

SENATE Substitute for HOUSE BILL No. 2919

By Committee on Utilities

4-2

9 AN ACT concerning energy; relating to conservation and electric gen-
10 eration, transmission and efficiency and air emissions; amending
11 K.S.A. 65-3008b, 65-3012 and 66-104d and K.S.A. 2007 Supp. 65-
12 3005, 65-3008a, 66-1,184 and 74-616 and repealing the existing
13 sections.

14

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

16 New Section 1. (a) Any pulverized coal electricity generating facility
17 which is constructed in Kansas after the effective date of this act, has
18 1,400 megawatts or more nameplate capacity and is co-located with an
19 existing coal-fired electric generating unit in western Kansas that has
20 greater than 325 megawatts nameplate capacity shall meet the following
21 emission limits: (1) Nitrogen oxides, an annual rate of 0.050 lbs/mmBtu;
22 and (2) sulfur dioxide, an annual rate of 0.065 lbs/mmBtu for low-sulfur
23 coal (coal having a scrubber inlet emission rate less than 0.9 lbs/mmBtu)
24 or 0.085 lbs/mmBtu for high-sulfur coal (coal having a scrubber inlet
25 emission rate equal to or greater than 0.9 lbs/mmBtu).

26 (b) The emissions limits in this section shall be set forth in the con-
27 struction permit pursuant to the Kansas air quality act.

28 New Sec. 2. (a) As used in this section “public utility” means an
29 electric public utility, as defined in K.S.A. 66-101a, and amendments
30 thereto, but does not include any municipally owned or operated electric
31 utility.

32 (b) Each public utility selling energy at retail shall, no later than July
33 1, 2009, develop and submit to the state corporation commission for ap-
34 proval a retail tariff providing for the purchase by the utility’s retail cus-
35 tomers of energy from a commercial wind generation resource. Such wind
36 generation resource shall be either owned by the public utility or owned
37 by another generator from which the public utility or its member-owned
38 wholesale provider purchases the energy. If a public utility selling energy
39 at retail does not own wind generation and does not purchase wind energy
40 from a commercial wind generator, and if the utility’s member-owned
41 wholesale provider, if any, owns no wind generation, the public utility
42 shall not be required to submit such tariff for approval.

43 (c) Each public utility shall develop energy efficiency and load man-

1 agement programs which provide information, technical assistance and
2 incentives to each type of customer and customer class to control energy
3 use. No later than July 1, 2010, each public utility shall submit to the
4 state corporation commission a report setting forth the elements of the
5 utility's energy efficiency and load management programs.

6 (d) Each public utility shall develop, or work with regional or local
7 organizations to develop, and implement a voluntary conservation pro-
8 gram to assist businesses and institutions in: (1) Inventorying and assess-
9 ing the emissions of greenhouse gases from purchased electricity, heat or
10 steam and, where feasible, indirect emissions from activities of the busi-
11 ness or institution; and (2) developing methods and practices to reduce
12 such emissions while taking into consideration the economic impact of
13 such methods and practices.

14 New Sec. 3. (a) As used in this section:

15 (1) "Electric cooperative utility" means any corporation which sells
16 electric energy at retail and which is organized under the electric coop-
17 erative act, K.S.A. 17-4601 et seq., and amendments thereto, or becomes
18 subject to the electric cooperative act in the manner in such act.

19 (2) "Generation and transmission utility" means any public utility op-
20 erating a pulverized coal electricity generating facility which is con-
21 structed in Kansas after the effective date of this act, has 1,400 megawatts
22 or more nameplate capacity and is co-located with an existing coal-fired
23 electric generating unit in western Kansas that has greater than 325 me-
24 gawatts nameplate capacity.

25 (3) "Municipal utility" means any Kansas municipality which owns or
26 operates an electric utility and sells electric energy at retail.

27 (4) "Public utility" means an electric public utility as defined in K.S.A.
28 66-101a, and amendments thereto.

29 (b) Upon request by any municipal utility or any electric cooperative
30 utility to purchase electric energy from a generation and transmission
31 utility, the generation and transmission utility shall make application to
32 the southwest power pool to make a determination of the transmission
33 line upgrades necessary to deliver the purchased electricity to such mu-
34 nicipal utility or electric cooperative utility and the appropriate cost re-
35 covery mechanism under southwest power pool tariffs and rules. Costs of
36 studies or upgrades, if any, shall be the responsibility of the requesting
37 municipal utility or electric cooperative utility.

38 New Sec. 4. As used in sections 4 through 8, and amendments
39 thereto:

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

42 (b) "Energy star" means the joint program of the United States en-
43 vironmental protection agency and the United States department of en-

1 ergy which labels certain products that meet energy efficiency standards
2 adopted for such products.

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

4 (d) "New state building" means any building or structure which is
5 constructed by the state or any agency of the state and the construction
6 of which commences on or after July 1, 2009.

7 New Sec. 5. The secretary of administration shall adopt rules and
8 regulations for state agencies for the purchase of products and equipment,
9 including, but not limited to, appliances, lighting fixtures and bulbs, and
10 computers, which meet energy efficiency guidelines which are not less
11 than the guidelines adopted for such products to qualify as an energy star
12 product if the projected cost savings for the useful life of such products
13 and equipment is equal to or greater than the additional cost compared
14 to functionally equivalent such products and equipment of lower
15 efficiency.

16 New Sec. 6. (a) The department of administration shall collect data
17 on energy consumption and costs for all state-owned and leased real prop-
18 erty and the secretary of administration shall submit a written report to
19 the legislature on or before the first day of the 2009 regular session of
20 the legislature and on or before the first day of each ensuing regular
21 session of the legislature identifying state-owned or leased real property
22 locations in which an excessive amount of energy is being used in ac-
23 cordance with rules and regulations adopted by the secretary of admin-
24 istration concerning energy efficiency performance standards for state-
25 owned or leased real property.

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

33 New Sec. 7. (a) Within the limitations of appropriations therefor, the
34 Kansas energy office of the state corporation commission shall develop
35 and increase the participation of school districts and local governments
36 in the facilities conservation improvements program (FCIP) pursuant to
37 K.S.A. 75-37,125, and amendments thereto.

38 (b) The state corporation commission shall strongly encourage state
39 agencies which operate and maintain state-owned buildings that are not
40 participating in the FCIP to participate in the FCIP pursuant to K.S.A.
41 75-37,125, and amendments thereto, on or before December 1, 2010.

42 New Sec. 8. The secretary of administration shall adopt rules and
43 regulations prescribing energy efficiency performance standards requir-

1 ing that all new construction and, to the extent possible, renovated state-
2 owned buildings, be designed and constructed to achieve energy con-
3 sumption levels that are at least 10% below the levels established under
4 the ASHRAE standard or the IECC, as appropriate, if such levels of
5 energy consumption are life-cycle cost-effective for such buildings and
6 also recommending that new and, to the extent possible, renovated school
7 and municipal buildings meet the same requirements.

8 New Sec. 9. (a) There is hereby established the Kansas electric gen-
9 eration, science and technology commission. The commission shall be
10 made up of the following 15 members:

11 (1) Chairperson of the house committee on energy and utilities, or
12 the chairperson's appointee, to be appointed from the house committee
13 on energy and utilities, or its successor, for the appointee's legislative
14 term;

15 (2) vice-chairperson of the house committee on energy and utilities,
16 or the vice-chairperson's appointee, to be appointed from the house com-
17 mittee on energy and utilities, or its successor, for the appointee's legis-
18 lative term;

19 (3) ranking minority member of the house committee on energy and
20 utilities, or the ranking minority member's appointee, to be appointed
21 from the house committee on energy and utilities, or its successor, for
22 the appointee's legislative term;

23 (4) chairperson of the senate committee on utilities, or the chairper-
24 son's appointee, to be appointed from the senate committee on utilities,
25 or its successor, for the appointee's legislative term;

26 (5) vice-chairperson of the senate committee on utilities, or the vice-
27 chairperson's appointee, to be appointed from the senate committee on
28 utilities, or its successor, for the appointee's legislative term;

29 (6) ranking minority member of the senate committee on utilities, or
30 the ranking minority member's appointee, to be appointed from the sen-
31 ate committee on utilities, or its successor, for the appointee's legislative
32 term;

33 (7) chief of energy operations of the state corporation commission
34 who shall serve as a nonvoting member of the commission;

35 (8) director of the division of environment in the Kansas department
36 of health and environment who shall serve as a nonvoting member of the
37 commission;

38 (9) one member appointed by the governor;

39 (10) two members appointed by the speaker of the house of
40 representatives;

41 (11) one member appointed by the minority leader of the house of
42 representatives;

43 (12) two members appointed by the president of the senate; and

- 1 (13) one member appointed by the minority leader of the senate.
- 2 (b) Appointments made in (a)(9) through (a)(13) shall have one of
- 3 the following qualifications, but no more than two members appointed
- 4 shall fall into any one qualification category:
 - 5 (1) Expertise in global greenhouse gas regulation or practices or
 - 6 climatology;
 - 7 (2) expertise in energy conservation;
 - 8 (3) expertise in baseload generation and regulation; or
 - 9 (4) expertise in renewable energy resources.
- 10 (c) The chairperson of the house committee on energy and utilities,
- 11 or its successor, or the chairperson's appointee, shall call the first meeting,
- 12 at which time the members shall elect the chairperson and vice-chair-
- 13 person of the commission. The commission shall meet at least four times
- 14 a year on call of the chairperson. A majority of the members of the com-
- 15 mission or their appointees shall constitute a quorum for the exercise of
- 16 powers conferred upon the commission.
- 17 (d) The commission is hereby granted such specific powers as are
- 18 necessary to carry out the functions enumerated in this section. The com-
- 19 mission shall examine issues related to electric service in this state, in-
- 20 cluding, but not limited to:
 - 21 (1) The actions of federal and regional entities regarding electric gen-
 - 22 eration and transmission;
 - 23 (2) the obligations of all entities that generate, transmit or distribute
 - 24 electricity;
 - 25 (3) the economic impact of generation, transmission and distribution
 - 26 of electricity on community economic development and on electric rates
 - 27 for various classes of customers;
 - 28 (4) the impact of electric generation and transmission on the state's
 - 29 environment and types of remediation that may be required to limit un-
 - 30 desirable impacts;
 - 31 (5) the social impact on Kansas residents of various methods of gen-
 - 32 eration and transmission of electricity;
 - 33 (6) the impact on state and local tax revenues of the various means
 - 34 of generating and transmitting electricity;
 - 35 (7) the adequacy of the state's capacity to generate electricity in light
 - 36 of current and future needs of the state, region and nation;
 - 37 (8) the impact of conservation on the need for expansion of electric
 - 38 generation capacity in the short and long term;
 - 39 (9) the fuel portfolio balance of the state's electric generation
 - 40 facilities;
 - 41 (10) the effectiveness of existing incentives for renewable energy
 - 42 investment;
 - 43 (11) other states' existing incentives for renewable energy investment;

1 and
2 (12) the reports and recommendations of the electricity committee
3 of the Kansas energy council.
4 (e) The commission shall submit a preliminary written report of the
5 activities and recommendations of the commission to the house commit-
6 tee on energy and utilities and the senate committee on utilities on or
7 before the first day of the 2009 regular session of the legislature and shall
8 submit subsequent written reports on or before the first day of each
9 subsequent regular session of the legislature. The commission shall sub-
10 mit a final written report of its activities and recommendations on or
11 before the first day of the 2012 regular session of the legislature. The
12 final written report of the commission shall include, but not be limited
13 to, recommendations for:
14 (1) New incentives for development of a diversified electricity gen-
15 eration portfolio;
16 (2) an appropriate energy generation portfolio goal, or series of goals,
17 taking into consideration regional and national markets;
18 (3) laws, rules and regulations, and policies needed to facilitate di-
19 versification of the electricity generation portfolio; and
20 (4) any additional studies related to the commission's charge that
21 might appropriately be undertaken by the Kansas research universities.
22 (f) The commission may receive and expend moneys appropriated to
23 the commission from the public service regulation fund created by K.S.A.
24 66-1a01, and amendments thereto, and moneys received from any other
25 source, whether public or private, to further the purposes of this section.
26 (g) Commission members shall be paid compensation, subsistence
27 allowances, mileage and other expenses as provided by K.S.A. 75-3223,
28 and amendments thereto, for each day of actual attendance at any meet-
29 ing of the commission or any subcommittee meeting approved by the
30 commission.
31 (h) The state corporation commission shall provide assistance to the
32 commission. Each other state agency shall provide assistance to the com-
33 mission as may be requested by the commission.
34 (i) The provisions of this section shall expire on December 31, 2011,
35 unless extended by statute.
36 New Sec. 10. As used in this section:
37 (a) (1) "Affected facility" means a coal-fired steam electricity gen-
38 erating unit commencing operation after January 1, 2008, of more than
39 250 million British thermal units per hour of heat input other than:
40 (A) An affected facility owned or operated by the federal government;
41 or
42 (B) an affected facility on tribal lands.
43 (2) "Best available control technology" means an emissions limitation,

1 including a visible emission standard, based on the maximum degree of
2 reduction for each pollutant subject to regulation under this section which
3 would be emitted from any proposed major stationary source or major
4 modification which the secretary, on a case-by-case basis, taking into ac-
5 count energy, environmental and economic impacts and other costs, de-
6 termines is achievable for such source or modification through application
7 of production processes or available methods, systems and techniques,
8 including fuel cleaning or treatment or innovative fuel combustion tech-
9 niques for control of such pollutant. In no event shall application of best
10 available control technology result in emissions of any pollutant which
11 would exceed the emissions allowed by any applicable standard under 40
12 C.F.R. parts 60 and 61. If the secretary determines that technological or
13 economic limitations on the application of measurement methodology to
14 a particular emissions unit would make the imposition of an emissions
15 standard infeasible, a design, equipment, work practice, operational stan-
16 dard or combination thereof, may be prescribed instead to satisfy the
17 requirement for the application of best available control technology. Such
18 standard shall, to the degree possible, set forth the emissions reduction
19 achievable by implementation of such design, equipment, work practice
20 or operation, and shall provide for compliance by means which achieve
21 equivalent results.

22 (b) In the event rules and regulations regulating the emission of car-
23 bon dioxide from affected facilities are established in accordance with
24 subsection (b)(1) of K.S.A. 65-3005, and amendments thereto, the owner
25 or operator of an affected facility shall engage in the capture or reduction
26 of carbon dioxide using the best available control technology, or such
27 other means or methodology proven to mitigate the emission of carbon
28 dioxide from the affected facility. If best available control technology is
29 applied, the owner or operator shall not be required to reapply best avail-
30 able control technology thereafter unless otherwise required because of
31 a major modification to the affected facility. The issuance of any air permit
32 shall not be delayed or deferred pending the establishment of any rules
33 and regulations regulating carbon dioxide.

34 New Sec. 11. (a) (1) By the year 2012, for each public utility, the
35 nameplate capacity of the renewable electric generation facilities included
36 in the public utility's generation portfolio, whether owned by the public
37 utility or contracted for energy purchase by the public utility, shall be no
38 less than 10% of the public utility's peak load, expressed in megawatts,
39 in the state of Kansas, for a three-year average for the 2008, 2009 and
40 2010 calendar years.

41 (2) By the year 2016, for each public utility, the nameplate capacity
42 of the renewable electric generation facilities included in the public util-
43 ity's generation portfolio, whether owned by the public utility or con-

1 tracted for energy purchase by the public utility, shall be no less than
2 15% of the public utility's peak load, expressed in megawatts, in the state
3 of Kansas, for a three-year average for the 2012, 2013 and 2014 calendar
4 years.

5 (3) By the year 2020, for each public utility, the nameplate capacity
6 of the renewable electric generation facilities included in the public util-
7 ity's generation portfolio, whether owned by the public utility or con-
8 tracted for energy purchase by the public utility, shall be no less than
9 20% of the public utility's peak load, expressed in megawatts, in the state
10 of Kansas, for a three-year average for the 2016, 2017 and 2018 calendar
11 years.

12 (b) The state corporation commission shall establish rules and regu-
13 lations to govern reporting requirements and prevention of duplication
14 of the application of the requirements of this section.

15 (c) As used in this section:

16 (1) "Public utility" means an electric public utility, as defined in
17 K.S.A. 66-101a, and amendments thereto, but does not include any por-
18 tion of any municipally owned or operated electric utility; and

19 (2) "renewable electric generation facilities" means facilities gener-
20 ating electricity utilizing renewable energy resources or technologies, as
21 defined in K.S.A. 79-201, and amendments thereto, and the capacity of
22 all net metering systems operating under the net metering and easy con-
23 nection act.

24 New Sec. 12. Sections 12 through 28, and amendments thereto, shall
25 be known and may be cited as the net metering and easy connection act.

26 New Sec. 13. As used in the net metering and easy connection act:

27 (a) "Avoided energy cost" means the current average cost of fuel and
28 purchased energy for the preceding 12 months for the utility, or in the
29 case of a non-generating utility, for such utility's wholesale power sup-
30 plier, as defined by the governing body with jurisdiction over any munic-
31 ipal electric utility, electric cooperative utility or electric public utility.

32 (b) "Commission" means the state corporation commission.

33 (c) "Customer-generator" means the owner or operator of a qualified
34 electric energy generation unit which:

35 (1) Is powered by solar thermal sources or photovoltaic cells and
36 panels;

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

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

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

- 1 (5) is intended primarily to offset part or all of the customer-gener-
2 ator's own electrical energy requirements;
- 3 (6) meets all applicable safety, performance, interconnection and re-
4 liability standards established by the national electrical code, the national
5 electrical safety code, the institute of electrical and electronics engineers,
6 underwriters laboratories, the federal energy regulatory commission and
7 any local governing authorities; and
- 8 (7) contains a mechanism accessible by electric utility personnel that
9 automatically disables the unit and interrupts the flow of electricity back
10 onto the supplier's electricity lines in the event that service to the cus-
11 tomer-generator is interrupted.
- 12 (d) "Net metering" means using metering equipment sufficient to
13 measure the difference between the electrical energy supplied to a cus-
14 tomer-generator by a retail electric supplier and the electrical energy
15 supplied by the customer-generator to the retail electric supplier over the
16 applicable billing period.
- 17 (e) "Retail electric supplier" means any municipal electric utility,
18 electric cooperative utility or electric public utility which provides retail
19 electric service in this state.
- 20 New Sec. 14. A retail electric supplier shall:
- 21 (a) Make net metering available to customer-generators on a first-
22 come, first-served basis, subject to the following: (1) A supplier shall not
23 be required to make net metering available in a calendar year if total
24 rated generating capacity of all applications for interconnection already
25 approved by the supplier in the calendar year equals or exceeds 1% of
26 the supplier's single-hour peak load for the previous calendar year; and
27 (2) a supplier shall not be required to make net metering available to a
28 customer-generator if the total rated generating capacity of net metering
29 systems equals; (A) 5% of the supplier's Kansas single-hour peak load
30 during the previous year; or (B) such higher percentage as specified by
31 the commission, for a public utility, or the governing body, for any other
32 utility, once the total rated generating capacity of net metering systems
33 has reach 5% of the supplier's single-hour peak load during the previous
34 year;
- 35 (b) offer to the customer-generator a tariff or contract that is identical
36 in electrical energy rates, rate structure and monthly charges to the con-
37 tract or tariff that the customer would be assigned if the customer were
38 not an eligible customer-generator but shall not charge the customer-
39 generator any additional standby, capacity, interconnection or other fee
40 or charge that would not otherwise be charged if the customer were not
41 an eligible customer-generator; and
- 42 (c) disclose annually the availability of the net metering program to
43 each of its customers with the method and manner of disclosure being at

1 the discretion of the supplier.

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

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

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

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

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

39 (c) If the electricity generated by the customer-generator exceeds the
40 electricity supplied by the supplier during a billing period, the customer-
41 generator shall be billed for the appropriate customer charges for that
42 billing period in accordance with section 14, and amendments thereto,
43 and shall be credited an amount at least equal to 150% of the avoided

1 energy cost for the excess kilowatt-hours generated during the billing
2 period, with this credit applied to the following billing period.

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

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

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

28 (b) For systems of 10 kilowatts or less, a customer-generator whose
29 system meets the standards specified by subsection (a) shall not be re-
30 quired to install additional controls, perform or pay for additional tests or
31 distribution equipment or purchase additional liability insurance beyond
32 what is required under subsection (a) and section 15, and amendments
33 thereto.

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

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

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

43 New Sec. 19. (a) Applications by a customer-generator for intercon-

1 nection of the qualified generation unit to the distribution system shall
2 be accompanied by the plan for the customer-generator's electrical gen-
3 erating system, including, but not limited to, a wiring diagram and spec-
4 ifications for the generating unit, and shall be reviewed and responded
5 to by the retail electric supplier within 30 days after receipt for systems
6 of 10 kilowatts or less and within 90 days after receipt for all other systems.
7 Prior to the interconnection of the qualified generation unit to the sup-
8 plier's system, the customer-generator will furnish the retail electric sup-
9 plier a certification from a qualified professional electrician or engineer
10 that the installation meets the requirements of subsection (a) of section
11 18, and amendments thereto. If the application for interconnection is
12 approved by the retail electric supplier and the customer-generator does
13 not complete the interconnection within one year after receipt of notice
14 of the approval, the approval shall expire and the customer-generator shall
15 be responsible for filing a new application.

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

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

30 New Sec. 21. Within nine months after the effective date of the net
31 metering and easy connection act, the commission shall adopt rules and
32 regulations necessary for the administration of such act for electric public
33 utilities, which shall include rules and regulations ensuring that simple
34 contracts will be used for interconnection and net metering. For systems
35 of 10 kilowatts or less, the application process shall use an all-in-one
36 document that includes a simple interconnection request, simple proce-
37 dures and a brief set of terms and conditions.

38 New Sec. 22. Within nine months after the effective date of the net
39 metering and easy connection act, the governing body of an electric co-
40 operative utility or electric municipal utility shall adopt policies establish-
41 ing a simple contract to be used for interconnection and net metering.
42 For systems of 10 kilowatts or less, the application process shall use an
43 all-in-one document that includes a simple interconnection request, sim-

1 ple procedures and a brief set of terms and conditions.

2 New Sec. 23. For any cause of action relating to any damages to
3 property or person caused by the generation unit of a customer-generator
4 or the interconnection thereof, the retail electric supplier shall have no
5 liability absent clear and convincing evidence of fault on the part of the
6 supplier.

7 New Sec. 24. The estimated generating capacity of all net metering
8 systems operating under the provisions of the net metering and easy con-
9 nnection act shall count towards accomplishment by the respective retail
10 electric supplier, or the wholesale generator supplying electric energy to
11 the retail electric supplier, of any renewable energy portfolio target or
12 mandate adopted by the Kansas legislature.

13 New Sec. 25. Any costs incurred under the net metering and easy
14 connection act by a retail electric supplier shall be recoverable in the
15 utility's rate structure.

16 New Sec. 26. No consumer shall connect or operate an electric gen-
17 eration unit in parallel phase and synchronization with any retail electric
18 supplier without written approval by such supplier that all of the require-
19 ments under subsection (a) of section 19, and amendments thereto, have
20 been met. For a consumer who violates this provision, a supplier may
21 immediately and without notice disconnect the electric facilities of such
22 consumer and terminate such consumer's electric service.

23 New Sec. 27. The manufacturer of any electric generation unit used
24 by a customer-generator may be held liable for any damages to property
25 or person caused by a defect in the electric generation unit of a customer-
26 generator.

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

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

1 customer.

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

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

8 (B) "school" means Cloud county community college and Dodge City
9 community college; *and*

10 (C) *"avoided energy cost" means the average cost of fuel and pur-*
11 *chased energy for the preceding 12 months for the utility, or in the case*
12 *of a non-generating utility, such utility's wholesale power supplier, as*
13 *defined by the governing body with jurisdiction over any electric coop-*
14 *erative utility or electric public utility.*

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

43 (3) *A customer-generator, as defined by section 13, and amendments*

1 *thereto, shall have the option of entering into a contract pursuant to this*
2 *subsection (b) or utilizing the net metering and easy connection act. The*
3 *customer-generator shall exercise the option in writing, filed with the util-*
4 *ity and shall not be entitled to change the option once it is filed.*

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

7 (1) The utility will supply, own, and maintain all necessary meters
8 and associated equipment utilized for billing. In addition, and for the
9 purposes of monitoring customer generation and load, the utility may
10 install at its expense, load research metering. The customer shall supply,
11 at no expense to the utility, a suitable location for meters and associated
12 equipment used for billing and for load research;

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

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

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

42 (5) the utility may limit the number and size of renewable generators
43 to be connected to the utility's system due to the capacity of the distri-

1 bution line to which such renewable generator would be connected, and
2 in no case shall the utility be obligated to purchase an amount greater
3 than 4% of such utility's peak power requirements.

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

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

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

24 (g) For the purpose of meeting the ~~governor's stated goal of produc-~~
25 ~~ing 10% of the state's electricity by wind power by 2010 and 20% by 2020,~~
26 ~~requirements of section 11, and amendments thereto,~~ the parallel gener-
27 ation of electricity provided for in this section shall be included as part
28 of the state's *renewable* energy generation ~~by wind power.~~

29 (h) *The provisions of the net metering and easy connection act shall*
30 *not preclude the state corporation commission from approving net me-*
31 *tering tariffs upon request of an electric utility for other methods of re-*
32 *newable generation not prescribed in subsection (c)(1) of section 13, and*
33 *amendments thereto.*

34 Sec. 30. K.S.A. 2007 Supp. 65-3005 is hereby amended to read as
35 follows: 65-3005. (a) The secretary shall have the power to:

36 ~~(a)~~ (1) Adopt, amend and repeal rules and regulations implementing
37 and consistent with this act.

38 ~~(b)~~ (2) Hold hearings relating to any aspect of or matter in the ad-
39 ministration of this act concerning air quality control, and in connection
40 therewith, compel the attendance of witnesses and the production of
41 evidence.

42 ~~(c)~~ (3) Issue such orders, permits and approvals as may be necessary
43 to effectuate the purposes of this act and enforce the same by all appro-

- 1 piate administrative and judicial proceedings.
- 2 ~~(4)~~ (4) Require access to records relating to emissions which cause
3 or contribute to air pollution.
- 4 ~~(5)~~ (5) Prepare and develop a comprehensive plan or plans for the
5 prevention, abatement and control of air pollution originating in Kansas
6 that affects air quality in Kansas or in other states or both.
- 7 ~~(6)~~ (6) Adopt rules and regulations governing such public notification
8 and comment procedures as authorized by this act.
- 9 ~~(7)~~ (7) Encourage voluntary cooperation by persons or affected
10 groups to achieve the purposes of this act.
- 11 ~~(8)~~ (8) (A) Encourage local units of government to handle air
12 pollution problems within their respective jurisdictions and on a coop-
13 erative basis; ~~(B)~~ (B) provide technical and consultative assistance there-
14 for; and ~~(C)~~ (C) enter into agreements with local units of government to
15 administer all or part of the provisions of the Kansas air quality act in the
16 units' respective jurisdictions.
- 17 ~~(9)~~ (9) Encourage and conduct studies, investigations and research
18 relating to air contamination and air pollution and their causes, effects,
19 prevention, abatement and control.
- 20 ~~(10)~~ (10) Encourage air contaminant emission sources to voluntarily
21 implement strategies, including the development and use of innovative
22 technologies, market-based principles and other private initiatives to re-
23 duce or prevent pollution.
- 24 ~~(11)~~ (11) Determine by means of field studies and sampling the degree
25 of air contamination and air pollution in the state and the several parts
26 thereof.
- 27 ~~(12)~~ (12) Establish ambient air quality standards for the state as a whole
28 or for any part thereof.
- 29 ~~(13)~~ (13) Collect and disseminate information and conduct educa-
30 tional and training programs relating to air contamination and air
31 pollution.
- 32 ~~(14)~~ (14) Advise, consult and cooperate with other agencies of the
33 state, local governments, industries, other states, interstate or interlocal
34 agencies, and the federal government, and with interested persons or
35 groups.
- 36 ~~(15)~~ (15) Accept, receive and administer grants or other funds or gifts
37 from public and private entities, including the federal government, for
38 the purpose of carrying out any of the functions of this act. Such funds
39 received by the secretary pursuant to this section shall be deposited in
40 the state treasury to the account of the department of health and
41 environment.
- 42 ~~(16)~~ (16) Enter into contracts and agreements with other state agen-
43 cies or subdivisions, local governments, other states, interstate agencies,

1 the federal government or its agencies or private entities as is necessary
2 to accomplish the purposes of the Kansas air quality act.

3 ~~(17)~~ (17) Conduct or participate in intrastate or interstate emissions
4 trading programs or other programs that demonstrate equivalent air qual-
5 ity benefits for the prevention, abatement and control of air pollution in
6 Kansas or in other states or both.

7 ~~(18)~~ (18) Prepare and adopt a regional haze plan as may be necessary
8 to prevent, abate and control air pollution originating in Kansas that af-
9 fects air quality in Kansas or in other states or both. Any regional haze
10 plan prepared by the secretary shall be no more stringent than is required
11 by 42 U.S.C. 7491.

12 ~~(19)~~ (19) Participate in the activities of any visibility transport com-
13 mission established under 42 U.S.C. 7492. The secretary shall report to
14 the governor and the legislature on the activities of any such visibility
15 transport commission annually.

16 (b) *It is the policy of this state to prevent the deterioration of air*
17 *quality in accordance with the following:*

18 (1) *The secretary shall not in the exercise of powers and duties, except*
19 *as provided below, promulgate any rule and regulation, or issue any order*
20 *or take any other action under any provision of the Kansas air quality*
21 *act or other provision of law, that is more stringent, restrictive or expan-*
22 *sive than required by the federal clean air act (42 U.S.C. 7401 et seq.) or*
23 *any rule and regulation adopted by the United States environmental pro-*
24 *tection agency under the federal clean air act, as amended. If the secretary*
25 *determines that a more stringent, restrictive or expansive rule and regu-*
26 *lation is necessary, the secretary may implement the rule and regulation*
27 *only after approval by an act of the legislature. Nothing herein shall pre-*
28 *clude the secretary and applicant or permittee from concurring with a*
29 *more stringent, restrictive or expansive condition in a permit to construct*
30 *or operate a stationary source.*

31 (2) *The restrictions of the secretary's powers herein shall not apply*
32 *to: (A) Actions by the secretary to prevent designation of an area as a*
33 *nonattainment area by the United States environmental protection*
34 *agency; or (B) an implementation plan developed by the secretary to bring*
35 *a nonattainment area into compliance or to maintain compliance as that*
36 *plan is implemented within the nonattainment area.*

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

40 (c) *In as much as K.S.A. 65-3012, and amendments thereto, does not*
41 *now apply, nor has it ever been applicable, to the air quality permitting*
42 *process, the secretary may not use the emergency powers granted by*
43 *K.S.A. 65-3012, and amendments thereto, in the air quality permitting*

1 *process, nor any powers or discretion under any other statute not strictly*
2 *applicable to the air quality permitting process.*

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

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

34 *(b) The secretary shall affirm, modify or reverse the decision on such*
35 *permit after the public comment period or public hearing, and shall af-*
36 *firm the issuance of any permit the terms and conditions of which comply*
37 *with all requirements established by rules and regulations promulgated*
38 *pursuant to the Kansas air quality act. Any person who participated in*
39 *the public comment process or the public hearing who otherwise would*
40 *have standing under K.S.A. 77-611, and amendments thereto, shall have*
41 *standing to obtain judicial review of the secretary's final action on the*
42 *permit pursuant to the act for judicial review and civil enforcement of*
43 *agency actions in the court of appeals. Any such person other than the*

1 applicant for or holder of the permit shall not be required to have ex-
2 hausted administrative remedies in order to be entitled to review. The
3 court of appeals shall have original jurisdiction to review any such final
4 agency action. The record before the court of appeals shall be confined
5 to the agency record for judicial review and consist of the documentation
6 submitted to or developed by the secretary in making the final permit
7 decision, including the permit application and any addenda or amend-
8 ments thereto, the permit summary, the draft permit, all written com-
9 ments properly submitted to the secretary, all testimony presented at any
10 public hearing held on the permit application, all responses by the ap-
11 plicant or permit holder to any written comments or testimony, the sec-
12 retary's response to the public comments and testimony and the final
13 permit.

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

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

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

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

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

41 (e) Within 15 days after the issuance of a notice of intent to take any
42 action authorized by subsection (a), (b), (c) or (d), or within 15 days after
43 the secretary's written decision to affirm, modify or reverse a permit de-

1 cision pursuant to subsection (b) of K.S.A. 65-3008a, the permittee may
2 file a request for a hearing with the secretary. Each such notice of intent
3 shall specify the provision of this act or rule and regulation allegedly
4 violated, the facts constituting the alleged violation and the secretary's
5 intended action. Each notice of intent or written decision to affirm, mod-
6 ify or reverse a permit decision shall state the permittee's right to request
7 a hearing. Such hearing shall be conducted in accordance with the Kansas
8 administrative procedure act.

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

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

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

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

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

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

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

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

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

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

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

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

39 (c) In any civil action brought pursuant to this section in which a
40 temporary restraining order or preliminary injunction is sought, it shall
41 not be necessary to allege or prove at any stage of the proceeding that
42 irreparable damage will occur should the temporary restraining order or
43 preliminary injunction not be issued or that the remedy at law is inade-

1 quate, and the temporary restraining order or preliminary injunction shall
2 issue without such allegations and without such proof.

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

6 Sec. 34. K.S.A. 66-104d is hereby amended to read as follows: 66-
7 104d. (a) As used in this section, "cooperative" means any cooperative,
8 ~~as defined by K.S.A. 17-4603, and amendments thereto, which has fewer~~
9 ~~than 15,000 customers and which provides power principally at retail~~
10 *corporation organized under the electric cooperative act, K.S.A. 17-4601*
11 *et seq., and amendments thereto, or which becomes subject to the electric*
12 *cooperative act in the manner therein provided; or any limited liability*
13 *company or corporation providing electric service at wholesale in the state*
14 *of Kansas that is owned by four or more electric cooperatives that provide*
15 *retail service in the state of Kansas; or any customer-owned corporation*
16 *formed prior to 2004.*

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

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

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

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

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

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

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

- 1 (d) A cooperative exempt under this section may elect to terminate
2 its exemption in the same manner as prescribed in subsection (c).
- 3 (e) An election under subsection (c) or (d) may be held not more
4 often than once every two years.
- 5 (f) Nothing in this section shall be construed to affect the single cer-
6 tified service territory of a cooperative or the authority of the state cor-
7 poration commission, as otherwise provided by law, over a cooperative
8 with regard to service territory; charges, *fees or tariffs* for transmission
9 services; sales of power for resale, *other than sales between a cooperative,*
10 *as defined in subsection (a), that does not provide retail electric service*
11 *and an owner of such cooperative; and* wire stringing and transmission
12 line siting, pursuant to K.S.A. 66-131, 66-183, 66-1,170 et seq. or 66-
13 1,177 et seq., and amendments thereto.
- 14 (g) (1) Notwithstanding a cooperative's election to be exempt under
15 this section, the commission shall investigate all rates, joint rates, tolls,
16 charges and exactions, classifications and schedules of rates of such co-
17 operative if there is filed with the commission, not more than one year
18 after a change in such cooperative's rates, joint rates, tolls, charges and
19 exactions, classifications or schedules of rates, a petition, *in the case of a*
20 *retail distribution cooperative,* signed by not less than 5% of all the co-
21 operative's customers or 3% of the cooperative's customers from any one
22 rate class, *or, in the case of a generation and transmission cooperative,*
23 *not less than 20% of its members or 5% of the aggregate retail customers*
24 *of its members.* If, after investigation, the commission finds that such
25 rates, joint rates, tolls, charges or exactions, classifications or schedules of
26 rates are unjust, unreasonable, unjustly discriminatory or unduly prefer-
27 ential, the commission shall have the power to fix and order substituted
28 therefor such rates, joint rates, tolls, charges and exactions, classifications
29 or schedules of rates as are just and reasonable.
- 30 (2) The cooperative's rates, joint rates, tolls, charges and exactions,
31 classifications or schedules of rates complained of shall remain in effect
32 subject to change or refund pending the state corporation commission's
33 investigation and final order.
- 34 (3) Any customer of a cooperative wishing to petition the commission
35 pursuant to subsection (g)(1) may request from the cooperative the
36 names, addresses and rate classifications of all the cooperative's customers
37 or of the cooperative's customers from any one or more rate classes. The
38 cooperative, within 21 days after receipt of the request, shall furnish to
39 the customer the requested names, addresses and rate classifications and
40 may require the customer to pay the reasonable costs thereof.
- 41 (h) (1) If a cooperative is exempt under this section, not less than 10
42 days' notice of the time and place of any meeting of the board of trustees
43 at which rate changes are to be discussed and voted on shall be given to

1 all members of the cooperative and such meeting shall be open to all
2 members.

3 (2) Violations of subsection (h)(1) shall be subject to civil penalties
4 and enforcement in the same manner as provided by K.S.A. 75-4320 and
5 75-4320a, and amendments thereto, for violations of K.S.A. 75-4317 et
6 seq. and amendments thereto.

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

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

14 New Sec. 35. (a) For taxable years 2008 and 2009, there shall be
15 allowed tax credits against the income tax liability imposed upon a tax-
16 payer pursuant to the Kansas income tax act, in an amount equal to the
17 following:

18 (1) For nonowner occupied multiple family dwellings, \$100 per
19 dwelling unit located immediately below the attic space where sufficient
20 ceiling insulation is installed to achieve an insulation value of R-52; and

21 (2) for nonowner occupied multiple family dwellings, \$300 times the
22 number of dwelling units served by the system for a newly installed heat-
23 ing and air conditioning system which replaces an existing system, has a
24 separate temperature control for each dwelling unit and meets one or
25 more of the following criteria:

26 (A) Furnace or boiler must meet or exceed 92% AFUE;

27 (B) split systems must meet or exceed SEER 14, EER of 11.5;

28 (C) single package systems must meet or exceed SEER 14;

29 (D) air source heat pumps must meet or exceed HSPF 8, SEER 14
30 and EER of 11.5; and

31 (E) ground-source heat pumps must meet or exceed:

32 (i) Closed-loop systems—14.1 cooling EER and 3.3 heating coeffi-
33 cient of performance (COP);

34 (ii) open-loop systems—16.2 EER and 3.6 COP;

35 (iii) direct-expansion systems—15 EER and 3.5 COP; and

36 (iv) all ground-source heat pumps must include a desuperheater,
37 which preheats water for a water heater, or an integrated water heating
38 system.

39 (b) If the amount of tax credits allowed pursuant to this section ex-
40 ceeds the taxpayer's income tax liability for the year in which the ex-
41 penditures were incurred, the amount thereof which exceeds such tax
42 liability may be carried over for deduction from the taxpayer's income tax
43 liability in the next succeeding taxable year or years until the total amount

1 of the tax credits have been deducted from tax liability, except that no
2 such tax credits shall be carried over for deduction after the fifth taxable
3 year succeeding the taxable year in which the expenditures are made.

4 (c) The taxpayer claiming a credit pursuant to this section shall pro-
5 vide evidence of purchase and installation of the item or items for which
6 the credit is claimed as required by rules and regulations of the secretary
7 of revenue.

8 (d) The secretary of revenue shall adopt rules and regulations to im-
9 plement the provisions of this section.

10 (e) The secretary of revenue shall submit a report to the legislature
11 regarding utilization of credits claimed pursuant to this section, for pur-
12 poses of evaluation of the program. Such report shall be due on or before
13 the first day of the 2010 legislative session.

14 New Sec. 36. (a) In addition to the income tax credit allowed pur-
15 suant to section 35, and amendments thereto, for taxable years 2008 and
16 2009, a taxpayer shall be entitled to a deduction from Kansas adjusted
17 gross income with respect to: (1) The amortization of the amortizable
18 costs of a new heating and air conditioning system based upon a period
19 of five years; plus (2) the costs of installation of such new system spread
20 over five years. For the first taxable year in which such new system is in
21 use, such deduction shall be an amount equal to 60% of the amortizable
22 costs of such new system plus 60% of the costs of installation of such new
23 system. For each of the next four taxable years, such deduction shall be
24 an amount equal to 10% of the amortizable costs of such new system plus
25 10% of the costs of installation of such new system.

26 (b) The election of the taxpayer to claim the deduction allowed by
27 subsection (a) shall be made by filing a statement of such election with
28 the secretary of revenue in the manner and form and within the time
29 prescribed by rules and regulations adopted by the secretary.

30 (c) The secretary of revenue shall adopt rules and regulations as
31 deemed necessary to carry out the provisions of this section.

32 New Sec. 37. (a) As used in this section:

33 (1) "Affected unit" means any emissions unit which: (A) Commenced
34 operation on or after January 1, 2008; (B) generates electricity in this
35 state; (C) combusts coal in an amount greater than 10% of its total heat
36 input on a rolling 12-month basis; and (D) is a new unit.

37 (2) "Inlet conditions" means the concentration of mercury in the flue
38 gas exiting the combustion source prior to application of any air pollution
39 control device as determined using the coal analysis procedures estab-
40 lished in the United States environmental protection agency's mercury
41 information collection request, as amended.

42 (3) "Mercury" means mercury and mercury compounds in either a
43 gaseous or particulate form.

1 (b) The secretary of health and environment shall adopt rules and
2 regulations requiring affected units to achieve 80% or greater reduction
3 of mercury from the calculated inlet condition of the affected unit.

4 (c) This section shall be part of and supplemental to the Kansas air
5 quality act.

6 Sec. 38. K.S.A. 2007 Supp. 74-616 is hereby amended to read as
7 follows: 74-616. In addition to other powers and duties provided by law,
8 in administering the provisions of this act the state corporation commis-
9 sion shall:

10 (a) Adopt rules and regulations necessary for the administration of
11 this act;

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

14 (c) *allow, for commission approved energy efficiency, conservation*
15 *and demand management programs, at the option of the requesting utility,*
16 *the capitalization and addition to rate base of investments in and expend-*
17 *itures for such approved programs;*

18 (d) make requests for and accept funds and other assistance from
19 federal agencies for energy conservation and other energy-related activ-
20 ities in this state, including, but not limited to, the state energy program;

21 ~~(e)~~ (e) administer federal energy conservation programs in this state;
22 *and*

23 ~~(f)~~ (f) prepare an emergency management plan for natural gas and
24 electric energy to be adopted during activation of emergency support
25 function 12 of the Kansas response plan established under K.S.A. 48-920
26 et seq., and amendments thereto, which plan shall include the system of
27 priorities for natural gas and electric energy allocation and curtailment of
28 energy resources consumption established under K.S.A. 74-620, and
29 amendments thereto.

30 New Sec. 39. If any provision of this act or its application to any
31 person or circumstance is held invalid, the invalidity shall not affect any
32 other provision or application of the act which can be given effect without
33 the invalid provision or application. To this end the provisions of this act
34 are severable.

35 Sec. 40. K.S.A. 65-3008b, 65-3012 and 66-104d and K.S.A. 2007
36 Supp. 65-3005, 65-3008a, 66-1,184 and 74-616 are hereby repealed.

37 Sec. 41. This act shall take effect and be in force from and after its
38 publication in the Kansas register.