality permit for construction of a new electricity generation facility at Holcomb. The substitute bill contains provisions originally contained in HB 2127 and Sub. HB 2014 as well as provisions included in the vetoed bill. Provisions of the substitute bill also are contained in SB 339, introduced by the Senate Committee on Federal and State Affairs. SB 339 was in the Senate Utilities Committee at the time the Committee took action on Sub. for HB 2369.

The Senate Utilities Committee received a briefing at which representatives of the Governor's office and Sunflower presented information regarding the settlement agreement. Staff provided a review of SB 339 and a comparison with the source bills.

The Senate Committee made the following changes to provisions introduced as SB 339 prior to recommending the substitute bill:

- The six-month length of time allowed for agencies to adopt rules and regulations was extended to 12 months throughout the bill;
- The definition of renewable resources was changed to include existing hydropower in the definition for purposes of the Renewable Energy Standards Act and the Net Metering Act;
- The impact on air and water resources of the gathering of renewable resource feedstocks was deleted as a criterion for certification of new renewable resources;
- Language of the bill was clarified to ensure inclusion of non-regulated large cooperatives in the renewable energy standards requirements; and
- Various clarifying and technical amendments also were made to the language prior to introduction of the substitute bill.

A fiscal note for the substitute bill was not available at the time the Senate Utilities Committee took action on the bill.