

SESSION OF 2015

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2233

As Amended by House Committee on Energy
and Environment

Brief*

HB 2233 would establish the procedure for developing and submitting a state plan to the federal Environmental Protection Agency (EPA) to comply with the proposed federal Clean Power Plan rule.

Authority of the Secretary of Health and Environment

The bill would authorize the Secretary of Health and Environment (Secretary) to develop and submit a state plan to the EPA for compliance with the requirements of the proposed federal Clean Power Plan rule.

The Secretary would be authorized to implement the state plan through regulatory mechanisms including administrative regulations, permits, agreements, or other other flexible measures, but would be prohibited from permitting participation in an organized carbon emission trading market without first obtaining specific statutory authority. The bill would not prohibit trading between and within Kansas utilities in order to achieve a mass-based or rate-based goal. Specifically, the bill would not prohibit a Kansas utility:

- With multiple affected units in one or more states from sharing, aggregating, or purchasing emissions among such utility's units; or

*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>

- From sharing, aggregating, or purchasing emissions between other Kansas utilities with affected units.

Mandatory Joint Investigation by the Secretary of Health and Environment and the Kansas Corporation Commission

Before establishing any standard of performance for any affected or existing jurisdictional electric generating unit or flexible regulatory mechanism, the Secretary would be required to conduct a joint investigation and hold a joint hearing with the Kansas Corporation Commission (KCC). In establishing standards or regulatory mechanisms the parties would be required to:

- Exercise the Secretary's and KCC's respective existing statutory authority over the affected utilities;
- Determine each utility's re-dispatch options along with the cost of each option;
- Determine the lowest possible cost re-dispatch options on a statewide basis;
- Ensure any option selected maintains the reliability of Kansas' integrated electric systems;
- Issue a joint final order establishing the compliance goal and defining the regulatory mechanisms for the state plan; and
- Issue a joint interim order within 180 days of initiation of the joint investigation, if it is necessary to submit a state plan within any deadline imposed by the EPA. If a joint interim order is issued, it would be required to establish the compliance goal and define the regulatory mechanisms for the state

plan. Upon submission of the plan, the Secretary would be required to request an extension.

***Legislative Review and Approval of the State Plan;
Submission to the EPA***

After issuing a joint interim order, the Secretary would promulgate and submit a state plan establishing the compliance goal and regulatory mechanisms approved in the joint order. If any differences occur between the joint interim order and joint final order, the Secretary would be required to promulgate and submit the modifications to the state plan to the EPA.

The Secretary would be required to submit the state plan to the Senate Utilities Committee and the House Energy and Environment Committee (or other designated legislative committees) for review and approval at the start of the public notice period for the state plan. If the Legislature were not in session when the plan was submitted, the Legislative Coordinating Council would designate a joint committee to conduct the review.

Reviews would have to be completed within 60 days, and the plan would be considered approved unless both committees voted to disapprove it. If a committee voted to disapprove the plan the committee would have to specify the reasons for disapproval. The Secretary would then make any necessary changes and resubmit the plan to the committees, which would have 30 days to approve or disapprove the resubmitted plan, otherwise the plan would be considered approved as submitted.

If federal emission guidelines were not adopted, or were adopted and subsequently suspended or vacated in whole or part, the Secretary would be prohibited from carrying out the state plan.

The bill would be in effect upon publication in the *Kansas Register*.

Background

The bill was introduced by the House Committee on Energy and Environment.

In the House Committee, a Commissioner of the KCC provided testimony in favor of the bill, along with the Director of the Utilities Division, KCC. Written proponent testimony was provided by the Kansas Chamber of Commerce.

Testimony in opposition to the bill was provided by representatives of the KDHE, Kansans for Clean Energy, and Sunflower Electric Power Corporation which also spoke on behalf of Mid-Kansas Electric Company, Midwest Energy, and the Kansas Electric Cooperatives.

Neutral testimony was provided by representatives of Kansas Electric Power Cooperative, Inc. and KCP&L which also spoke on behalf of Westar Energy and Empire District Electric. Kansas City BPU provided written testimony.

The House Committee made numerous amendments to the bill, including:

- Authorizing the Secretary to develop and submit a state plan to the EPA;
- Authorizing the Secretary to implement a state plan through various regulatory mechanisms;
- Prohibiting the Secretary from permitting participation in an organized carbon emission trading market without specific statutory authority, but allowing Kansas utilities to aggregate, share, or purchase emissions within a utility's units or

between Kansas utilities to achieve a mass-based or rate-based goal;

- Requiring the Secretary and KCC to conduct a joint investigation and to hold a joint hearing on any state plan recommendations;
- Requiring the Secretary and KCC to issue a joint final order or joint interim order establishing and defining the state plan;
- Requiring the Secretary to submit the state plan to legislative committees for review and approval; and
- Prohibiting the Secretary from carrying out the plan if federal emission guidelines are not adopted or are adopted and subsequently suspended or vacated in whole or in part.

The fiscal note prepared by the Division of the Budget on the bill, as introduced, states the KCC indicates passage of the bill would increase FY 2016 fee fund expenditures in the range of \$400,000 to \$500,000 to hire outside consultants. The consultants would evaluate re-dispatch models submitted to the KCC by the Southwest Power Pool and other utilities. The fiscal effect of the bill for KDHE would be negligible, because any additional work required by the bill would be absorbed within existing resources. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.