

HOUSE BILL No. 2711

By Committee on Energy and Utilities

1-30

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

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

15 New Section 1. As used in sections 1 through 7, and amendments
16 thereto:

17 (a) "ASHRAE" means American society of heating, refrigerating and
18 air-conditioning engineers, Inc. standard 90.1-2004.

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

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

24 (d) "New public school building" means any building or structure the
25 construction of which commences on or after July 1, 2009, and which is
26 located upon the land of any school district under the supervision of the
27 state board of education.

28 (e) "New state building" means any building or structure which is
29 constructed by the state or any agency of the state and the construction
30 of which commences on or after July 1, 2009.

31 New Sec. 2. The secretary of administration shall adopt rules and
32 regulations that require that the average fuel economy standard for state-
33 owned motor vehicles purchased during calendar year 2010 shall not be
34 less than 10% higher than the average fuel economy standard of state-
35 owned motor vehicles purchased during calendar year 2007. The head of
36 each state agency shall provide information to and cooperate with the
37 secretary of administration for the purposes of implementing and admin-
38 istering this section and the rules and regulations adopted by the secretary
39 of administration.

40 New Sec. 3. The secretary of administration shall adopt rules and
41 regulations for state agencies for the purchase of products and equipment,
42 including, but not limited to, appliances, lighting fixtures and bulbs, and
43 computers, which meet energy efficiency guidelines which are not less

1 than the guidelines adopted for such products to qualify as an energy star
2 product.

3 New Sec. 4. (a) The department of administration shall collect data
4 on energy consumption and costs for all state-owned and leased real prop-
5 erty and the secretary of administration shall submit a written report to
6 the legislature on or before the first day of the 2009 regular session of
7 the legislature and on or before the first day of each ensuing regular
8 session of the legislature identifying state-owned or leased real property
9 locations in which an excessive amount of energy is being used in ac-
10 cordance with rules and regulations adopted by the secretary of admin-
11 istration concerning energy efficiency performance standards for state-
12 owned or leased real property.

13 (b) The secretary of administration shall not approve a new lease or
14 a renewal or extension of an existing lease of non-state owned real prop-
15 erty unless the lessor has submitted an energy audit for such real property
16 that is the subject of such lease. The secretary of administration shall
17 adopt rules and regulations establishing energy efficiency performance
18 standards which shall apply to leased space and improvements which the
19 lessor shall be required to address based on such energy audit.

20 New Sec. 5. (a) Within the limitations of appropriations therefor, the
21 Kansas energy office of the state corporation commission shall develop
22 and increase the participation of school districts and local governments
23 in the facilities conservation improvements program (FCIP) pursuant to
24 K.S.A. 75-37,125, and amendments thereto.

25 (b) The state corporation commission shall strongly encourage state
26 agencies which operate and maintain state-owned buildings that are not
27 participating in the FCIP to participate in the FCIP pursuant to K.S.A.
28 75-37,125, and amendments thereto, on or before December 1, 2010.

29 New Sec. 6. (a) The secretary of administration shall adopt rules and
30 regulations prescribing energy efficiency performance standards requir-
31 ing that all new state buildings and new public school buildings be de-
32 signed, constructed and certified to achieve energy consumption levels
33 that are at least 25% below the levels established under the ASHRAE
34 standard or the IECC, as appropriate, if such levels of energy consump-
35 tion are life-cycle cost-effective for such buildings.

36 (b) The secretary of administration shall adopt by rules and regula-
37 tions water efficiency performance standards which shall include, but not
38 be limited to, provisions: (1) Requiring that water systems designed for
39 new state buildings and new public school buildings shall be designed
40 and constructed to achieve potable water consumption levels that are at
41 least 25% below the indoor water use baseline calculated for the building
42 after meeting the fixture performance requirements prescribed by the
43 American society of mechanical engineers efficiency recommendations in

1 effect on the effective date of this act; (2) for calculation of the indoor
2 water use baseline for new state buildings and new public school buildings
3 in accordance with the department of energy federal emergency man-
4 agement program standards using water usage data from new state build-
5 ings and new public school buildings constructed in the state during the
6 2006, 2007 and 2008 fiscal years; and (3) requiring outdoor potable water
7 or harvested groundwater consumption of state agencies and school dis-
8 tricts shall be reduced by not less than 25% over the amount of water
9 consumed by conventional means, through water use efficient landscape
10 materials and irrigation policies, including, but not limited to, water reuse
11 and recycling.

12 New Sec. 7. (a) New state buildings and new public school buildings
13 shall include installation of building owner's meters for electricity, natural
14 gas, fuel oil and water in accordance with United States department of
15 energy guidelines issued under section 103 of the energy policy act of
16 2005. The state agency or school district and the building architect or
17 designer shall compare metered data from the first year of building op-
18 eration with the energy efficiency performance standards adopted by the
19 secretary of administration and shall submit a written report concerning
20 each such building to the secretary of administration within two months
21 following the first year of operation.

22 (b) If the average building energy or water consumption savings over
23 the one-year period following the date of beneficial occupancy is 85% or
24 less than the energy efficiency performance standards or water efficiency
25 performance standards established pursuant to this act, parties including,
26 but not limited to, the building architect or designer, state agency or
27 school district and the contractor or the construction manager at risk,
28 shall investigate, determine the cause of the failure to achieve the stan-
29 dards and recommend corrections or modifications to meet such
30 standards.

31 New Sec. 8. (a) As used in this section:

32 (1) "Load serving entity" means: (A) An entity selling electric energy
33 to retail customers pursuant to rates regulated by a state regulatory body;
34 (B) any cooperative, as defined by K.S.A. 17-4603, and amendments
35 thereto, or any other member-owned corporation or limited liability com-
36 pany organized and existing under the laws of this state or another state,
37 whose primary purpose is to furnish retail or wholesale electric energy,
38 either directly or indirectly, to its members or to an entity owned or
39 controlled by its members; or (C) a municipally owned or operated elec-
40 tric utility.

41 (2) "Merchant power plant" means an electric generation plant, and
42 associated facilities, which has a nameplate rating of at least 300 mega-
43 watts, and less than 50% of the output of which is supplied for the selling

1 of electric energy to its retail customers or to load serving entities,
2 whether through ownership interests or pursuant to contracts, or both,
3 with terms equal to or greater than five years.

4 (b) On and after the effective date of this act, no person or entity
5 shall construct or expand the capacity of any merchant power plant in this
6 state which generates electricity from fossil fuel.

7 New Sec. 9. (a) There is hereby established the Kansas electric gen-
8 eration, transmission and efficiency study commission. The commission
9 shall be made up of the following 11 members:

- 10 (1) Chairperson of the house committee on energy and utilities;
- 11 (2) vice-chairperson of the house committee on energy and utilities;
- 12 (3) ranking minority member of the house committee on energy and
13 utilities;
- 14 (4) chairperson of the senate committee on utilities;
- 15 (5) vice-chairperson of the senate committee on utilities;
- 16 (6) ranking minority member of the senate committee on utilities;
- 17 (7) chief of energy operations of the state corporation commission;
- 18 (8) director of the division of environment in the Kansas department
19 of health and environment; and
- 20 (9) three members appointed by the governor.

21 (b) The chairperson of the house committee on energy and utilities
22 shall be the chairperson of the commission, and the chairperson of the
23 senate committee on utilities shall be the vice-chairperson of the com-
24 mission. The commission shall meet at least four times a year on call of
25 the chairperson of the commission, and additional meetings as deemed
26 necessary. A majority of the members of the commission or their desig-
27 nees shall constitute a quorum for the exercise of powers conferred upon
28 the commission.

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

- 33 (1) The actions of federal and regional entities regarding electric gen-
34 eration and transmission;
- 35 (2) the obligations of all entities that generate, transmit or distribute
36 electricity;
- 37 (3) the economic impact of generation, transmission and distribution
38 of electricity on community economic development and on electric rates
39 for various classes of customers;
- 40 (4) the impact of electric generation and transmission on the state's
41 environment and types of remediation that may be required to limit un-
42 desirable impacts;
- 43 (5) the social impact on Kansas residents of various methods of gen-

- 1 eration and transmission of electricity;
- 2 (6) the impact on state and local tax revenues of the various means
3 of generating and transmitting electricity;
- 4 (7) the adequacy of the state's capacity to generate electricity in light
5 of current and future needs of the state, region and nation;
- 6 (8) the impact of conservation on the need for expansion of electric
7 generation capacity in the short and long term;
- 8 (9) the fuel portfolio balance of the state's electric generation
9 facilities;
- 10 (10) the effectiveness of existing incentives for renewable energy
11 investment;
- 12 (11) other states' existing incentives for renewable energy invest-
13 ment; and
- 14 (12) the reports and recommendations of the electricity committee
15 of the Kansas energy council.
- 16 (d) The commission shall submit a preliminary written report of the
17 activities and recommendations of the commission to the house commit-
18 tee on energy and utilities and the senate committee on utilities on or
19 before the first day of the 2009 regular session of the legislature. The
20 commission shall submit a final written report of its activities and rec-
21 ommendations on or before the first day of the 2010 regular session of
22 the legislature. The final written report of the commission shall include,
23 but is not limited to, recommendations for:
- 24 (1) New incentives for development of a diversified electricity gener-
25 eration portfolio;
- 26 (2) an appropriate energy generation portfolio goal, or series of goals,
27 taking into consideration regional and national markets;
- 28 (3) laws, rules and regulations, and policies needed to facilitate di-
29 versification of the electricity generation portfolio; and
- 30 (4) any additional studies related to the commission's charge that
31 might appropriately be undertaken by the Kansas research universities.
- 32 (e) The commission may receive and expend moneys appropriated to
33 the commission from the public service regulation fund created by K.S.A.
34 66-1a01, and amendments thereto, and moneys received from any other
35 source, whether public or private, to further the purposes of this section.
- 36 (f) Commission members shall be paid compensation, subsistence al-
37 lowances, mileage and other expenses as provided by K.S.A. 75-3223, and
38 amendments thereto, for each day of actual attendance at any meeting of
39 the commission or any subcommittee meeting approved by the
40 commission.
- 41 (g) The state corporation commission and each other state agency
42 shall provide assistance to the commission as may be requested by the
43 commission. The legislative division of post audit shall provide such as-

1 assistance as may be requested by the commission and authorized by the
2 legislative post audit committee. The staff of the office of the revisor of
3 statutes, the legislative research department and the division of legislative
4 administrative services shall provide such assistance as may be requested
5 by the commission and authorized by the legislative coordinating council.

6 (h) The provisions of this section shall sunset on June 30, 2010, unless
7 extended by statute.

8 New Sec. 10. (a) Sections 10 through 12, and amendments thereto,
9 shall be known and may be cited as the carbon dioxide emissions offset
10 act and shall not be construed to be part of the Kansas air quality act.

11 (b) As used in the carbon dioxide emissions offset act:

12 (1) "Affected facility" means a fossil-fuel-fired steam electricity gener-
13 ating unit of more than 250 million British thermal units per hour heat
14 input other than:

15 (A) A facility owned or operated by the federal government;

16 (B) a facility located on tribal lands; or

17 (C) any other facility exempt under section 111 of the federal clean
18 air act.

19 (2) "Community wind resources" means any new wind energy project
20 that:

21 (A) Has an ownership structure as follows:

22 (i) For a project that consists of one or two turbines, is owned by one
23 or more qualified owners with at least 33% of the power purchase agree-
24 ment payments flowing to a qualified owner or owners or local commu-
25 nity; and

26 (ii) for a project that consists of more than two turbines, is owned by
27 qualified owners with no single qualified owner owning more than 15%
28 of a project and with at least 33% of the power purchase agreement
29 payments flowing to the qualified owner or owners or local community;
30 or

31 (B) has a resolution of support adopted:

32 (i) By the county board of each county in which the project is to be
33 located; or

34 (ii) by the tribal council for the project located within the boundaries
35 of an Indian reservation.

36 (3) "Construct" or "construction" means physical on-site construction
37 of an affected facility.

38 (4) "Owner or operator" means any person who owns, leases, oper-
39 ates, controls or supervises an affected facility subject to any standard or
40 requirement of the Kansas air quality act, K.S.A. 65-3001 et seq., and
41 amendments thereto, or any rules and regulations promulgated
42 thereunder.

43 (5) "Potential-to-emit" means the maximum capacity of an affected

1 facility to emit carbon dioxide under its physical and operational design.
2 Any physical or operational limitation on the capacity of the source to
3 emit carbon dioxide, including any reduction equipment and restrictions
4 on hours of operation or on the type or amount of material combusted,
5 stored or processed, shall be treated as part of its design.

6 (6) “Qualified owner or owners” means:
7 (A) An individual who is a Kansas resident;
8 (B) any of the following entities, all members of which are individuals
9 who was Kansas residents: A limited liability company which is organized
10 under the Kansas revised limited liability company act (K.S.A. 17-7662 et
11 seq., and amendments thereto), a corporation organized not-for-profit
12 under the laws of this state or a cooperative organized under the coop-
13 erative marketing act (K.S.A. 17-1601 et seq., and amendments thereto),
14 the electric cooperative act (K.S.A. 17-4601 et seq., and amendments
15 thereto) or the renewable energy electric generation cooperative act
16 (K.S.A. 17-4651 et seq., and amendments thereto);
17 (C) a Kansas political subdivision or local government including, but
18 not limited to, a municipal electric utility, or a municipal power agency
19 on behalf of and at the request of a member distribution utility, a county,
20 a city, a school district, a public or private higher education institution or
21 any other local or regional governmental organization such as a board,
22 commission or association; or
23 (D) a tribal council.

24 (7) “Reconstruct” or “reconstruction” means any rebuilding of an
25 emission source within an existing affected facility which generates elec-
26 tricity from fossil fuel that would result in an increase in carbon dioxide
27 emissions from such facility.

28 (8) “Supercritical pulverized coal technology” means a steam gener-
29 ating facility operating at or above 3,600 pounds per square inch and less
30 than 1,200 degrees fahrenheit.

31 (9) “Ultra-supercritical pulverized coal technology” means a steam
32 generating facility operating at or above 4,500 pounds per square inch
33 and at or above 1,200 degrees fahrenheit.

34 New Sec. 11. (a) Any affected facility to be constructed or recon-
35 structed on or after January 1, 2008, shall comply with the emission lim-
36 itations provided for herein if the potential-to-emit from the proposed
37 affected facility equals or exceeds 250,000 tons per year of carbon dioxide.

38 (b) Except as otherwise provided herein:
39 (1) On and after the date on which the initial performance test of an
40 affected facility is completed or required to be completed, whichever
41 occurs first, neither the owner nor the operator of such affected facility
42 shall on an annual basis cause to be discharged into the atmosphere from
43 such affected facility any gases containing carbon dioxide in excess of the

1 following emission limits:

2 (A) For an affected facility using solid fuel, carbon dioxide in excess
3 of 1,520 pounds per net megawatt hour;

4 (B) for an affected facility using liquid fuel, carbon dioxide in excess
5 of 1,080 pounds per net megawatt hour; and

6 (C) for an affected facility using gaseous fuel, carbon dioxide in excess
7 of 810 pounds per net megawatt hour; and

8 (2) ten years after the initial performance test of an affected facility
9 using solid fuel is completed or required to be completed, whichever
10 occurs first, neither the owner nor the operator of such affected facility
11 shall cause to be discharged into the atmosphere any gases containing
12 carbon dioxide in excess of 1,330 pounds per net megawatt hour.

13 New Sec. 12. (a) For affected facilities not meeting the carbon di-
14 oxide emission limitations set forth in section 11, and amendments
15 thereto, the owner or operator shall be deemed to be in compliance if
16 the emissions in excess of such limitations are mitigated or offset by any
17 of the following means or methods in the amount of the credit as provided
18 below:

19 (1) For wind-powered electricity generating facilities constructed af-
20 ter January 1, 2000, excluding community wind resources, an offset credit
21 equal to one and one-half times an amount computed as follows, if the
22 affected facility is located in Kansas, and one times such amount if located
23 outside of Kansas: The affected facility's expected carbon dioxide emis-
24 sion rate expressed in pounds per megawatt, multiplied by the name plate
25 rating of the wind-powered electricity generating facility expressed in
26 megawatt hours, multiplied by the expected average capacity factor of the
27 wind-powered electricity generating facility at the proposed site or sites,
28 multiplied by 8,760 hours per year. The owner or operator of the affected
29 facility shall be entitled to the offset credit whether it owns or leases the
30 wind-powered electricity generating facility, or purchases power from
31 such wind-powered electricity generating facility;

32 (2) for development of carbon reduction, storage or utilization pro-
33 jects, an offset credit shall be received for the reduced, avoided, displaced,
34 captured, stored or sequestered carbon dioxide as follows:

35 (A) For capture of carbon dioxide emitted from an affected facility
36 using chilled ammonia, amine capture and coal gasification, an offset
37 credit equal to two times the actual carbon dioxide tonnage captured; or

38 (B) for storage of carbon dioxide emitted from an affected facility
39 using deep aquifer injection, depleted oil or natural gas field injection,
40 enhanced oil or gas recovery, carbon capture sequestration or pipeline
41 projects for the transportation of carbon dioxide to be used for enhanced
42 oil or gas recovery or carbon storage, an offset credit equal to three times
43 the actual carbon dioxide tonnage sequestered, stored or displaced; or

- 1 (C) for development of carbon utilization technology that displaces
2 or offsets the release of carbon dioxide using algae to produce bio-diesel
3 or starch substitutes for grain based ethanol, an offset credit equal to
4 three times the actual carbon dioxide tonnage displaced or offset in
5 Kansas;
- 6 (3) for any nuclear or hydro-power electricity generating facility con-
7 structed after January 1, 2008, any large-scale energy storage project, any
8 central station solar energy project or any efficiency project of an existing
9 fossil-fueled electricity generating facility, an offset credit equal to three
10 times the actual carbon dioxide tonnage avoided if the facility or project
11 is located in Kansas. If the facility or project is located outside of Kansas,
12 the offset credit shall be equal to the actual carbon dioxide tonnage
13 avoided;
- 14 (4) for energy efficiency and renewable distributed generation
15 sources located in Kansas, using demand-side peak-shaving or photo-vol-
16 taic, bio-mass or community wind resources, excluding wind-powered
17 electricity generating facilities described in subsection (a)(1), and for elec-
18 tricity purchased from a customer-generator pursuant to the net metering
19 and easy connection act, an offset credit equal to three times the actual
20 carbon dioxide tonnage avoided;
- 21 (5) for ultra-supercritical pulverized coal technology projects, an off-
22 set credit equal to three times the actual carbon dioxide tonnage avoided
23 in comparison to the carbon dioxide emissions per megawatt hour from
24 a supercritical pulverized coal technology project;
- 25 (6) for non-release agricultural related projects, using minimum till
26 or no-till practices, conversion of cultivated land to pasture, forest se-
27 questration projects, and erosion, windbreaks or community beautifica-
28 tion projects, an offset credit equal to three times the actual carbon di-
29 oxide tonnage sequestered as a result of such projects in Kansas, and two
30 times the actual carbon dioxide tonnage sequestered as a result of such
31 projects within the service territory of the owner or operator.
- 32 (b) For transmission system improvements located inside or outside
33 Kansas, including direct-current converters or ties, which enable or en-
34 hance the development in whole or in part of renewable resources elec-
35 tricity generating facilities located in Kansas, an offset credit shall be
36 allowed as follows:
- 37 (1) The carbon dioxide offset credit from any project shall be based
38 on the incremental available transfer capacity, expressed in mega-volt-
39 amperes, which may be available for renewable energy transfers as a re-
40 sult of such project. Such determination of available transfer capacity
41 must be demonstrated by an engineering study performed by, or in ac-
42 cordance with procedures developed by, the southwest power pool or
43 other reliability, planning or regional transmission organization, if any, in

1 the affected transmission grid or grids.

2 (2) Such carbon dioxide offset shall be determined by taking the ad-
3 ditional transmission capacity, expressed in mega-volt-amperes, multi-
4 plied by a 0.9 power factor, multiplied by the rate of the affected facility's
5 expected carbon dioxide release rate expressed in pounds per megawatt
6 hour, multiplied by a 40% capacity factor, multiplied by 8,760 hours per
7 year, to be recalculated on an annual basis. The owner or operator of the
8 affected facility shall be entitled to an offset credit whether it owns or
9 leases the transmission facility.

10 (c) For research and development projects to develop new technol-
11 ogy to capture, displace or sequester carbon, which were incurred in good
12 faith but did not result in the development of successful technology to
13 capture, displace or sequester carbon, an offset credit equal to one ton
14 of carbon dioxide reduction for each dollar expended shall be allowed for
15 10 years.

16 (d) For expenditures by any Kansas electric public utility for energy
17 efficiency programs whose purpose is to educate the public on energy
18 conservation, or expected to lead to the reduction of energy use by the
19 public, an offset credit equal to one-half of a ton of carbon dioxide for
20 each dollar expended shall be allowed.

21 (e) An owner or operator of an affected facility shall receive an offset
22 credit for the retirement of other electricity generating units located in
23 Kansas which are permanently removed from service on or after July 1,
24 2008, and which combusted the same fuel as the affected facility. The
25 owner or operator shall state, in a written format prescribed by the per-
26 mitting authority, those units that have been permanently retired on a
27 specific date and the fossil-fuel capability of such unit. Such offset credit
28 is only applicable if fuel utilized by the affected facility is the same fuel
29 as that utilized by the retired electricity generating unit.

30 (f) If an owner or operator is rendered unable, wholly or in part, by
31 force majeure, to carry out its obligations under this act, the owner's or
32 operator's performance herein, to the extent affected by such force ma-
33 jeure, shall be suspended during the continuance of any inability, pro-
34 vided the owner or operator is in good faith attempting with reasonable
35 dispatch to remedy the cause. As used in this subsection, "force majeure"
36 means acts of God, strikes, lockouts or other industrial disturbances, acts
37 of the public enemy, wars, blockages, insurrections, riots, epidemics, nat-
38 ural disasters, civil disturbances, failure of or accidents to machinery or
39 lines or any other cause, whether similar or dissimilar to the foregoing,
40 that is beyond the owner's or operator's reasonable control.

41 (g) Any person that can substantiate the reduction of the emission of
42 carbon dioxide through a carbon mitigation project located in Kansas,
43 shall be entitled to an offset credit in the amount of carbon dioxide re-

1 duction and, may sell, trade or exchange the credit to an owner or op-
2 erator of an affected facility which may then be utilized to satisfy the
3 carbon dioxide emission limitations herein.

4 (h) (1) For carbon dioxide releases not otherwise reduced or miti-
5 gated, the owner or operator shall mitigate emissions in excess of the
6 allowable emissions set forth herein by paying to the state corporation
7 commission the sum of \$3 for each ton of carbon dioxide emissions from
8 the affected facility which are in excess of the allowable limitations set
9 forth herein. Consistent with the methods required under K.A.R. 28-19-
10 202, the owner or operator of an affected facility shall determine such
11 emissions which are greater than the allowable limitation and shall report
12 the same to the secretary on the date specified in K.A.R. 28-19-202(d)(1).
13 The owner or operator of an affected facility shall remit to the state cor-
14 poration commission such payment consistent with a determination under
15 this subsection by the same date. The state corporation commission shall
16 remit to the state treasurer, in accordance with the provisions of K.S.A.
17 75-4215, and amendments thereto, all moneys received by the commis-
18 sion pursuant to such section. Upon receipt of the remittance, the state
19 treasurer shall deposit the entire amount in the state treasury and credit
20 it to the energy efficiency grant programs fund which is hereby created
21 in the state treasury.

22 (2) Moneys in the energy efficiency grant programs fund shall be
23 expended in accordance with appropriation acts for grants for energy
24 efficiency programs or as otherwise determined by the legislature.

25 (3) On or before the 10th of each month, the director of accounts
26 and reports shall transfer from the state general fund to the energy effi-
27 ciency grant fund interest earnings based on:

28 (A) The average daily balance of moneys in the energy efficiency
29 grant programs fund for the preceding month; and

30 (B) the net earnings rate for the pooled money investment portfolio
31 for the preceding month.

32 (4) All expenditures from the energy efficiency grant programs fund
33 shall be made in accordance with appropriation acts upon warrants of the
34 director of accounts and reports issued pursuant to vouchers approved
35 by the chairperson of the state corporation commission, or a person or
36 persons designated by the chairperson of the commission, for the pur-
37 poses set forth in this section.

38 (i) Before July 1, 2009, the secretary of the Kansas department of
39 health and environment shall adopt such rules and regulations to imple-
40 ment this section and sections 10 and 11, and amendments thereto, in-
41 cluding, but not limited to, monitoring, reporting and recordkeeping
42 requirements, consistent herewith as deemed necessary to ensure con-
43 formance with the provisions of this section and section 11, and amend-

1 ments thereto. The secretary shall consult with the state corporation com-
2 mission in the promulgation of such rules and regulations. The secretary
3 shall not defer nor delay the issuance of any construction permit pursuant
4 to the Kansas air quality act, and amendments thereto, pending the es-
5 tablishment of such rules and regulations. The limitations under this act
6 shall not be set forth in any construction or operating permit to be issued
7 under the Kansas air quality act.

8 New Sec. 13. Sections 13 through 28, and amendments thereto, shall
9 be known and may be cited as the net metering and easy connection act.

10 New Sec. 14. As used in the net metering and easy connection act:

11 (a) “Avoided fuel cost” means the current average cost of fuel for the
12 entity generating electricity, as defined by the governing body with juris-
13 diction over any municipal electric utility, electric cooperative utility or
14 electric public utility.

15 (b) “Commission” means the state corporation commission.

16 (c) “Customer-generator” means the owner or operator of a qualified
17 electric energy generation unit which:

18 (1) Is powered by solar thermal sources or photovoltaic cells and
19 panels;

20 (2) has an electrical generating system with a capacity of not more
21 than 100 kilowatts;

22 (3) is located on a premises owned, operated, leased or otherwise
23 controlled by the customer-generator;

24 (4) is interconnected and operates in parallel phase and synchroni-
25 zation with a retail electric supplier and has been approved by such retail
26 electric supplier;

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

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

34 (7) contains a mechanism that automatically disables the unit and
35 interrupts the flow of electricity back onto the supplier’s electricity lines
36 in the event that service to the customer-generator is interrupted.

37 (d) “Net metering” means using metering equipment sufficient to
38 measure the difference between the electrical energy supplied to a cus-
39 tomer-generator by a retail electric supplier and the electrical energy
40 supplied by the customer-generator to the retail electric supplier over the
41 applicable billing period.

42 (e) “Retail electric supplier” means any municipal electric utility,
43 electric cooperative utility or electric public utility which provides retail

1 electric service in this state.

2 New Sec. 15. A retail electric supplier shall:

3 (a) Make net metering available to customer-generators on a first-
4 come, first-served basis, subject to the following: (1) A supplier shall not
5 be required to make net metering available in a calendar year if total
6 rated generating capacity of all applications for interconnection already
7 approved by the supplier in the calendar year equals or exceeds 1% of
8 the supplier's single-hour peak load for the previous calendar year; and
9 (2) a supplier shall not be required to make net metering available to a
10 customer-generator if the total rated generating capacity of net metering
11 systems equals; (A) 5% of the supplier's single-hour peak load during the
12 previous year; or (B) such higher percentage as specified by the commis-
13 sion, for a public utility, or the governing body, for any other utility, once
14 the total rated generating capacity of net metering systems has reach 5%
15 of the supplier's single-hour peak load during the previous year;

16 (b) offer to the customer-generator a tariff or contract that is identical
17 in electrical energy rates, rate structure and monthly charges to the con-
18 tract or tariff that the customer would be assigned if the customer were
19 not an eligible customer-generator but shall not charge the customer-
20 generator any additional standby, capacity, interconnection or other fee
21 or charge that would not otherwise be charged if the customer were not
22 an eligible customer-generator; and

23 (c) disclose annually the availability of the net metering program to
24 each of its customers with the method and manner of disclosure being at
25 the discretion of the supplier.

26 New Sec. 16. A customer-generator's facility shall be equipped with
27 sufficient metering equipment that can measure the net amount of elec-
28 trical energy produced or consumed by the customer-generator. If the
29 customer-generator's existing meter equipment does not meet these
30 requirements or if it is necessary for the electric supplier to install addi-
31 tional distribution equipment to accommodate the customer-generator's
32 facility, the customer-generator shall reimburse the retail electric supplier
33 for the costs to purchase and install the necessary additional equipment.
34 At the request of the customer-generator, such costs may be initially paid
35 for by the retail electric supplier and any amount equal to not more than
36 the total costs plus a reasonable interest charge may be recovered from
37 the customer-generator over the course of not more than 12 billing cycles.
38 Any subsequent meter testing, maintenance or meter equipment change
39 necessitated by the customer-generator shall be paid for by the customer-
40 generator.

41 New Sec. 17. Consistent with the provisions of the net metering and
42 easy connection act, the net electrical energy measurement shall be cal-
43 culated in the following manner:

- 1 (a) For a customer-generator, a retail electric supplier shall measure
2 the net electrical energy produced or consumed during the billing period
3 in accordance with normal metering practices for customers in the same
4 rate class, either by employing a single, bidirectional meter that measures
5 the amount of electrical energy produced and consumed or by employing
6 multiple meters that separately measure the customer-generator's con-
7 sumption and production of electricity.
- 8 (b) If the electricity supplied by the supplier exceeds the electricity
9 generated by the customer-generator during a billing period, the cus-
10 tomer-generator shall be billed for the net electricity supplied by the
11 supplier in accordance with normal practices for customers in the same
12 rate class.
- 13 (c) If the electricity generated by the customer-generator exceeds the
14 electricity supplied by the supplier during a billing period, the customer-
15 generator shall be billed for the appropriate customer charges for that
16 billing period in accordance with section 15, and amendments thereto,
17 and shall be credited an amount at least equal to the avoided fuel cost of
18 the excess kilowatt-hours generated during the billing period, with this
19 credit applied to the following billing period.
- 20 (d) Any credits granted pursuant to this section shall expire without
21 any compensation at the earlier of either 12 months after their issuance
22 or when the customer-generator disconnects service or terminates the
23 net metering relationship with the supplier.
- 24 (e) For any electric cooperative utility or municipal electric utility,
25 upon agreement of the wholesale generator supplying electric energy to
26 the retail electric supplier, at the option of the retail electric supplier, the
27 credit to the customer-generator may be provided by the wholesale
28 generator.
- 29 New Sec. 18. (a) Each qualified electric energy generation unit used
30 by a customer-generator shall meet all applicable safety, performance,
31 interconnection and reliability standards established by any local code
32 authorities, the national electrical code, the national electrical safety code,
33 the institute of electrical and electronics engineers and underwriters lab-
34 oratories for distributed generation. No supplier shall impose any fee,
35 charge or other requirement not specifically authorized by the net me-
36 tering and east connection act or the rules and regulations promulgated
37 under such act unless the fee, charge or other requirement would apply
38 to similarly situated customers who are not customer-generators, except
39 that a retail electric supplier may require that a customer-generator's
40 system contain a switch, circuit breaker, fuse or other easily accessible
41 device or feature located in immediate proximity to the customer-gen-
42 erator's metering equipment that would allow a utility worker the ability
43 to manually and instantly disconnect the unit from the utility's electric

1 distribution system.

2 (b) For systems of 10 kilowatts or less, a customer-generator whose
3 system meets the standards specified by subsection (a) shall not be re-
4 quired to install additional controls, perform or pay for additional tests or
5 distribution equipment or purchase additional liability insurance beyond
6 what is required under subsection (a) and section 16, and amendments
7 thereto.

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

12 (1) Set forth safety, performance and reliability standards and
13 requirements; and

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

17 New Sec. 19. (a) Applications by a customer-generator for intercon-
18 nection of the qualified generation unit to the distribution system shall
19 be accompanied by the plan for the customer-generator's electrical gen-
20 erating system, including, but not limited to, a wiring diagram and spec-
21 ifications for the generating unit, and shall be reviewed and responded
22 to by the retail electric supplier within 30 days after receipt for systems
23 of 10 kilowatts or less and within 90 days after receipt for all other systems.
24 Prior to the interconnection of the qualified generation unit to the sup-
25 plier's system, the customer-generator will furnish the retail electric sup-
26 plier a certification from a qualified professional electrician or engineer
27 that the installation meets the requirements of subsection (a) of section
28 18, and amendments thereto. If the application for interconnection is
29 approved by the retail electric supplier and the customer-generator does
30 not complete the interconnection within one year after receipt of notice
31 of the approval, the approval shall expire and the customer-generator shall
32 be responsible for filing a new application.

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

36 New Sec. 20. Each retail electric supplier regulated by the commis-
37 sion shall submit an annual net metering report to the commission and
38 each other retail electric supplier shall submit the same report to its re-
39 spective governing body. The report shall include the following infor-
40 mation for the previous calendar year: The total number of customer-
41 generator facilities, the total estimated generating capacity of its
42 net-metered customer-generators and the total estimated net kilowatt-
43 hours received from customer-generators. The supplier shall make such

- 1 report available to any consumer of the supplier upon request.
- 2 New Sec. 21. Within nine months after the effective date of the net
3 metering and easy connection act, the commission shall adopt rules and
4 regulations necessary for the administration of such act for electric public
5 utilities, which shall include rules and regulations ensuring that simple
6 contracts will be used for interconnection and net metering. For systems
7 of 10 kilowatts or less, the application process shall use an all-in-one
8 document that includes a simple interconnection request, simple proce-
9 dures and a brief set of terms and conditions.
- 10 New Sec. 22. Within nine months after the effective date of the net
11 metering and easy connection act, the governing body of an electric co-
12 operative utility or electric municipal utility shall adopt policies establish-
13 ing a simple contract to be used for interconnection and net metering.
14 For systems of 10 kilowatts or less, the application process shall use an
15 all-in-one document that includes a simple interconnection request, sim-
16 ple procedures and a brief set of terms and conditions.
- 17 New Sec. 23. For any cause of action relating to any damages to
18 property or person caused by the generation unit of a customer-generator
19 or the interconnection thereof, the retail electric supplier shall have no
20 liability absent clear and convincing evidence of fault on the part of the
21 supplier.
- 22 New Sec. 24. The estimated generating capacity of all net metering
23 systems operating under the provisions of the net metering and easy con-
24 nection act shall count towards the respective retail electric supplier's
25 accomplishment of any renewable energy portfolio target or mandate
26 adopted by the Kansas legislature.
- 27 New Sec. 25. Any costs incurred under the net metering and easy
28 connection act by a retail electric supplier shall be recoverable in the
29 utility's rate structure.
- 30 New Sec. 26. No consumer shall connect or operate an electric gen-
31 eration unit in parallel phase and synchronization with any retail electric
32 supplier without written approval by such supplier that all of the require-
33 ments under subsection (a) of section 19, and amendments thereto, have
34 been met. For a consumer who violates this provision, a supplier may
35 immediately and without notice disconnect the electric facilities of such
36 consumer and terminate such consumer's electric service.
- 37 New Sec. 27. The manufacturer of any electric generation unit used
38 by a customer-generator may be held liable for any damages to property
39 or person caused by a defect in the electric generation unit of a customer-
40 generator.
- 41 New Sec. 28. The seller, installer or manufacturer of any electric
42 generation unit who knowingly misrepresents the safety aspects of an
43 electric generation unit may be held liable for any damages to property

1 or person caused by the electric generation unit of a customer-generator.
2 Sec. 29. K.S.A. 2007 Supp. 66-1,184 is hereby amended to read as
3 follows: 66-1,184. (a) Except as provided in subsection (b), every public
4 utility which provides retail electric services in this state shall enter into
5 a contract for parallel generation service with any person who is a cus-
6 tomer of such utility, upon request of such customer, whereby such cus-
7 tomer may attach or connect to the utility's delivery and metering system
8 an apparatus or device for the purpose of feeding excess electrical power
9 which is generated by such customer's energy producing system into the
10 utility's system. No such apparatus or device shall either cause damage
11 to the public utility's system or equipment or present an undue hazard
12 to utility personnel. Every such contract shall include, but need not be
13 limited to, provisions relating to fair and equitable compensation on such
14 customer's monthly bill for energy supplied to the utility by such
15 customer.

16 (b) (1) For purposes of this subsection:
17 (A) "Utility" means an electric public utility, as defined by K.S.A. 66-
18 101a, and amendments thereto, any cooperative, as defined by K.S.A. 17-
19 4603, and amendments thereto, or a nonstock member-owned electric
20 cooperative corporation incorporated in this state, or a municipally owned
21 or operated electric utility;
22 (B) "school" means Cloud county community college and Dodge City
23 community college.

24 (2) Every utility which provides retail electric services in this state
25 shall enter into a contract for parallel generation service with any person
26 who is a customer of such utility, if such customer is a residential customer
27 of the utility and owns a renewable generator with a capacity of 25 kilo-
28 watts or less, or is a commercial customer of the utility and owns a re-
29 newable generator with a capacity of 200 kilowatts or less or is a school
30 and owns a renewable generator with a capacity of 1.5 megawatts or less.
31 Such generator shall be appropriately sized for such customer's antici-
32 pated electric load. A commercial customer who uses the operation of a
33 renewable generator in connection with irrigation pumps shall not request
34 more than 10 irrigation pumps connected to renewable generators be
35 attached or connected to the utility's system. At the customer's delivery
36 point on the customer's side of the retail meter such customer may attach
37 or connect to the utility's delivery and metering system an apparatus or
38 device for the purpose of feeding excess electrical power which is gen-
39 erated by such customer's energy producing system into the utility's sys-
40 tem. No such apparatus or device shall either cause damage to the utility's
41 system or equipment or present an undue hazard to utility personnel.
42 Every such contract shall include, but need not be limited to, provisions
43 relating to fair and equitable compensation for energy supplied to the

1 utility by such customer. Such compensation shall be not less than 100%
2 of the utility's monthly system average cost of energy per kilowatt hour
3 except that in the case of renewable generators with a capacity of 200
4 kilowatts or less, such compensation shall be not less than 150% of the
5 utility's monthly system average cost of energy per kilowatt hour. A utility
6 may credit such compensation to the customer's account or pay such
7 compensation to the customer at least annually or when the total com-
8 pensation due equals \$25 or more.

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

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

16 (1) The utility will supply, own, and maintain all necessary meters
17 and associated equipment utilized for billing. In addition, and for the
18 purposes of monitoring customer generation and load, the utility may
19 install at its expense, load research metering. The customer shall supply,
20 at no expense to the utility, a suitable location for meters and associated
21 equipment used for billing and for load research;

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

28 (3) the customer shall furnish, install, operate, and maintain in good
29 order and repair and without cost to the utility, such relays, locks and
30 seals, breakers, automatic synchronizer, and other control and protective
31 apparatus as shall be designated by the utility as being required as suitable
32 for the operation of the generator in parallel with the utility's system. In
33 any case where the customer and the utility cannot agree to terms and
34 conditions of any such contract, the state corporation commission shall
35 establish the terms and conditions for such contract. In addition, the
36 utility may install, own, and maintain a disconnecting device located near
37 the electric meter or meters. Interconnection facilities between the cus-
38 tomer's and the utility's equipment shall be accessible at all reasonable
39 times to utility personnel. Upon notification by the customer of the cus-
40 tomer's intent to construct and install parallel generation, the utility shall
41 provide the customer a written estimate of all costs that will be incurred
42 by the utility and billed to the customer to accommodate the intercon-
43 nection. The customer may be required to reimburse the utility for any

1 equipment or facilities required as a result of the installation by the cus-
2 tomer of generation in parallel with the utility's service. The customer
3 shall notify the utility prior to the initial energizing and start-up testing
4 of the customer-owned generator, and the utility shall have the right to
5 have a representative present at such test;

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

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

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

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

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

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

37 Sec. 30. K.S.A. 2007 Supp. 65-3005 is hereby amended to read as
38 follows: 65-3005. The secretary shall have the power to:

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

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

- 1 (c) Issue such orders, permits and approvals as may be necessary to
2 effectuate the purposes of this act and enforce the same by all appropriate
3 administrative and judicial proceedings.
- 4 (d) Require access to records relating to emissions which cause or
5 contribute to air pollution.
- 6 (e) Prepare and develop a comprehensive plan or plans for the pre-
7 vention, abatement and control of air pollution originating in Kansas that
8 affects air quality in Kansas or in other states or both.
- 9 (f) Adopt rules and regulations governing such public notification and
10 comment procedures as authorized by this act.
- 11 (g) Encourage voluntary cooperation by persons or affected groups
12 to achieve the purposes of this act.
- 13 (h) (1) Encourage local units of government to handle air pollution
14 problems within their respective jurisdictions and on a cooperative basis;
15 (2) provide technical and consultative assistance therefor; and (3) enter
16 into agreements with local units of government to administer all or part
17 of the provisions of the Kansas air quality act in the units' respective
18 jurisdictions.
- 19 (i) Encourage and conduct studies, investigations and research relat-
20 ing to air contamination and air pollution and their causes, effects, pre-
21 vention, abatement and control.
- 22 (j) Encourage air contaminant emission sources to voluntarily imple-
23 ment strategies, including the development and use of innovative tech-
24 nologies, market-based principles and other private initiatives to reduce
25 or prevent pollution.
- 26 (k) Determine by means of field studies and sampling the degree of
27 air contamination and air pollution in the state and the several parts
28 thereof.
- 29 (l) Establish ambient air quality standards for the state as a whole or
30 for any part thereof.
- 31 (m) Collect and disseminate information and conduct educational
32 and training programs relating to air contamination and air pollution.
- 33 (n) Advise, consult and cooperate with other agencies of the state,
34 local governments, industries, other states, interstate or interlocal agen-
35 cies, and the federal government, and with interested persons or groups.
- 36 (o) Accept, receive and administer grants or other funds or gifts from
37 public and private entities, including the federal government, for the pur-
38 pose of carrying out any of the functions of this act. Such funds received
39 by the secretary pursuant to this section shall be deposited in the state
40 treasury to the account of the department of health and environment.
- 41 (p) Enter into contracts and agreements with other state agencies or
42 subdivisions, local governments, other states, interstate agencies, the fed-
43 eral government or its agencies or private entities as is necessary to ac-

- 1 compish the purposes of the Kansas air quality act.
- 2 (q) Conduct or participate in intrastate or interstate emissions trading
3 programs or other programs that demonstrate equivalent air quality ben-
4 efits for the prevention, abatement and control of air pollution in Kansas
5 or in other states or both.
- 6 (r) Prepare and adopt a regional haze plan as may be necessary to
7 prevent, abate and control air pollution originating in Kansas that affects
8 air quality in Kansas or in other states or both. Any regional haze plan
9 prepared by the secretary shall be no more stringent than is required by
10 42 U.S.C. 7491.
- 11 (s) Participate in the activities of any visibility transport commission
12 established under 42 U.S.C. 7492. The secretary shall report to the gov-
13 ernor and the legislature on the activities of any such visibility transport
14 commission annually.
- 15 (t) *Implement the federal clean air act (42 U.S.C. 7401 et seq., here-*
16 *inafter referred to as the "federal act").*
- 17 (1) *It is the policy of this state to prevent the deterioration of air*
18 *quality by means including, but not limited to, the following:*
- 19 (A) *The secretary shall not in the exercise of powers and duties, except*
20 *as provided below, promulgate any rule and regulation, or issue any order*
21 *or take any other action under any provision of the Kansas air quality*
22 *act or other provision of law, that is more stringent, restrictive or expan-*
23 *sive than required by the federal act or any rule and regulation adopted*
24 *by the United States environmental protection agency under the federal*
25 *act, as amended. If the secretary determines that a more stringent, re-*
26 *strictive or expansive rule and regulation is necessary, the secretary may*
27 *implement the rule and regulation only after approval by an act of the*
28 *legislature; provided however, nothing herein shall preclude the secretary*
29 *and applicant or permittee from concurring with a more stringent, re-*
30 *strictive or expansive condition in a permit to construct or operate a sta-*
31 *tionary source.*
- 32 (B) *The restrictions of the secretary's powers herein shall not apply*
33 *to an implementation plan developed by the secretary to bring a non-*
34 *attainment area into compliance or to maintain compliance as that plan*
35 *is implemented within the non-attainment area.*
- 36 (C) *For any application for a permit required by federal or state law,*
37 *the secretary shall not deny or delay the issuance of such permit when*
38 *the requirements of this act have been met.*
- 39 (2) *In as much as K.S.A. 65-3012, and amendments thereto, does not*
40 *now apply, nor has it ever been applicable, to the air quality permitting*
41 *process, the secretary may not use the emergency powers granted by*
42 *K.S.A. 65-3012, and amendments thereto, in the air quality permitting*
43 *process, nor any powers or discretion under any other statute no strictly*

1 applicable to the air quality permitting process.

2 (3) Any action by the secretary on any application filed after January
3 1, 2006, and before the effective date of this act, which seeks the issuance,
4 modification, amendment, revision or renewal of any approval or permit,
5 and which is still the subject of any administrative or judicial review
6 proceedings, shall be reconsidered by the secretary upon the applicant's
7 or permittee's timely written request, which must be filed no later than
8 60 days after the effective date of this act. Within 15 days after the ap-
9 plicant or permittee files a written request pursuant hereto, the secretary
10 shall reconsider the secretary's decision, agency action or order and shall
11 determine in accordance with the provisions of this act, as amended,
12 whether the issuance, modification, amendment, revision or renewal of
13 any approval or permit requested by the permittee or applicant should
14 be issued, modified, amended, revised or renewed. If the applicant or
15 permittee is aggrieved by the secretary's determination hereunder, the
16 applicant or permittee shall be immediately entitled to judicial review of
17 such agency action by filing a petition for judicial review in the court of
18 appeals within 30 days from the date of the secretary's determination. If
19 the secretary fails to act within the 15 days, the applicant or permittee
20 immediately shall be entitled to seek a writ of mandamus compelling the
21 secretary to act by filing for such writ in the court of appeals. Such pro-
22 ceedings shall be conducted in accordance with K.S.A. 77-601 et seq., and
23 amendments thereto, however the applicant or permittee shall not be re-
24 quired to exhaust any other or additional administrative remedies avail-
25 able within the agency notwithstanding any other provision of law.

26 Sec. 31. K.S.A. 2007 Supp. 65-3008a is hereby amended to read as
27 follows: 65-3008a. (a) No permit shall be issued, modified, renewed or
28 reopened without first providing the public an opportunity to comment
29 and request a public hearing on the proposed permit action. The request
30 for a public hearing on the issuance of a permit shall set forth the basis
31 for the request and a public hearing shall be held if, in the judgment of
32 the secretary, there is sufficient reason.

33 (b) The secretary shall affirm, modify or reverse the decision on such
34 permit after the public comment period or public hearing, and shall af-
35 firm the issuance of any permit the terms and conditions of which comply
36 with all requirements established by rules and regulations promulgated
37 pursuant to the Kansas air quality act. Any person who participated in
38 the public comment process or the public hearing who otherwise would
39 have standing under K.S.A. 77-611, and amendments thereto, shall have
40 standing to obtain judicial review of the secretary's final action on the
41 permit pursuant to the act for judicial review and civil enforcement of
42 agency actions in the court of appeals. Any such person other than the
43 applicant for or holder of the permit shall not be required to have ex-

1 exhausted administrative remedies in order to be entitled to review. The
2 court of appeals shall have original jurisdiction to review any such final
3 agency action. The record before the court of appeals shall be confined
4 to the agency record for judicial review and consist of the documentation
5 submitted to or developed by the secretary in making the final permit
6 decision, including the permit application and any addenda or amend-
7 ments thereto, the permit summary, the draft permit, all written com-
8 ments properly submitted to the secretary, all testimony presented at any
9 public hearing held on the permit application, all responses by the ap-
10 plicant or permit holder to any written comments or testimony, the sec-
11 retary's response to the public comments and testimony and the final
12 permit.

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

16 Sec. 32. K.S.A. 65-3008b is hereby amended to read as follows: 65-
17 3008b. (a) The secretary may suspend or revoke an approval or a permit
18 if the permittee has violated any provision of the approval or the permit,
19 any provision of this act or any rule and regulation adopted under this act
20 and applicable to the permitted source.

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

25 (c) The secretary may deny a permit for any proposed new stationary
26 source if the owner or operator of such a source fails to demonstrate to
27 the satisfaction of the secretary that any other stationary source owned
28 or operated by such person, or by any entity controlling, controlled by or
29 under common control with such person, in this state is in compliance,
30 or meeting a schedule for compliance, with all applicable emission limi-
31 tations and standards under this act and the federal clean air act, and
32 amendments thereto.

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

40 (e) Within 15 days after the issuance of a notice of intent to take any
41 action authorized by subsection (a), (b), (c) or (d), or within 15 days after
42 the secretary's written decision to affirm, modify or reverse a permit de-
43 cision pursuant to subsection (b) of K.S.A. 65-3008a, the permittee may

1 file a request for a hearing with the secretary. Each such notice of intent
2 shall specify the provision of this act or rule and regulation allegedly
3 violated, the facts constituting the alleged violation and the secretary's
4 intended action. Each notice of intent or written decision to affirm, mod-
5 ify or reverse a permit decision shall state the permittee's right to request
6 a hearing. Such hearing shall be conducted in accordance with the Kansas
7 administrative procedure act.

8 (f) The filing of a request by the permittee for an approval or permit
9 modification, revocation or amendment, or the filing by the permittee of
10 a notification of planned changes or anticipated noncompliance, does not
11 stay any approval or permit condition.

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

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

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

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

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

1 (i) Failure of the secretary to issue or deny the permit, or grant or
2 deny a request to modify or reopen the permit, within the period stated
3 in subsection (h) shall not result in the default issuance of a permit, permit
4 amendment, permit modification or permit renewal nor shall such failure
5 result in any other entity assuming jurisdiction to act on the permit or
6 the request.

7 Sec. 33. K.S.A. 65-3012 is hereby amended to read as follows: 65-
8 3012. (a) Notwithstanding any other provision of this act, the secretary
9 may take such action *against any existing source* as may be necessary to
10 protect the health of persons or the environment: (1) Upon receipt of
11 information that the emission of air pollution presents ~~a~~ *an imminent and*
12 *substantial endangerment* to the health of persons or to the environment;
13 or (2) for an imminent or actual violation of this act, any rules and reg-
14 ulations adopted under this act, any orders issued under this act or any
15 permit conditions required by this act.

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

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

22 (2) Commencing an action to enjoin acts or practices specified in
23 subsection (a) or requesting the attorney general or appropriate county
24 or district attorney to commence an action to enjoin those acts or prac-
25 tices. Upon a showing by the secretary that a person has engaged in those
26 acts or practices, a permanent or temporary injunction, restraining order
27 or other order may be granted by any court of competent jurisdiction. An
28 action for injunction under this subsection shall have precedence over
29 other cases in respect to order of trial.

30 (3) Applying to the district court in the county in which an order of
31 the secretary under subsection (b)(1) will take effect, in whole or in part,
32 for an order of that court directing compliance with the order of the
33 secretary. Failure to obey the court order shall be punishable as contempt
34 of the court issuing the order. The application under this subsection for
35 a court order shall have precedence over other cases in respect to order
36 of trial.

37 (c) In any civil action brought pursuant to this section in which a
38 temporary restraining order or preliminary injunction is sought, it shall
39 not be necessary to allege or prove at any stage of the proceeding that
40 irreparable damage will occur should the temporary restraining order or
41 preliminary injunction not be issued or that the remedy at law is inade-
42 quate, and the temporary restraining order or preliminary injunction shall
43 issue without such allegations and without such proof.

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

4 Sec. 34. K.S.A. 66-104d is hereby amended to read as follows: 66-
5 104d. (a) As used in this section, "cooperative" means any cooperative,
6 ~~as defined by K.S.A. 17-4603, and amendments thereto, which has fewer~~
7 ~~than 15,000 customers and which provides power principally at retail~~
8 *member-owned corporation or limited liability company providing elec-*
9 *tric service either at retail or wholesale in the state of Kansas.*

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

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

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

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

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

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

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

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

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

41 (f) Nothing in this section shall be construed to affect the single cer-
42 tified service territory of a cooperative or the authority of the state cor-
43 poration commission, as otherwise provided by law, over a cooperative

1 with regard to service territory, charges, *fees or tariffs* for transmission
2 services, sales of power for resale *other than sales between a member-*
3 *owned generation and transmission cooperative and a member of such*
4 *cooperative*, wire stringing and transmission line siting, pursuant to K.S.A.
5 66-131, 66-183, 66-1,170 et seq. or 66-1,177 et seq., and amendments
6 thereto.

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

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

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

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

39 (2) Violations of subsection (h)(1) shall be subject to civil penalties
40 and enforcement in the same manner as provided by K.S.A. 75-4320 and
41 75-4320a, and amendments thereto, for violations of K.S.A. 75-4317 et
42 seq. and amendments thereto.

43 (i) (1) Any cooperative exempt under this section shall maintain a

1 schedule of rates and charges at the cooperative headquarters and shall
2 make copies of such schedule of rates and charges available to the general
3 public during regular business hours.

4 (2) Any cooperative which fails, neglects or refuses to maintain such
5 copies of schedule of rates and charges under this subsection shall be
6 subject to a civil penalty of not more than \$500.

7 New Sec. 35. If any provision of this act or its application to any
8 person or circumstance is held invalid, the invalidity shall not affect any
9 other provision or application of the act which can be given effect without
10 the invalid provision or application. To this end the provisions of this act
11 are severable.

12 Sec. 36. K.S.A. 65-3008b, 65-3012 and 66-104d and K.S.A. 2007
13 Supp. 65-3005, 65-3008a and 66-1,184 are hereby repealed.

14 Sec. 37. This act shall take effect and be in force from and after its
15 publication in the Kansas register.