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4 **House Substitute for SENATE BILL No. 112**

5  
6 By Committee on Utilities

7  
8 3-29

9  
10 AN ACT concerning energy ~~resources; concerning generation of elec-~~  
11 ~~tricity using renewable energy resources; providing certain income tax~~  
12 ~~credits with regard to electricity generated by such facilities; providing~~  
13 ~~for issuance of bonds for certain purposes [policy];~~ establishing an  
14 energy policy division of the state corporation commission and the  
15 position of director thereof; prescribing the duties thereof; creating an  
16 energy policy advisory council; amending K.S.A. 66-1,184 and K.S.A.  
17 2000 Supp. 74-616 and repealing the existing ~~sections [section]~~.

18  
19 *Be it enacted by the Legislature of the State of Kansas:*

20 New Section 1. — (a) As used in this section:

21 ~~— (1) “Avoided cost” means: (A) The utility’s or cooperative’s cost of~~  
22 ~~generation, as reflected in the utility’s or cooperative’s avoided fuel cost~~  
23 ~~and avoided capacity cost, if any; or (B) the utility’s or cooperative’s cost~~  
24 ~~to purchase electricity from another source, as reflected in the energy~~  
25 ~~component of wholesale rates paid by the utility or cooperative, plus the~~  
26 ~~utility’s or cooperative’s avoided capacity cost, if any.~~

27 ~~— (2) “Electric cooperative” means a cooperative, as defined by K.S.A.~~  
28 ~~17-4603, and amendments thereto.~~

29 ~~— (3) “Electric public utility” has the meaning provided by K.S.A. 66-~~  
30 ~~101a, and amendments thereto.~~

31 ~~— (4) “Municipal electric utility” means an electric utility owned or op-~~  
32 ~~erated by a municipality.~~

33 ~~— (5) “Renewable energy resources and technologies” means wind, so-~~  
34 ~~lar, thermal, photovoltaic, biomass, refuse incineration, hydropower, ge-~~  
35 ~~othermal, landfill gas or other renewable resources or technologies.~~

36 ~~— (6) “Renewable generation facility” means a facility which generates~~  
37 ~~electricity solely by use of renewable energy resources or technologies.~~

38 ~~— (b) An electric cooperative, electric public utility or municipal electric~~  
39 ~~utility shall enter into a contract for parallel generation service with any~~  
40 ~~customer of such cooperative or utility, upon request of such customer,~~  
41 ~~whereby such customer may attach or connect to the cooperative’s or~~  
42 ~~utility’s delivery and metering system an apparatus or device for the pur-~~  
43 ~~pose of feeding excess electrical power which is generated by such cus-~~

~~1 tomer's renewable generation facility into the cooperative's or utility's  
2 system. No such apparatus or device shall either cause damage to the  
3 cooperative's or utility's system or equipment or present an undue hazard  
4 to personnel of the cooperative or utility. Every such contract shall in-  
5 clude, but need not be limited to, the following provisions:~~

~~6 —(1) For 10 years from the date the generation facility is attached or  
7 connected to the cooperative's or utility's delivery and metering system,  
8 the cooperative or utility shall compensate such customer for energy sup-  
9 plied to such cooperative or utility as follows: (A) For an electric public  
10 utility other than an electric cooperative or municipal electric utility, com-  
11 pensation shall be at a rate not less than 85% of such utility's residential  
12 customer rate, for electricity generated by hydropower, and not less than  
13 70% of such utility's residential customer rate, for electricity generated  
14 by renewable resources or technologies other than hydropower; and (B)  
15 for an electric cooperative or municipal electric utility, compensation shall  
16 be at a rate equal to such cooperative's or utility's avoided cost.~~

~~17 —(2) A public utility shall not be required to pay compensation pur-  
18 suant to subsection (b)(1)(A) in excess of \$500,000 in any one taxable year  
19 of such public utility.~~

~~20 —(3) The cooperative or utility shall supply, own and maintain all nec-  
21 essary meters and associated equipment utilized for billing.~~

~~22 —(4) The cooperative or utility, at its expense, may install load research  
23 metering for purposes of monitoring customer generation and load and  
24 may install, own and maintain a disconnecting device located near the  
25 electric meter or meters.~~

~~26 —(5) The customer shall supply, at no expense to the cooperative or  
27 utility, a suitable location for meters and associated equipment used for  
28 billing and load research.~~

~~29 —(6) The cooperative or utility shall not charge the generating cus-  
30 tomer any additional charge or fee beyond that charged similar nonge-  
31 neraling customers.~~

~~32 —(7) For purposes of insuring the safety and quality of the cooperative's  
33 or utility's system power, the cooperative or utility shall have the right to  
34 require the customer, at certain times and as electrical operating condi-  
35 tions warrant, to limit the production of electrical energy from the cus-  
36 tomer's generating facility to an amount no greater than the load at the  
37 customer's facility of which the generating facility is a part.~~

~~38 —(8) Interconnection facilities between the customer's and the coop-  
39 erative's or utility's equipment shall be accessible at all times to personnel  
40 of the cooperative or utility.~~

~~41 —(9) The customer shall notify the cooperative or utility prior to the  
42 initial energizing and start up testing of the customer owned generation  
43 facility and the cooperative or utility shall have the right to have a rep-~~

1 ~~representative present at such test.~~  
2 ~~—(10) Service under any such contract shall be subject to any rules and~~  
3 ~~regulations of the cooperative or utility that are on file with the state~~  
4 ~~corporation commission.~~  
5 ~~—(c) In addition to the provisions required by subsection (b), an electric~~  
6 ~~cooperative, municipal electric utility or electric public utility may require~~  
7 ~~a special agreement for conditions related to technical and safety aspects~~  
8 ~~of parallel generation.~~  
9 ~~—(d) To the extent authorized by law, an electric cooperative, munic-~~  
10 ~~ipal electric utility or electric public utility may utilize the purchase of~~  
11 ~~electricity pursuant to this section for emission allowance trading pursu-~~  
12 ~~ant to the federal clean air act.~~  
13 ~~—(e) In any case where the customer and an electric public utility can-~~  
14 ~~not agree to terms and conditions of any contract provided for by this~~  
15 ~~section, the state corporation commission shall establish the terms and~~  
16 ~~conditions for such contract.~~  
17 ~~—New Sec. 2. —(a) As used in this section:~~  
18 ~~—(1) Terms have the meanings provided by section 1, and amendments~~  
19 ~~thereto.~~  
20 ~~—(2) “Qualified renewable generation facility” means a renewable gen-~~  
21 ~~eration facility which is located in this state, which is not operated by an~~  
22 ~~electric public utility and which has a capacity of: (1) Not more than five~~  
23 ~~megawatts, in the case of a facility using hydropower; and (2) not more~~  
24 ~~than two megawatts, in the case of a facility using renewable energy re-~~  
25 ~~sources or technologies other than hydropower.~~  
26 ~~—(b) For any taxable year commencing after December 31, 2000, a~~  
27 ~~credit shall be allowed against the tax imposed by the Kansas income tax~~  
28 ~~act on the Kansas taxable income of a taxpayer who is an electric public~~  
29 ~~utility, other than an electric cooperative or a municipal electric utility,~~  
30 ~~and who, pursuant to section 1, and amendments thereto, purchases elec-~~  
31 ~~tricity generated by a qualified renewable generation facility during such~~  
32 ~~year. Such credit shall be in an amount equal to 110% of the difference~~  
33 ~~between:~~  
34 ~~—(1) The total amount paid by the taxpayer for such electricity during~~  
35 ~~the taxable year; and~~  
36 ~~—(2) the total amount that the taxpayer would have paid for such elec-~~  
37 ~~tricity if the taxpayer had paid at a rate equal to the taxpayer’s avoided~~  
38 ~~cost.~~  
39 ~~—(c) For any taxable year commencing after December 31, 2000, and~~  
40 ~~for each of the 10 consecutive taxable years after the taxable year in which~~  
41 ~~first allowed, a credit shall be allowed against the tax imposed by the~~  
42 ~~Kansas income tax act on the Kansas taxable income of a taxpayer who~~  
43 ~~sells electricity generated by a qualified renewable generation facility dur-~~

~~ing such year to an electric cooperative or a municipal electric utility. Such credit shall be in an amount equal to \$10 per kilowatt of the facility's rated capacity during the taxable year if the facility produces at least 30% of its rated capacity during the taxable year.~~

~~—(d) No credit allowed by this section shall exceed the income tax liability for the taxable year and no such credit shall be carried over for deduction from the taxpayer's income in a subsequent taxable year. In no event shall a credit allowed by this section exceed \$500,000 for any taxpayer during any taxable year.~~

~~—(e) The secretary of revenue shall adopt such rules and regulations as necessary to carry out the purposes of this section.~~

~~—Sec. 3. K.S.A. 66-1,184 is hereby amended to read as follows: 66-1,184. (a) Every public utility which provides retail electric services in this state shall enter into a contract for parallel generation service with any person who is a customer of such utility, upon request of such customer, whereby such customer may attach or connect to the utility's delivery and metering system an apparatus or device for the purpose of feeding excess electrical power which is generated by such customer's energy producing system into the utility's system. No such apparatus or device shall either cause damage to the public utility's system or equipment or present an undue hazard to utility personnel. Every such contract shall include, but need not be limited to, provisions relating to fair and equitable compensation on such customer's monthly bill for energy supplied to the utility by such customer, and the following terms and conditions: (a) (1) The utility will supply, own, and maintain all necessary meters and associated equipment utilized for billing. In addition, and for the purposes of monitoring customer generation and load, the utility may install at its expense, load research metering. The customer shall supply, at no expense to the utility, a suitable location for meters and associated equipment used for billing and for load research; (b) (2) for the purposes of insuring the safety and quality of utility system power, the utility shall have the right to require the customer, at certain times and as electrical operating conditions warrant, to limit the production of electrical energy from the generating facility to an amount no greater than the load at the customer's facility of which the generating facility is a part; (c) (3) the customer shall furnish, install, operate, and maintain in good order and repair and without cost to the utility, such relays, locks and seals, breakers, automatic synchronizer, and other control and protective apparatus as shall be designated by the utility as being required as suitable for the operation of the generator in parallel with the utility's system. In any case where the customer and the utility cannot agree to terms and conditions of any such contract, the state corporation commission shall establish the terms and conditions for such contract. In addition, the utility may install,~~

~~own, and maintain a disconnecting device located near the electric meter or meters. Interconnection facilities between the customer's and the utility's equipment shall be accessible at all reasonable times to utility personnel. The customer may be required to reimburse the utility for any equipment or facilities required as a result of the installation by the customer of generation in parallel with the utility's service. The customer shall notify the utility prior to the initial energizing and start up testing of the customer owned generator, and the utility shall have the right to have a representative present at such test; and (d) (4) the utility may require a special agreement for conditions related to technical and safety aspects of parallel generation.~~

~~—(b) Service under any such contract provided for by this section shall be subject to the utility's rules and regulations on file with the state corporation commission.~~

~~—(c) The provisions of this section shall not apply to contracts for parallel generation services which are subject to the provisions of section 1, and amendments thereto.~~

~~New Sec. 4. (a) For the purpose of financing the construction, renovation or repair of one or more renewable generation facilities, as defined in section 1, and amendments thereto, each having a capacity of more than two but less than 25 megawatts, the Kansas development finance authority is hereby authorized to issue revenue bonds in amounts sufficient to pay the costs of such construction, renovation or repair, including any required interest on the bonds during construction, renovation or repair, plus all amounts required for costs of the bond issuance and for any required reserves on the bonds. The bonds, and interest thereon, issued pursuant to this section shall be payable from revenues derived from sales of electricity generated by the renewable generation facility or facilities.~~

~~—(b) The provisions of subsection (a) of K.S.A. 74 8905, and amendments thereto, shall not prohibit the issuance of bonds by the Kansas development finance authority for the purposes of this section and any such issuance of bonds is exempt from the provisions of subsection (a) of K.S.A. 74 8905, and amendments thereto, which would operate to preclude such issuance.~~

~~—(c) Revenue bonds, including refunding revenue bonds, issued hereunder shall not constitute an indebtedness of the state of Kansas, nor shall they constitute indebtedness within the meaning of any constitutional or statutory provision limiting the incurring of indebtedness.~~

~~—(d) Revenue bonds, including refunding revenue bonds, issued hereunder and the income derived therefrom are and shall be exempt from all state, county and municipal taxation in the state of Kansas, except Kansas estate taxes.~~

1 ~~Sec. 5.~~ **[Section 1.]** K.S.A. 2000 Supp. 74-616 is hereby amended to  
2 read as follows: 74-616. (a) *There is hereby established the energy policy*  
3 *division of the state corporation commission. The director of the division*  
4 *shall be appointed by the commission, in consultation with the energy*  
5 *policy advisory council. The director shall be in the unclassified service*  
6 *under the Kansas civil service act and, within the limitations of appro-*  
7 *priations therefor, shall receive compensation fixed by the commission.*  
8 *Within the limitations of appropriations therefor, the director may employ*  
9 *such staff as necessary to carry out the duties of the director and the*  
10 *division and shall have supervision of the program manager for federal*  
11 *energy conservation programs in the state and all other employees of the*  
12 *division.*

13 (b) In addition to other powers and duties provided by law, ~~in ad-~~  
14 ~~ministering the provisions of this act the state corporation commission~~  
15 ~~the director of the energy policy division shall:~~

16 ~~(a) Adopt rules and regulations necessary for the administration of~~  
17 ~~this act;~~

18 ~~(b) develop a comprehensive state energy conservation plan and the~~  
19 ~~procedures for implementing the plan according to federal requirements;~~

20 ~~(c) make requests for and accept funds and other assistance from~~  
21 ~~federal agencies for energy conservation and other energy related activ-~~  
22 ~~ities in this state, including, but not limited to, the state energy conser-~~  
23 ~~vation program, the energy extension service program and the institu-~~  
24 ~~tional building conservation program;~~

25 ~~(d) administer federal energy conservation programs in this state;~~

26 ~~(e) collect and compile necessary data on energy resources and mon-~~  
27 ~~itor energy resources supplies in this state;~~

28 ~~(f) prepare an energy resources emergency management plan for~~  
29 ~~adoption during any energy resources emergency proclaimed to exist by~~  
30 ~~the governor under K.S.A. 74-619, and amendments thereto, which plan~~  
31 ~~shall include the system of priorities for energy resources allocation and~~  
32 ~~curtailment of energy resources consumption established under K.S.A.~~  
33 ~~74-620, and amendments thereto;~~

34 ~~(g) (1) Consult with interested parties on a regular basis regarding:~~  
35 ~~(A) Development and updating of the plan and policy recommendations~~  
36 ~~provided for by subsection (b)(3); and (B) other energy policy and coor-~~  
37 ~~dination issues;~~

38 ~~(2) as an extension of the commission's existing powers and duties,~~  
39 ~~collect and compile necessary data and other information relating to cur-~~  
40 ~~rent and projected availability of energy resources and supplies and cur-~~  
41 ~~rent and projected energy consumption and use such information in de-~~  
42 ~~velopment and updating of the plan and policy recommendations~~  
43 ~~provided for by subsection (b)(3);~~

1 (3) with the input of the energy policy advisory council and in con-  
2 sultation with interested parties, develop and periodically review and up-  
3 date a comprehensive state energy plan and policy recommendations re-  
4 garding energy resource development initiatives and energy conservation  
5 and management as a resource for use by the governor, the legislature  
6 and the commission;

7 (4) with the input of the energy policy advisory council, develop and  
8 periodically review and update guidelines for: (A) Determination of when  
9 an energy resources emergency exists within the state; (B) issuance of an  
10 energy resources emergency proclamation pursuant to K.S.A. 74-619, and  
11 amendments thereto; and (C) managing an energy resources emergency;

12 (5) on or before the first day of each regular legislative session, submit  
13 to the governor and the house and senate standing committees on utilities,  
14 a report on: (A) The plan and policy recommendations provided for by  
15 subsection (b)(3) and any updates of such plan and policy recommenda-  
16 tions; (B) the guidelines provided for by subsection (b)(4) and updates of  
17 such guidelines and procedures; and (C) any other matters related to the  
18 activities of the division;

19 (6) request and accept funds and other assistance from agencies of  
20 the federal government, or from any other source, for purposes of energy  
21 resource development, energy conservation or other energy related activ-  
22 ities in the state, including, but not limited to, the state energy conser-  
23 vation program and institutional building conservation program;

24 (7) administer federal energy conservation programs in the state;

25 (8) cooperate in the implementation of any emergency energy ration-  
26 ing program which may be imposed by the federal government or  
27 any agency thereof;

28 ~~(h) prepare and have available for public inspection an annual report~~  
29 ~~which describes the energy resources emergency management program;~~  
30 ~~and~~

31 ~~(i) (9) adopt rules and regulations necessary for the administration of~~  
32 ~~this act; and~~

33 (10) with the approval of the chairperson of the commission, make  
34 and enter into all contracts and agreements and do all other acts and  
35 things necessary or incidental to the performance of functions and duties  
36 and the execution of powers under this act related to the required func-  
37 tions of the energy policy division.

38 New Sec. ~~6:~~ **[2.]** (a) There is hereby created within the energy policy  
39 division of the state corporation commission the state energy policy ad-  
40 visory council.

41 (b) The energy policy advisory council shall be composed of:

42 (1) The following voting members appointed by the governor: (A) An  
43 energy economist on the faculty of a state educational institution under

1 the supervision of the state board of regents or on the faculty of a mu-  
2 nicipal university in this state; (B) a representative of oil producers in the  
3 state; (C) a representative of natural gas producers in the state; (D) a  
4 representative of investor-owned generators of electricity in the state; (E)  
5 a representative of rural electric cooperatives in the state; (F) a repre-  
6 sentative of municipally-owned or operated electric utilities in the state;  
7 (G) a representative of generators in the state which generate electricity  
8 from renewable energy resources; and (H) three energy consumers;

9 (2) the following voting members *ex officio*, or their designees: (A)  
10 The secretary of commerce and housing; (B) the secretary of administra-  
11 tion; (C) the state geologist; (D) the chairperson of the state corporation  
12 commission; and (E) the consumer counsel of the citizens' utility rate-  
13 payer board; and

14 (3) the following nonvoting members *ex officio*, or their designees:  
15 The chairperson, vice-chairperson and ranking minority member of each  
16 the house and senate standing committees on utilities.

17 (c) Of the members of the council first appointed by the governor,  
18 the governor shall designate three to serve terms of two years, three to  
19 serve terms of three years and four to serve terms of four years. There-  
20 after, each such member shall serve a term of four years and until a  
21 successor is appointed and qualifies. Following expiration of the terms of  
22 appointment of original members of the board, no member appointed by  
23 the governor shall serve more than two terms on the council.

24 (d) The council shall assist the director of the energy policy division  
25 in:

26 (1) Developing and proposing the plan and policy recommendations,  
27 and updates thereof, provided for by subsection (b)(3) of K.S.A. 74-616,  
28 and amendments thereto; and

29 (2) developing and proposing the guidelines, and updates thereof,  
30 provided for by subsection (b)(4) of K.S.A. 74-616, and amendments  
31 thereto.

32 (e) The council shall meet quarterly, or upon call of the chairperson  
33 or the director of the energy policy division or on written request of voting  
34 members of the council equal in number to not less than a quorum. At  
35 the initial meeting and annually in the third calendar quarter of the cal-  
36 endar year the council shall elect from among its members a chairperson,  
37 vice-chairperson and such other officers as the council deems necessary.  
38 Six voting members shall constitute a quorum of the council.

39 (f) Both voting and nonvoting members of the council shall receive  
40 compensation, subsistence allowances, mileage and other expenses as  
41 provided in K.S.A. 75-3223, and amendments thereto.

42 New Sec. ~~7~~ **[3.]** The state geological survey, department of com-  
43 merce and housing, department of administration and all other state and



1 local governmental agencies shall cooperate with the director of the en-  
2 ergy policy division and the energy policy advisory council in carrying out  
3 their duties under this act and shall make available to the director and  
4 the council all nonproprietary, nonconfidential facts, records, information  
5 and data requested by the director or the council.

6 Sec. ~~8.~~ **[4.]** ~~K.S.A. 66-1,184 and~~ K.S.A. 2000 Supp. 74-616 are hereby  
7 repealed.

8 Sec. ~~9.~~ **[5.]** This act shall take effect and be in force from and after  
9 its publication in the statute book.

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