

**SENATE Substitute for
HOUSE BILL No. 2066**

By Committee on Utilities

2-11

11
12 AN ACT concerning the environment; relating to conservation and elec-
13 tric generation, transmission and efficiency and air emissions; amend-
14 ing K.S.A. 65-3008b, 65-3012 and 66-104d and K.S.A. 2007 Supp. 65-
15 3005, 65-3008a and 66-1,184 and repealing the existing sections.

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

18 New Section 1. (a) There is hereby established the Kansas electric
19 generation, transmission and efficiency study commission. The commis-
20 sion shall be made up of the following 11 members:

- 21 (1) Chairperson of the house committee on energy and utilities;
22 (2) vice-chairperson of the house committee on energy and utilities;
23 (3) ranking minority member of the house committee on energy and
24 utilities;
25 (4) chairperson of the senate committee on utilities;
26 (5) vice-chairperson of the senate committee on utilities;
27 (6) ranking minority member of the senate committee on utilities;
28 (7) chief of energy operations of the state corporation commission
29 who shall serve as a nonvoting member of the commission;
30 (8) director of the division of environment in the Kansas department
31 of health and environment who shall serve as a nonvoting member of the
32 commission;
33 (9) one member appointed by the governor;
34 (10) a person with scientific knowledge in energy policy appointed by
35 the speaker of the house of representatives; and
36 (11) a person with scientific knowledge in energy policy appointed by
37 the president of the senate.

38 (b) The chairperson of the house committee on energy and utilities
39 shall be the chairperson of the commission, and the chairperson of the
40 senate committee on utilities shall be the vice-chairperson of the com-
41 mission. The commission shall meet at least four times a year on call of
42 the chairperson of the commission, and additional meetings as deemed
43 necessary. A majority of the members of the commission or their desig-

1 needs shall constitute a quorum for the exercise of powers conferred upon
2 the commission.

3 (c) The commission is hereby granted such specific powers as are
4 necessary to carry out the functions enumerated in this section. The com-
5 mission shall examine issues related to electric service in this state, in-
6 cluding, but not limited to:

7 (1) The actions of federal and regional entities regarding electric gen-
8 eration and transmission;

9 (2) the obligations of all entities that generate, transmit or distribute
10 electricity;

11 (3) the economic impact of generation, transmission and distribution
12 of electricity on community economic development and on electric rates
13 for various classes of customers;

14 (4) the impact of electric generation and transmission on the state's
15 environment and types of remediation that may be required to limit un-
16 desirable impacts;

17 (5) the social impact on Kansas residents of various methods of gen-
18 eration and transmission of electricity;

19 (6) the impact on state and local tax revenues of the various means
20 of generating and transmitting electricity;

21 (7) the adequacy of the state's capacity to generate electricity in light
22 of current and future needs of the state, region and nation;

23 (8) the impact of conservation on the need for expansion of electric
24 generation capacity in the short and long term;

25 (9) the fuel portfolio balance of the state's electric generation
26 facilities;

27 (10) the effectiveness of existing incentives for renewable energy
28 investment;

29 (11) other states' existing incentives for renewable energy invest-
30 ment; and

31 (12) the reports and recommendations of the electricity committee
32 of the Kansas energy council.

33 (d) The commission shall submit a preliminary written report of the
34 activities and recommendations of the commission to the house commit-
35 tee on energy and utilities and the senate committee on utilities on or
36 before the first day of the 2009 regular session of the legislature. The
37 commission shall submit a final written report of its activities and rec-
38 ommendations on or before the first day of the 2010 regular session of
39 the legislature. The final written report of the commission shall include,
40 but is not limited to, recommendations for:

41 (1) New incentives for development of a diversified electricity gen-
42 eration portfolio;

43 (2) an appropriate energy generation portfolio goal, or series of goals,

- 1 taking into consideration regional and national markets;
- 2 (3) laws, rules and regulations, and policies needed to facilitate di-
- 3 versification of the electricity generation portfolio; and
- 4 (4) any additional studies related to the commission's charge that
- 5 might appropriately be undertaken by the Kansas research universities.
- 6 (e) The commission may receive and expend moneys appropriated to
- 7 the commission from the public service regulation fund created by K.S.A.
- 8 66-1a01, and amendments thereto, and moneys received from any other
- 9 source, whether public or private, to further the purposes of this section.
- 10 (f) Commission members shall be paid compensation, subsistence al-
- 11 lowances, mileage and other expenses as provided by K.S.A. 75-3223, and
- 12 amendments thereto, for each day of actual attendance at any meeting of
- 13 the commission or any subcommittee meeting approved by the
- 14 commission.
- 15 (g) The state corporation commission and each other state agency
- 16 shall provide assistance to the commission as may be requested by the
- 17 commission. The legislative division of post audit shall provide such as-
- 18 sistance as may be requested by the commission and authorized by the
- 19 legislative post audit committee. The staff of the office of the revisor of
- 20 statutes, the legislative research department and the division of legislative
- 21 administrative services shall provide such assistance as may be requested
- 22 by the commission and authorized by the legislative coordinating council.
- 23 (h) The provisions of this section shall sunset on June 30, 2010, unless
- 24 extended by statute.
- 25 New Sec. 2. Sections 2 through 17, and amendments thereto, shall
- 26 be known and may be cited as the net metering and easy connection act.
- 27 New Sec. 3. As used in the net metering and easy connection act:
- 28 (a) "Avoided ~~fuel~~ **[energy]** cost" means the current average ~~cost of~~
- 29 ~~fuel for the entity generating electricity~~ **[cost including fuel and pur-**
- 30 **chased power for the preceding 12 months]**, as defined by the gov-
- 31 erning body with jurisdiction over any municipal electric utility, electric
- 32 cooperative utility or electric public utility.
- 33 (b) "Commission" means the state corporation commission.
- 34 (c) "Customer-generator" means the owner or operator of a qualified
- 35 electric energy generation unit which:
- 36 (1) Is powered by solar thermal sources or photovoltaic cells and
- 37 panels;
- 38 (2) has an electrical generating system with a capacity of not more
- 39 than 100 kilowatts;
- 40 (3) is located on a premises owned, operated, leased or otherwise
- 41 controlled by the customer-generator;
- 42 (4) is interconnected and operates in parallel phase and synchroni-
- 43 zation with a retail electric supplier and has been approved by such retail

1 electric supplier;

2 (5) is intended primarily to offset part or all of the customer-gener-
3 ator’s own electrical energy requirements;

4 (6) meets all applicable safety, performance, interconnection and re-
5 liability standards established by the national electrical code, the national
6 electrical safety code, the institute of electrical and electronics engineers,
7 underwriters laboratories, the federal energy regulatory commission and
8 any local governing authorities; and

9 (7) contains a mechanism [*accessible by electric utility person-
10 nel*] that automatically disables the unit and interrupts the flow of elec-
11 tricity back onto the supplier’s electricity lines in the event that service
12 to the customer-generator is interrupted.

13 (d) “Net metering” means using metering equipment sufficient to
14 measure the difference between the electrical energy supplied to a cus-
15 tomer-generator by a retail electric supplier and the electrical energy
16 supplied by the customer-generator to the retail electric supplier over the
17 applicable billing period.

18 (e) “Retail electric supplier” means any municipal electric utility,
19 electric cooperative utility or electric public utility which provides retail
20 electric service in this state.

21 New Sec. 4. A retail electric supplier shall:

22 (a) Make net metering available to customer-generators on a first-
23 come, first-served basis, subject to the following: (1) A supplier shall not
24 be required to make net metering available in a calendar year if total
25 rated generating capacity of all applications for interconnection already
26 approved by the supplier in the calendar year equals or exceeds 1% of
27 the supplier’s single-hour peak load for the previous calendar year; and
28 (2) a supplier shall not be required to make net metering available to a
29 customer-generator if the total rated generating capacity of net metering
30 systems equals; (A) 5% of the supplier’s [*Kansas*] single-hour peak load
31 during the previous year; or (B) such higher percentage as specified by
32 the commission, for a public utility, or the governing body, for any other
33 utility, once the total rated generating capacity of net metering systems
34 has reach 5% of the supplier’s single-hour peak load during the previous
35 year;

36 (b) offer to the customer-generator a tariff or contract that is identical
37 in electrical energy rates, rate structure and monthly charges to the con-
38 tract or tariff that the customer would be assigned if the customer were
39 not an eligible customer-generator but shall not charge the customer-
40 generator any additional standby, capacity, interconnection or other fee
41 or charge that would not otherwise be charged if the customer were not
42 an eligible customer-generator; and

43 (c) disclose annually the availability of the net metering program to

1 each of its customers with the method and manner of disclosure being at
2 the discretion of the supplier.

3 ~~New Sec. 5. A customer-generator's facility shall be equipped with~~
4 ~~sufficient metering equipment that can measure the net amount of elec-~~
5 ~~trical energy produced or consumed by the customer-generator. If the~~
6 ~~customer-generator's existing meter equipment does not meet these~~
7 ~~requirements or if it is necessary for the electric supplier to install addi-~~
8 ~~tional distribution equipment to accommodate the customer-generator's~~
9 ~~facility, the customer-generator shall reimburse the retail electric supplier~~
10 ~~for the costs to purchase and install the necessary additional equipment.~~
11 ~~At the request of the customer-generator, such costs may be initially paid~~
12 ~~for by the retail electric supplier and any amount equal to not more than~~
13 ~~the total costs plus a reasonable interest charge may be recovered from~~
14 ~~the customer-generator over the course of not more than 12 billing cycles.~~
15 ~~Any subsequent meter testing, maintenance or meter equipment change~~
16 ~~necessitated by the customer-generator shall be paid for by the customer-~~
17 ~~generator.~~

18 ***[New Sec. 5. The utility will supply, own and maintain all nec-***
19 ***essary meters and associated equipment utilized for billing. In ad-***
20 ***dition, and for the purposes of monitoring customer generation and***
21 ***load, the utility may install at its expense, load research metering.***
22 ***The customer shall supply, at no expense to the utility, a suitable***
23 ***location for meters and associated equipment used for billing and***
24 ***for load research.]***

25 New Sec. 6. Consistent with the provisions of the net metering and
26 easy connection act, the net electrical energy measurement shall be cal-
27 culated in the following manner:

28 (a) For a customer-generator, a retail electric supplier shall measure
29 the net electrical energy produced or consumed during the billing period
30 in accordance with normal metering practices for customers in the same
31 rate class, either by employing a single, bidirectional meter that measures
32 the amount of electrical energy produced and consumed or by employing
33 multiple meters that separately measure the customer-generator's con-
34 sumption and production of electricity.

35 (b) If the electricity supplied by the supplier exceeds the electricity
36 generated by the customer-generator during a billing period, the cus-
37 tomer-generator shall be billed for the net electricity supplied by the
38 supplier in accordance with normal practices for customers in the same
39 rate class.

40 (c) If the electricity generated by the customer-generator exceeds the
41 electricity supplied by the supplier during a billing period, the customer-
42 generator shall be billed for the appropriate customer charges for that
43 billing period in accordance with section 4, and amendments thereto, and

1 shall be credited an amount at least equal to the avoided ~~fuel cost~~ **[en-**
2 **ergy]** of the excess kilowatt-hours generated during the billing period,
3 with this credit applied to the following billing period.

4 (d) Any credits granted pursuant to this section shall expire without
5 any compensation at the earlier of either 12 months after their issuance
6 or when the customer-generator disconnects service or terminates the
7 net metering relationship with the supplier.

8 (e) For any electric cooperative utility or municipal electric utility,
9 upon agreement of the wholesale generator supplying electric energy to
10 the retail electric supplier, at the option of the retail electric supplier, the
11 credit to the customer-generator may be provided by the wholesale
12 generator.

13 New Sec. 7. (a) Each qualified electric energy generation unit used
14 by a customer-generator shall meet all applicable safety, performance,
15 interconnection and reliability standards established by any local code
16 authorities, the national electrical code, the national electrical safety code,
17 the institute of electrical and electronics engineers and underwriters lab-
18 oratories for distributed generation. No supplier shall impose any fee,
19 charge or other requirement not specifically authorized by the net me-
20 tering and easy connection act or the rules and regulations promulgated
21 under such act unless the fee, charge or other requirement would apply
22 to similarly situated customers who are not customer-generators, except
23 that a retail electric supplier may require that a customer-generator's
24 system contain a switch, circuit breaker, fuse or other easily accessible
25 device or feature located in immediate proximity to the customer-gen-
26 erator's metering equipment that would allow a utility worker the ability
27 to manually and instantly disconnect the unit from the utility's electric
28 distribution system.

29 (b) For systems of 10 kilowatts or less, a customer-generator whose
30 system meets the standards specified by subsection (a) shall not be re-
31 quired to install additional controls, perform or pay for additional tests or
32 distribution equipment or purchase additional liability insurance beyond
33 what is required under subsection (a) and section 5, and amendments
34 thereto.

35 (c) For customer-generator systems of greater than 10 kilowatts, the
36 commission for public utilities and the governing body for other utilities,
37 by rule or equivalent formal action by each respective governing body,
38 shall:

39 (1) Set forth safety, performance and reliability standards and
40 requirements; and

41 (2) establish the qualifications for exemption from a requirement to
42 install additional controls, perform or pay for additional tests or distri-
43 bution equipment or purchase additional liability insurance.

1 New Sec. 8. (a) Applications by a customer-generator for intercon-
2 nection of the qualified generation unit to the distribution system shall
3 be accompanied by the plan for the customer-generator's electrical gen-
4 erating system, including, but not limited to, a wiring diagram and spec-
5 ifications for the generating unit, and shall be reviewed and responded
6 to by the retail electric supplier within 30 days after receipt for systems
7 of 10 kilowatts or less and within 90 days after receipt for all other systems.
8 Prior to the interconnection of the qualified generation unit to the sup-
9 plier's system, the customer-generator will furnish the retail electric sup-
10 plier a certification from a qualified professional electrician or engineer
11 that the installation meets the requirements of subsection (a) of section
12 7, and amendments thereto. If the application for interconnection is ap-
13 proved by the retail electric supplier and the customer-generator does
14 not complete the interconnection within one year after receipt of notice
15 of the approval, the approval shall expire and the customer-generator shall
16 be responsible for filing a new application.

17 (b) Upon the change in ownership of a qualified electric energy gen-
18 eration unit, the new customer-generator shall be responsible for filing a
19 new application under this section.

20 New Sec. 9. Each retail electric supplier regulated by the commis-
21 sion shall submit an annual net metering report to the commission and
22 each other retail electric supplier shall submit the same report to its re-
23 spective governing body. The report shall include the following infor-
24 mation for the previous calendar year: The total number of customer-
25 generator facilities, the total estimated generating capacity of its
26 net-metered customer-generators and the total estimated net kilowatt-
27 hours received from customer-generators. The supplier shall make such
28 report available to any consumer of the supplier upon request.

29 New Sec. 10. Within nine months after the effective date of the net
30 metering and easy connection act, the commission shall adopt rules and
31 regulations necessary for the administration of such act for electric public
32 utilities, which shall include rules and regulations ensuring that simple
33 contracts will be used for interconnection and net metering. For systems
34 of 10 kilowatts or less, the application process shall use an all-in-one
35 document that includes a simple interconnection request, simple proce-
36 dures and a brief set of terms and conditions.

37 New Sec. 11. Within nine months after the effective date of the net
38 metering and easy connection act, the governing body of an electric co-
39 operative utility or electric municipal utility shall adopt policies establish-
40 ing a simple contract to be used for interconnection and net metering.
41 For systems of 10 kilowatts or less, the application process shall use an
42 all-in-one document that includes a simple interconnection request, sim-
43 ple procedures and a brief set of terms and conditions.

1 New Sec. 12. For any cause of action relating to any damages to
2 property or person caused by the generation unit of a customer-generator
3 or the interconnection thereof, the retail electric supplier shall have no
4 liability absent clear and convincing evidence of fault on the part of the
5 supplier.

6 New Sec. 13. The estimated generating capacity of all net metering
7 systems operating under the provisions of the net metering and easy con-
8 nection act shall count towards the respective retail electric supplier's
9 accomplishment of any renewable energy portfolio target or mandate
10 adopted by the Kansas legislature.

11 New Sec. 14. Any costs incurred under the net metering and easy
12 connection act by a retail electric supplier shall be recoverable in the
13 utility's rate structure.

14 New Sec. 15. No consumer shall connect or operate an electric gen-
15 eration unit in parallel phase and synchronization with any retail electric
16 supplier without written approval by such supplier that all of the require-
17 ments under subsection (a) of section 19, and amendments thereto, have
18 been met. For a consumer who violates this provision, a supplier may
19 immediately and without notice disconnect the electric facilities of such
20 consumer and terminate such consumer's electric service.

21 New Sec. 16. The manufacturer of any electric generation unit used
22 by a customer-generator may be held liable for any damages to property
23 or person caused by a defect in the electric generation unit of a customer-
24 generator.

25 New Sec. 17. The seller, installer or manufacturer of any electric
26 generation unit who knowingly misrepresents the safety aspects of an
27 electric generation unit may be held liable for any damages to property
28 or person caused by the electric generation unit of a customer-generator.

29 Sec. 18. K.S.A. 2007 Supp. 66-1,184 is hereby amended to read as
30 follows: 66-1,184. (a) Except as provided in subsection (b), every public
31 utility which provides retail electric services in this state shall enter into
32 a contract for parallel generation service with any person who is a cus-
33 tomer of such utility, upon request of such customer, whereby such cus-
34 tomer may attach or connect to the utility's delivery and metering system
35 an apparatus or device for the purpose of feeding excess electrical power
36 which is generated by such customer's energy producing system into the
37 utility's system. No such apparatus or device shall either cause damage
38 to the public utility's system or equipment or present an undue hazard
39 to utility personnel. Every such contract shall include, but need not be
40 limited to, provisions relating to fair and equitable compensation on such
41 customer's monthly bill for energy supplied to the utility by such
42 customer.

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

1 (A) “Utility” means an electric public utility, as defined by K.S.A. 66-
2 101a, and amendments thereto, any cooperative, as defined by K.S.A. 17-
3 4603, and amendments thereto, or a nonstock member-owned electric
4 cooperative corporation incorporated in this state, or a municipally owned
5 or operated electric utility;

6 (B) “school” means Cloud county community college and Dodge City
7 community college.

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

36 (3) *A customer-generator, as defined by section 14, and amendments*
37 *thereto, shall have the option of entering into a contract pursuant to this*
38 *subsection (b) or utilizing the net metering and easy connection act. The*
39 *customer-generator shall exercise the option in writing, filed with the util-*
40 *ity and shall not be entitled to change the option once it is filed.*

41 (c) The following terms and conditions shall apply to contracts en-
42 tered into under subsection (a) or (b):

43 (1) The utility will supply, own, and maintain all necessary meters

1 and associated equipment utilized for billing. In addition, and for the
2 purposes of monitoring customer generation and load, the utility may
3 install at its expense, load research metering. The customer shall supply,
4 at no expense to the utility, a suitable location for meters and associated
5 equipment used for billing and for load research;

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

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

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

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

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

1 rent federal energy regulatory commission interconnection procedures
2 and regulations.

3 (e) In any case where the owner of the renewable generator and the
4 utility cannot agree to terms and conditions of any contract provided for
5 by this section, the state corporation commission shall establish the terms
6 and conditions for such contract.

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

17 (g) For the purpose of meeting the governor's stated goal of produc-
18 ing 10% of the state's electricity by wind power by 2010 and 20% by 2020,
19 the parallel generation of electricity provided for in this section shall be
20 included as part of the state's energy generation by wind power.

21 ***[(h) The provisions of the net metering and easy connection act***
22 ***shall not preclude the state corporation commission from approving***
23 ***net metering tariffs upon request of an electric utility for other***
24 ***methods of renewable generation not prescribed in subsection***
25 ***(a)(1) of section 3, and amendments thereto.]***

26 Sec. 19. K.S.A. 2007 Supp. 65-3005 is hereby amended to read as
27 follows: 65-3005. The secretary shall have the power to:

28 (a) Adopt, amend and repeal rules and regulations implementing and
29 consistent with this act.

30 (b) Hold hearings relating to any aspect of or matter in the admin-
31 istration of this act concerning air quality control, and in connection there-
32 with, compel the attendance of witnesses and the production of evidence.

33 (c) Issue such orders, permits and approvals as may be necessary to
34 effectuate the purposes of this act and enforce the same by all appropriate
35 administrative and judicial proceedings.

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

38 (e) Prepare and develop a comprehensive plan or plans for the pre-
39 vention, abatement and control of air pollution originating in Kansas that
40 affects air quality in Kansas or in other states or both.

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

43 (g) Encourage voluntary cooperation by persons or affected groups

1 to achieve the purposes of this act.

2 (h) (1) Encourage local units of government to handle air pollution
3 problems within their respective jurisdictions and on a cooperative basis;
4 (2) provide technical and consultative assistance therefor; and (3) enter
5 into agreements with local units of government to administer all or part
6 of the provisions of the Kansas air quality act in the units' respective
7 jurisdictions.

8 (i) Encourage and conduct studies, investigations and research relat-
9 ing to air contamination and air pollution and their causes, effects, pre-
10 vention, abatement and control.

11 (j) Encourage air contaminant emission sources to voluntarily imple-
12 ment strategies, including the development and use of innovative tech-
13 nologies, market-based principles and other private initiatives to reduce
14 or prevent pollution.

15 (k) Determine by means of field studies and sampling the degree of
16 air contamination and air pollution in the state and the several parts
17 thereof.

18 (l) Establish ambient air quality standards for the state as a whole or
19 for any part thereof.

20 (m) Collect and disseminate information and conduct educational
21 and training programs relating to air contamination and air pollution.

22 (n) Advise, consult and cooperate with other agencies of the state,
23 local governments, industries, other states, interstate or interlocal agen-
24 cies, and the federal government, and with interested persons or groups.

25 (o) Accept, receive and administer grants or other funds or gifts from
26 public and private entities, including the federal government, for the pur-
27 pose of carrying out any of the functions of this act. Such funds received
28 by the secretary pursuant to this section shall be deposited in the state
29 treasury to the account of the department of health and environment.

30 (p) Enter into contracts and agreements with other state agencies or
31 subdivisions, local governments, other states, interstate agencies, the fed-
32 eral government or its agencies or private entities as is necessary to ac-
33 complish the purposes of the Kansas air quality act.

34 (q) Conduct or participate in intrastate or interstate emissions trading
35 programs or other programs that demonstrate equivalent air quality ben-
36 efits for the prevention, abatement and control of air pollution in Kansas
37 or in other states or both.

38 (r) Prepare and adopt a regional haze plan as may be necessary to
39 prevent, abate and control air pollution originating in Kansas that affects
40 air quality in Kansas or in other states or both. Any regional haze plan
41 prepared by the secretary shall be no more stringent than is required by
42 42 U.S.C. 7491.

43 (s) Participate in the activities of any visibility transport commission

1 established under 42 U.S.C. 7492. The secretary shall report to the gov-
2 ernor and the legislature on the activities of any such visibility transport
3 commission annually.

4 *(t) Implement the federal clean air act (42 U.S.C. 7401 et seq., here-*
5 *inafter referred to as the “federal act”).*

6 *(1) It is the policy of this state to prevent the deterioration of air*
7 *quality by means including, but not limited to, the following:*

8 *(A) The secretary shall not in the exercise of powers and duties, except*
9 *as provided below, promulgate any rule and regulation, or issue any order*
10 *or take any other action under any provision of the Kansas air quality*
11 *act or other provision of law, that is more stringent, restrictive or expan-*
12 *sive than required by the federal act or any rule and regulation adopted*
13 *by the United States environmental protection agency under the federal*
14 *act, as amended. If the secretary determines that a more stringent, re-*
15 *strictive or expansive rule and regulation is necessary, the secretary may*
16 *implement the rule and regulation only after approval by an act of the*
17 *legislature; provided however, nothing herein shall preclude the secretary*
18 *and applicant or permittee from concurring with a more stringent, re-*
19 *strictive or expansive condition in a permit to construct or operate a sta-*
20 *tionary source.*

21 *(B) The restrictions of the secretary’s powers herein shall not apply*
22 *to an implementation plan developed by the secretary to bring a non-*
23 *attainment area into compliance or to maintain compliance as that plan*
24 *is implemented within the non-attainment area.*

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

28 *(2) In as much as K.S.A. 65-3012, and amendments thereto, does not*
29 *now apply, nor has it ever been applicable, to the air quality permitting*
30 *process, the secretary may not use the emergency powers granted by*
31 *K.S.A. 65-3012, and amendments thereto, in the air quality permitting*
32 *process, nor any powers or discretion under any other statute not strictly*
33 *applicable to the air quality permitting process.*

34 *(3) Any action by the secretary on any application filed after January*
35 *1, 2006, and before the effective date of this act, which seeks the issuance,*
36 *modification, amendment, revision or renewal of any approval or permit,*
37 *and which is still the subject of any administrative or judicial review*
38 *proceedings, shall be reconsidered by the secretary upon the applicant’s*
39 *or permittee’s timely written request, which shall be filed no later than*
40 *60 days after the effective date of this act. Within 15 days after the ap-*
41 *plicant or permittee files a written request pursuant hereto, the secretary*
42 *shall reconsider the secretary’s decision, agency action or order and shall*
43 *determine in accordance with the provisions of this act, as amended,*

1 *whether the issuance, modification, amendment, revision or renewal of*
2 *any approval or permit requested by the permittee or applicant should*
3 *be issued, modified, amended, revised or renewed. If the applicant or*
4 *permittee is aggrieved by the secretary's determination hereunder, the*
5 *applicant or permittee shall be immediately entitled to judicial review of*
6 *such agency action by filing a petition for judicial review in the court of*
7 *appeals within 30 days from the date of the secretary's determination. If*
8 *the secretary fails to act within the 15 days, the applicant or permittee*
9 *immediately shall be entitled to seek a writ of mandamus compelling the*
10 *secretary to act by filing for such writ in the court of appeals. Such pro-*
11 *ceedings shall be conducted in accordance with K.S.A. 77-601 et seq., and*
12 *amendments thereto, however the applicant or permittee shall not be re-*
13 *quired to exhaust any other or additional administrative remedies avail-*
14 *able within the agency notwithstanding any other provision of law.*

15 Sec. 20. K.S.A. 2007 Supp. 65-3008a is hereby amended to read as
16 follows: 65-3008a. (a) No permit shall be issued, modified, renewed or
17 reopened without first providing the public an opportunity to comment
18 and request a public hearing on the proposed permit action. The request
19 for a public hearing on the issuance of a permit shall set forth the basis
20 for the request and a public hearing shall be held if, in the judgment of
21 the secretary, there is sufficient reason.

22 (b) The secretary shall affirm, modify or reverse the decision on such
23 permit after the public comment period or public hearing, *and shall af-*
24 *firm the issuance of any permit the terms and conditions of which comply*
25 *with all requirements established by rules and regulations promulgated*
26 *pursuant to the Kansas air quality act.* Any person who participated in
27 the public comment process or the public hearing who otherwise would
28 have standing under K.S.A. 77-611, and amendments thereto, shall have
29 standing to obtain judicial review of the secretary's final action on the
30 permit pursuant to the act for judicial review and civil enforcement of
31 agency actions in the court of appeals. Any such person other than the
32 applicant for or holder of the permit shall not be required to have ex-
33 hausted administrative remedies in order to be entitled to review. The
34 court of appeals shall have original jurisdiction to review any such final
35 agency action. The record before the court of appeals shall be confined
36 to the agency record for judicial review and consist of the documentation
37 submitted to or developed by the secretary in making the final permit
38 decision, including the permit application and any addenda or amend-
39 ments thereto, the permit summary, the draft permit, all written com-
40 ments properly submitted to the secretary, all testimony presented at any
41 public hearing held on the permit application, all responses by the ap-
42 plicant or permit holder to any written comments or testimony, the sec-
43 retary's response to the public comments and testimony and the final

1 permit.

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

5 Sec. 21. K.S.A. 65-3008b is hereby amended to read as follows: 65-
6 3008b. (a) The secretary may suspend or revoke an approval or a permit
7 if the permittee has violated any provision of the approval or the permit,
8 any provision of this act or any rule and regulation adopted under this act
9 and applicable to the permitted source.

10 (b) As applicable to the source for which the approval or permit is
11 sought, the secretary may deny an approval or permit, or a renewal
12 thereof, if the applicant fails to: (1) Submit a complete application; or (2)
13 submit an application fee.

14 (c) The secretary may deny a permit for any proposed new stationary
15 source if the owner or operator of such a source fails to demonstrate to
16 the satisfaction of the secretary that any other stationary source owned
17 or operated by such person, or by any entity controlling, controlled by or
18 under common control with such person, in this state is in compliance,
19 or meeting a schedule for compliance, with all applicable emission limi-
20 tations and standards under this act and the federal clean air act, and
21 amendments thereto.

22 (d) The secretary may modify or reopen an approval or a permit for
23 cause. The secretary shall reopen a permit whenever requirements under
24 this act become applicable to a permitted source and three or more years
25 remain on the original term of the permit. Any permit revision incorpo-
26 rating a requirement adopted by the secretary shall be effective as soon
27 as practicable, but not later than 18 months after the promulgation of the
28 requirement by the United States environmental protection agency.

29 (e) Within 15 days after the issuance of a notice of intent to take any
30 action authorized by subsection (a), (b), (c) or (d), or within 15 days after
31 the secretary's written decision to affirm, modify or reverse a permit de-
32 cision pursuant to subsection (b) of K.S.A. 65-3008a, the permittee may
33 file a request for a hearing with the secretary. Each such notice of intent
34 shall specify the provision of this act or rule and regulation allegedly
35 violated, the facts constituting the alleged violation and the secretary's
36 intended action. Each notice of intent or written decision to affirm, mod-
37 ify or reverse a permit decision shall state the permittee's right to request
38 a hearing. Such hearing shall be conducted in accordance with the Kansas
39 administrative procedure act.

40 (f) The filing of a request by the permittee for an approval or permit
41 modification, revocation or amendment, or the filing by the permittee of
42 a notification of planned changes or anticipated noncompliance, does not
43 stay any approval or permit condition.

1 ~~(g) No permit shall be issued, modified, amended, revised or re-~~
2 ~~newed unless the United States environmental protection agency has cer-~~
3 ~~tified that such permit complies with the requirements of the federal~~
4 ~~clean air act, except that a permit may be issued if the United States~~
5 ~~environmental protection agency has not notified the secretary of the~~
6 ~~United States environmental protection agency's decision within 45 days~~
7 ~~after receipt of the proposed permit by such agency. For any operating~~
8 ~~permit issued in accordance with title V of the federal clean air act, a~~
9 ~~copy of a permit proposed to be issued and a copy of the application (and~~
10 ~~any application for a permit modification or renewal) or such portion~~
11 ~~thereof, including any compliance plan, shall be transmitted to the ad-~~
12 ~~ministrator of the United States environmental protection agency. Should~~
13 ~~the administrator of the United States environmental protection agency~~
14 ~~determine the proposed permit is not in compliance with the requirements~~
15 ~~of the federal clean air act, including the requirement of an applicable~~
16 ~~implementation plan, and within 45 days after receipt objects in writing~~
17 ~~to the issuance of the permit as not in compliance with such requirements,~~
18 ~~then in such event the secretary shall respond in writing to the adminis-~~
19 ~~trator. If the administrator of the United States environmental protection~~
20 ~~agency does not object in writing within 45 days after receipt of the pro-~~
21 ~~posed permit, the secretary may issue, amend, revise or renew the permit.~~

22 (h) The secretary shall issue or deny the permit (including requests
23 for modification or to reopen the permit):

24 (1) Within three years of the date the United States environmental
25 protection agency approves the state permitting program pursuant to the
26 provisions of the federal clean air act, as amended in November 1990,
27 for permit applications submitted within the first full year after such date;

28 (2) pursuant to the time schedule provided by title IV (acid rain) of
29 the 1990 amendments to the federal clean air act, for air contaminant
30 emission sources subject to that title; or

31 (3) within 18 months after receiving a complete application, in all
32 other cases.

33 (i) Failure of the secretary to issue or deny the permit, or grant or
34 deny a request to modify or reopen the permit, within the period stated
35 in subsection (h) shall not result in the default issuance of a permit, permit
36 amendment, permit modification or permit renewal nor shall such failure
37 result in any other entity assuming jurisdiction to act on the permit or
38 the request.

39 Sec. 22. K.S.A. 65-3012 is hereby amended to read as follows: 65-
40 3012. (a) Notwithstanding any other provision of this act, the secretary
41 may take such action *against any existing source* as may be necessary to
42 protect the health of persons or the environment: (1) Upon receipt of
43 information that the emission of air pollution presents *an imminent and*

1 substantial endangerment to the health of persons or to the environment;
2 or (2) for an imminent or actual violation of this act, any rules and reg-
3 ulations adopted under this act, any orders issued under this act or any
4 permit conditions required by this act.

5 (b) The action the secretary may take under subsection (a) includes
6 but is not limited to:

7 (1) Issuing an order directing the owner or operator, or both, to take
8 such steps as necessary to prevent the act or eliminate the practice. Such
9 order may include, with respect to a facility or site, temporary cessation
10 of operation.

11 (2) Commencing an action to enjoin acts or practices specified in
12 subsection (a) or requesting the attorney general or appropriate county
13 or district attorney to commence an action to enjoin those acts or prac-
14 tices. Upon a showing by the secretary that a person has engaged in those
15 acts or practices, a permanent or temporary injunction, restraining order
16 or other order may be granted by any court of competent jurisdiction. An
17 action for injunction under this subsection shall have precedence over
18 other cases in respect to order of trial.

19 (3) Applying to the district court in the county in which an order of
20 the secretary under subsection (b)(1) will take effect, in whole or in part,
21 for an order of that court directing compliance with the order of the
22 secretary. Failure to obey the court order shall be punishable as contempt
23 of the court issuing the order. The application under this subsection for
24 a court order shall have precedence over other cases in respect to order
25 of trial.

26 (c) In any civil action brought pursuant to this section in which a
27 temporary restraining order or preliminary injunction is sought, it shall
28 not be necessary to allege or prove at any stage of the proceeding that
29 irreparable damage will occur should the temporary restraining order or
30 preliminary injunction not be issued or that the remedy at law is inade-
31 quate, and the temporary restraining order or preliminary injunction shall
32 issue without such allegations and without such proof.

33 (d) Any order of the secretary pursuant to subsection (b)(1) is subject
34 to hearing and review in accordance with the Kansas administrative pro-
35 cedure act.

36 Sec. 23. K.S.A. 66-104d is hereby amended to read as follows: 66-
37 104d. (a) As used in this section, “cooperative” means any ~~cooperative,~~
38 ~~as defined by K.S.A. 17-4603, and amendments thereto, which has fewer~~
39 ~~than 15,000 customers and which provides power principally at retail~~
40 *corporation organized under the electric cooperative act, K.S.A. 17-4601*
41 *et seq., and amendments thereto, or which becomes subject to the electric*
42 *cooperative act in the manner provided pursuant to K.S.A. 17-4601 et*
43 *seq., and amendments thereto, or any limited liability company or cor-*

1 *poration providing electric service at wholesale in the state of Kansas that*
2 *is owned by four or more electric cooperatives that provide retail service*
3 *in the state of Kansas, or any customer-owned corporation formed prior*
4 *to January 1, 2004.*

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

9 (c) To be exempt under subsection (b), a cooperative shall poll its
10 members as follows:

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

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

19 (3) If the cooperative mails information to its members regarding the
20 proposition for deregulation other than notice of the election and the
21 ballot, the cooperative shall also include in such mailing any information
22 in opposition to the proposition that is submitted by petition signed by
23 not less than 1% of the cooperative's members. All expenses incidental
24 to mailing the additional information, including any additional postage
25 required to mail such additional information, must be paid by the sig-
26 natories to the petition.

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

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

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

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

36 (f) Nothing in this section shall be construed to affect the single cer-
37 tified service territory of a cooperative or the authority of the state cor-
38 poration commission, as otherwise provided by law, over a cooperative
39 with regard to service territory, charges, *fees or tariffs* for transmission
40 services, sales of power for resale *other than sales between a cooperative*
41 *as defined in subsection (a), that does not provide retail electric service*
42 *and an owner of such cooperative, wire stringing and transmission line*
43 *siting, pursuant to K.S.A. 66-131, 66-183, 66-1,170 et seq. or 66-1,177 et*

1 seq., and amendments thereto.

2 (g) (1) Notwithstanding a cooperative's election to be exempt under
3 this section, the commission shall investigate all rates, joint rates, tolls,
4 charges and exactions, classifications and schedules of rates of such co-
5 operative if there is filed with the commission, not more than one year
6 after a change in such cooperative's rates, joint rates, tolls, charges and
7 exactions, classifications or schedules of rates, a petition, *in the case of a*
8 *retail distribution cooperative*, signed by not less than 5% of all the co-
9 operative's customers or 3% of the cooperative's customers from any one
10 rate class, *or, in the case of a generation and transmission cooperative,*
11 *not less than 20% of its members or 5% of the aggregate retail customers*
12 *of its members*. If, after investigation, the commission finds that such
13 rates, joint rates, tolls, charges or exactions, classifications or schedules of
14 rates are unjust, unreasonable, unjustly discriminatory or unduly prefer-
15 ential, the commission shall have the power to fix and order substituted
16 therefor such rates, joint rates, tolls, charges and exactions, classifications
17 or schedules of rates as are just and reasonable.

18 (2) The cooperative's rates, joint rates, tolls, charges and exactions,
19 classifications or schedules of rates complained of shall remain in effect
20 subject to change or refund pending the state corporation commission's
21 investigation and final order.

22 (3) Any customer of a cooperative wishing to petition the commission
23 pursuant to subsection (g)(1) may request from the cooperative the
24 names, addresses and rate classifications of all the cooperative's customers
25 or of the cooperative's customers from any one or more rate classes. The
26 cooperative, within 21 days after receipt of the request, shall furnish to
27 the customer the requested names, addresses and rate classifications and
28 may require the customer to pay the reasonable costs thereof.

29 (h) (1) If a cooperative is exempt under this section, not less than 10
30 days' notice of the time and place of any meeting of the board of trustees
31 at which rate changes are to be discussed and voted on shall be given to
32 all members of the cooperative and such meeting shall be open to all
33 members.

34 (2) Violations of subsection (h)(1) shall be subject to civil penalties
35 and enforcement in the same manner as provided by K.S.A. 75-4320 and
36 75-4320a, and amendments thereto, for violations of K.S.A. 75-4317 et
37 seq. and amendments thereto.

38 (i) (1) Any cooperative exempt under this section shall maintain a
39 schedule of rates and charges at the cooperative headquarters and shall
40 make copies of such schedule of rates and charges available to the general
41 public during regular business hours.

42 (2) Any cooperative which fails, neglects or refuses to maintain such
43 copies of schedule of rates and charges under this subsection shall be

- 1 subject to a civil penalty of not more than \$500.
- 2 New Sec. 24. If any provision of this act or its application to any
3 person or circumstance is held invalid, the invalidity shall not affect any
4 other provision or application of the act which can be given effect without
5 the invalid provision or application. To this end the provisions of this act
6 are severable.
- 7 Sec. 25. K.S.A. 65-3008b, 65-3012 and 66-104d and K.S.A. 2007
8 Supp. 65-3005, 65-3008a and 66-1,184 are hereby repealed.
- 9 Sec. 26. This act shall take effect and be in force from and after its
10 publication in the Kansas register.