

**SENATE BILL No. 431**

By Committee on Utilities

2-13

1 AN ACT concerning public utilities; relating to the Kansas energy  
2 efficiency investments act; demand-side programs; amending K.S.A.  
3 66-1283 and repealing the existing section.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 66-1283 is hereby amended to read as follows: 66-  
7 1283. (a) As used in this section:

8 (1) "Commission" means the state corporation commission;

9 (2) "demand response" means measures that decrease peak demand or  
10 shift demand to off-peak periods of time;

11 (3) "demand-side program" means any program ~~conducted by: (A)~~  
12 ~~An electric utility to reduce the net consumption of electricity by a retail~~  
13 ~~electric customer; or (B) a natural gas utility to reduce the net consumption~~  
14 ~~of natural gas by a retail gas customer or portfolio of programs conducted~~  
15 ~~by a public utility to modify the consumption of electricity or natural gas~~  
16 ~~on the customer's side of the utility meter. "Demand-side program" may~~  
17 ~~include, but shall not be limited to: (A) energy efficiency measures, not to~~  
18 ~~include any measures to incent fuel switching for residential heating~~  
19 ~~systems; (B) programs, load management; (C), demand response; and (D)~~  
20 ~~interruptible or curtailable load; rates;~~

21 (4) "energy efficiency program" means ~~measures that a program or~~  
22 ~~portfolio of programs conducted by a public utility to reduce the amount of~~  
23 ~~energy required to achieve a given end use on the customer's side of the~~  
24 ~~meter while achieving substantially the same level of end-use service; and~~

25 (5) "fuel switching" means changing an existing particular end-use  
26 from natural gas to electricity or from electricity to natural gas;

27 (6) "interruptible or curtailable rate" means a tariffed rate under  
28 which a customer receives a reduced rate in exchange for agreeing to  
29 allow the utility to withdraw the supply of electricity or natural gas under  
30 certain specified conditions;

31 (7) "lost margin revenue" means income from retail sales of  
32 electricity or natural gas that is not collected by a utility as a direct result  
33 of the success of such utility's demand-side program, less any expenses the  
34 utility was not required to pay by forgoing the sale of such electricity or  
35 natural gas;

36 (5)(8) "public utility" means any public electric or gas utility, as

1 defined in K.S.A. 66-101, and amendments thereto, but does not include a  
2 municipally-owned electric or gas utility or an electric or gas cooperative  
3 that is exempt from commission jurisdiction pursuant to K.S.A. 66-104d,  
4 and amendments thereto; and

5 (9) *"total resource cost test" means a test that compares the sum of*  
6 *avoided utility costs to the sum of all incremental costs of end-use*  
7 *measures that are implemented due to the program, including both utility*  
8 *and participant contributions, plus utility costs to administer, deliver and*  
9 *evaluate each demand-side program.*

10 (b) It is the goal of the state to promote the implementation of ~~cost-~~  
11 ~~effective~~ *effective* demand-side programs in Kansas *to minimize the long*  
12 *term cost of utility service.* It shall be the policy of the state to value  
13 demand-side program investments equal to traditional investments in  
14 supply and delivery infrastructure ~~as much as is practicable, but when~~  
15 ~~evaluated over the long-term planning horizon, but demand-side programs~~  
16 ~~shall not:~~

17 (1) ~~Require public utilities shall not be required to offer, implement or~~  
18 ~~continue demand-side programs;~~

19 (2) ~~result in fuel switching; or~~

20 (3) ~~restrict fuel choice for new construction residential heating end-~~  
21 ~~uses.~~

22 (c) (1) (A) *Upon a finding that a submission for any demand-side*  
23 *program was consistent with this section, the commission shall permit*  
24 *public utilities to implement ~~commission-approved~~ such demand-side*  
25 ~~programs~~ *program and to recover the associated costs through cost*  
26 *recovery mechanisms submitted pursuant to this section. The commission*  
27 *shall issue an order on any demand-side program plan, associated costs*  
28 *and cost-recovery mechanisms within ~~180~~ 120 days after submission to the*  
29 *commission. The commission may extend the approval period to ~~240~~ 180*  
30 *days for good cause. Consistent with K.S.A. 66-117(e), and amendments*  
31 ~~thereto,~~ *If the commission fails to issue a final order on such program*  
32 *plan, associated costs and cost-recovery mechanism within ~~180~~ 120 days,*  
33 *or ~~240~~ 180 days if the approval period was extended by the commission*  
34 *for good cause, such program plan, associated costs and cost-recovery*  
35 *mechanism shall be deemed approved by the commission and shall take*  
36 *effect on the proposed effective date contained in such plan.*

37 (B) *Pursuant to the requirements of this section, the public utility and*  
38 *the commission shall both have the independent authority to accept or*  
39 *reject any proposed establishment, continuation or modification of a*  
40 *demand-side program, ~~portfolio of programs~~ or associated cost-recovery or*  
41 *incentive mechanisms, but no such establishment, continuation or*  
42 *modification of such ~~programs~~ program or mechanisms shall take effect*  
43 *without the approval of both the utility and the commission. If the public*

1 utility rejects modifications to a demand-side program or portfolio of  
2 programs approved by the commission, including modifications to the  
3 cost-recovery mechanism, the public utility shall not be required to  
4 implement the program or mechanism.

5 ~~(C) Upon final ruling of the commission order, The public utility has~~  
6 ~~shall have~~ the right to reconsider and may ~~withdraw its plan during the~~  
7 ~~reconsideration period, which elect not to implement the program and~~  
8 ~~cost-recovery mechanisms approved by the commission order. The~~  
9 ~~reconsideration period~~ shall not exceed 30 calendar days from the date the  
10 final order was issued. Pursuant to K.S.A. 77-613, and amendments  
11 thereto, the time period for filing a petition for judicial review shall not  
12 begin until the completion of any such reconsideration period.

13 (D) (1) ~~In making its decision deciding whether or not to approve the~~  
14 ~~a proposed program, the commission shall determine the appropriate test~~  
15 ~~for evaluating the cost-effectiveness of the demand-side program, the~~  
16 ~~commission shall:~~

17 (A) ~~Consider the entire portfolio of programs and may consider~~  
18 ~~multiple cost-effectiveness tests in evaluating the cost-effectiveness of such~~  
19 ~~demand-side program;~~

20 (B) ~~give primary consideration to the total resource cost test, but~~  
21 ~~shall not reject a demand-side program solely based on the results of a~~  
22 ~~single resource cost test. If a demand-side program passes the total~~  
23 ~~resource cost test with a benefit to cost ratio greater than or equal to a~~  
24 ~~one-to-one ratio, such program shall be found to be just and reasonable~~  
25 ~~and shall be approved; and~~

26 (C) ~~evaluate future investments in demand-side programs without~~  
27 ~~using previous public utility sunk costs.~~

28 (2) Programs targeted to low-income customers or general education  
29 campaigns do not need to meet a ~~any~~ cost-effectiveness test, so long as the  
30 commission determines that the program or campaign is in the public  
31 interest and is supported by a reasonable budget in the context of the  
32 overall budget.

33 ~~(2)(3)~~ (3) The commission shall allow recovery of the reasonable and  
34 prudent costs associated with delivering ~~commission-approved any~~  
35 ~~demand-side programs~~ program implemented pursuant to this section, so  
36 long as the program:

37 (A) ~~(i) Results in Reduces retail energy consumption; or (ii) reduces~~  
38 ~~the peak demand savings; and (B) is; or (iii) shifts demand to off-peak~~  
39 ~~periods; and~~

40 (B) ~~does not result in fuel switching; and~~

41 (C) ~~is beneficial to customers in the customer class for which the~~  
42 ~~programs were implemented, whether or not the program is utilized by all~~  
43 ~~customers in such class.~~

1 (4) The fact that a ~~commission-approved~~ program implemented  
 2 pursuant to this section proves not to be cost-effective is not by itself  
 3 sufficient grounds for disallowing cost recovery. Programs determined  
 4 during subsequent review to ~~not be non-cost-effective~~ cost-effective, other  
 5 than programs targeted to low-income customers or general education  
 6 campaigns, shall be modified to address deficiencies or terminated  
 7 following such determination.

8 (d) (1) ~~To comply with this section, The commission may allow shall~~  
 9 ~~approve implementation of~~ cost recovery mechanisms ~~that by public~~  
 10 ~~utilities upon a finding that such mechanisms~~ further encourage  
 11 investments in demand-side programs. Such cost recovery mechanisms  
 12 may include, but shall not be limited to: (A) Capitalization of investments  
 13 in and expenditures for demand-side programs; (B) recovery of lost  
 14 revenue associated with demand-side programs; (C) decoupling; (D) rate  
 15 design modifications; (E) accelerated depreciation on demand-side  
 16 investments; and (F) allowing the public utility to retain a portion of the  
 17 net benefits of a demand-side program for its shareholders shall:

18 (A) Provide timely cost recovery of investments and expenditures for  
 19 demand-side programs that may include: (i) Direct contemporaneous  
 20 recovery as costs are incurred; (ii) mechanisms that project such costs  
 21 with a later true-up to actual costs; or (iii) capitalization of investment  
 22 and expenditures for demand-side programs recovered by the utility  
 23 through amortization;

24 (B) ensure the recovery of the lost margin revenue, unless the utility's  
 25 prior general rate case proceeding provided for lost margin revenue  
 26 recovery of demand-side programs through: (i) Comprehensive utility  
 27 decoupling mechanisms consistent with best utility practices; or (ii) rate  
 28 design modifications; and

29 (C) provide timely earnings opportunities for public utilities  
 30 associated with cost-effective, measurable and verifiable demand-side  
 31 program savings that: (i) Allow the public utility to retain a portion of the  
 32 net benefits of such demand-side programs; (ii) achieve targets through  
 33 energy savings-based or demand-savings-based incentives; and (iii)  
 34 provide rate-of-return incentives on investments and expenditures for such  
 35 programs.

36 (2) In determining rates for electricity as part of a demand-side  
 37 program, the commission shall fairly apportion the costs and benefits of  
 38 such programs to each customer class.

39 ~~(e) To achieve the goals of this act, (3) (A) The commission shall:~~  
 40 ~~(1) Provide timely cost recovery for electric public utilities;~~

41 ~~(2) ensure that the financial incentives for an electric public utility~~  
 42 ~~are aligned with helping such utility's customers use energy more~~  
 43 ~~efficiently and in a manner that sustains or enhances such customers'~~

1 incentives to use energy more efficiently;

2 ~~(3) provide timely earnings opportunities for public utilities~~  
3 ~~associated with cost-effective, measurable and verifiable demand-side~~  
4 ~~program savings;~~

5 ~~(4) provide oversight and approval for utility-specific settlements~~  
6 ~~and tariff provisions; and~~

7 ~~(5) provide ensure independent-evaluation evaluations of demand-~~  
8 ~~side programs, as deemed necessary by the commission are conducted.~~

9 *(B) Such evaluations shall be conducted by a third-party vendor*  
10 *selected by the public utility and approved by the commission. Such*  
11 *evaluations shall include: (i) Peak demand and energy savings and the*  
12 *techniques used to estimate such savings; (ii) the estimated cost-*  
13 *effectiveness of the demand-side programs; (iii) any adjustment to the*  
14 *presumed net to gross ratio of 1.0 that reflects any savings that are*  
15 *attributable to the demand-side programs; and (iv) the net benefits of the*  
16 *demand-side programs.*

17 ~~(f) On or before May 31 of each year, Each public utility shall submit~~  
18 ~~an annual report to the commission describing the results of such demand-~~  
19 ~~side programs for the previous calendar year program year within five~~  
20 ~~months of the program year's end. The report shall include:~~

21 (1) Program expenditures, including incentive payments;

22 (2) *estimated peak demand and energy savings impacts and the*  
23 *techniques used to estimate such impacts;*

24 ~~(3) avoided costs and the techniques used to estimate such costs;~~

25 ~~(4) the estimated cost-effectiveness of the demand-side programs;~~

26 ~~(5) the net economic benefits of the demand-side programs; and~~

27 ~~(6)(3) a comparison of the commission authorized program budget to~~  
28 ~~actual costs.~~

29 (g) The commission may adopt rules and regulations for the  
30 administration of this ~~act~~ section.

31 (h) *This section shall govern demand-side programs for public*  
32 *utilities and shall control to the extent it conflicts with any other provision*  
33 *of law or rule or regulation.*

34 (i) This section shall be known and may be cited as the Kansas  
35 energy efficiency investment act.

36 Sec. 2. K.S.A. 66-1283 is hereby repealed.

37 Sec. 3. This act shall take effect and be in force from and after its  
38 publication in the statute book.