

SENATE BILL No. 630

By Committee on Utilities

2-15

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

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

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

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

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

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

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

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

37 New Sec. 3. The secretary of administration shall adopt rules and
38 regulations for state agencies for the purchase of products and equipment,
39 including, but not limited to, appliances, lighting fixtures and bulbs, and
40 computers, which meet energy efficiency guidelines which are not less
41 than the guidelines adopted for such products to qualify as an energy star
42 product.

43 New Sec. 4. (a) The department of administration shall collect data

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

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

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

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

26 New Sec. 6. The secretary of administration shall adopt rules and
27 regulations prescribing energy efficiency performance standards requir-
28 ing that all new state buildings be designed, constructed and certified to
29 achieve energy consumption levels that are at the levels established under
30 the ASHRAE standard or the IECC, as appropriate, if such levels of
31 energy consumption are life-cycle cost-effective for such buildings.

32 New Sec. 7. (a) New state buildings shall include installation of
33 building owner's meters for electricity, natural gas, fuel oil and water in
34 accordance with United States department of energy guidelines issued
35 under section 103 of the energy policy act of 2005. The state agency or
36 school district and the building architect or designer shall compare me-
37 tered data from the first year of building operation with the energy effi-
38 ciency performance standards adopted by the secretary of administration
39 and shall submit a written report concerning each such building to the
40 secretary of administration within two months following the first year of
41 operation.

42 (b) If the average building energy savings over the one-year period
43 following the date of beneficial occupancy is 85% or less than the energy

1 efficiency performance standards established pursuant to this act, parties
2 including, but not limited to, the building architect or designer, state
3 agency or school district and the contractor or the construction manager
4 at risk, shall investigate, determine the cause of the failure to achieve the
5 standards and recommend corrections or modifications to meet such
6 standards.

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

8 (1) “Load serving entity” means: (A) An entity selling electric energy
9 to retail customers pursuant to rates regulated by a state regulatory body;
10 (B) any cooperative, as defined by K.S.A. 17-4603, and amendments
11 thereto, or any other member-owned corporation or limited liability com-
12 pany organized and existing under the laws of this state or another state,
13 whose primary purpose is to furnish retail or wholesale electric energy,
14 either directly or indirectly, to its members or to an entity owned or
15 controlled by its members; or (C) a municipally owned or operated elec-
16 tric utility.

17 (2) “Merchant power plant” means an electric generation plant, and
18 associated facilities, which has a nameplate rating of at least 300 mega-
19 watts, and less than 50% of the output of which is supplied for the selling
20 of electric energy to its retail customers or to load serving entities,
21 whether through ownership interests or pursuant to contracts, or both,
22 with terms equal to or greater than five years.

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

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

- 29 (1) Chairperson of the house committee on energy and utilities;
- 30 (2) vice-chairperson of the house committee on energy and utilities;
- 31 (3) ranking minority member of the house committee on energy and
32 utilities;
- 33 (4) chairperson of the senate committee on utilities;
- 34 (5) vice-chairperson of the senate committee on utilities;
- 35 (6) ranking minority member of the senate committee on utilities;
- 36 (7) chief of energy operations of the state corporation commission;
- 37 (8) director of the division of environment in the Kansas department
38 of health and environment;
- 39 (9) three members appointed by the governor;
- 40 (10) a person knowledgeable in national and global greenhouse gas
41 regulations and practices, appointed by the governor;
- 42 (11) a research scientist knowledgeable in the production of fossil-
43 fuels, appointed by the minority leader of the house of representatives;

1 and

2 (12) an engineer knowledgeable in fossil-fuel and nuclear electric
3 generation technologies, appointed by the president of the senate.

4 (b) The chairperson of the house committee on energy and utilities
5 shall be the chairperson of the commission, and the chairperson of the
6 senate committee on utilities shall be the vice-chairperson of the com-
7 mission. The commission shall meet at least four times a year on call of
8 the chairperson of the commission, and additional meetings as deemed
9 necessary. A majority of the members of the commission or their desig-
10 nees shall constitute a quorum for the exercise of powers conferred upon
11 the commission.

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

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

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

20 (3) the economic impact of generation, transmission and distribution
21 of electricity on community economic development and on electric rates
22 for various classes of customers;

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

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

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

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

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

34 (9) the fuel portfolio balance of the state's electric generation
35 facilities;

36 (10) the effectiveness of existing incentives for renewable energy
37 investment;

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

40 (12) the reports and recommendations of the electricity committee
41 of the Kansas energy council.

42 (d) The commission shall submit a preliminary written report of the
43 activities and recommendations of the commission to the house commit-

1 tee on energy and utilities and the senate committee on utilities on or
2 before the first day of the 2009 regular session of the legislature. The
3 commission shall submit a final written report of its activities and rec-
4 ommendations on or before the first day of the 2010 regular session of
5 the legislature. The final written report of the commission shall include,
6 but is not limited to, recommendations for:

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

9 (2) an appropriate energy generation portfolio goal, or series of goals,
10 taking into consideration regional and national markets;

11 (3) laws, rules and regulations, and policies needed to facilitate di-
12 versification of the electricity generation portfolio;

13 (4) the level at which emissions of carbon dioxide from coal power
14 plants constitute an imminent and substantial endangerment to public
15 health, public welfare or the environment; and

16 (5) any additional studies related to the commission's charge that
17 might appropriately be undertaken by the Kansas research universities.

18 (e) The commission may receive and expend moneys appropriated to
19 the commission from the public service regulation fund created by K.S.A.
20 66-1a01, and amendments thereto, and moneys received from any other
21 source, whether public or private, to further the purposes of this section.

22 (f) Commission members shall be paid compensation, subsistence al-
23 lowances, mileage and other expenses as provided by K.S.A. 75-3223, and
24 amendments thereto, for each day of actual attendance at any meeting of
25 the commission or any subcommittee meeting approved by the
26 commission.

27 (g) The state corporation commission and each other state agency
28 shall provide assistance to the commission as may be requested by the
29 commission. The legislative division of post audit shall provide such as-
30 sistance as may be requested by the commission and authorized by the
31 legislative post audit committee. The staff of the office of the revisor of
32 statutes, the legislative research department and the division of legislative
33 administrative services shall provide such assistance as may be requested
34 by the commission and authorized by the legislative coordinating council.

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

37 New Sec. 10. Sections 10 through 25, and amendments thereto, shall
38 be known and may be cited as the net metering and easy connection act.

39 New Sec. 11. As used in the net metering and easy connection act:

40 (a) "Avoided fuel cost" means the current average cost of fuel for the
41 entity generating electricity, as defined by the governing body with juris-
42 diction over any municipal electric utility, electric cooperative utility or
43 electric public utility.

- 1 (b) "Commission" means the state corporation commission.
- 2 (c) "Customer-generator" means the owner or operator of a qualified
3 electric energy generation unit which:
- 4 (1) Is powered by solar thermal sources or photovoltaic cells and
5 panels;
- 6 (2) has an electrical generating system with a capacity of not more
7 than 100 kilowatts;
- 8 (3) is located on a premises owned, operated, leased or otherwise
9 controlled by the customer-generator;
- 10 (4) is interconnected and operates in parallel phase and synchroni-
11 zation with a retail electric supplier and has been approved by such retail
12 electric supplier;
- 13 (5) is intended primarily to offset part or all of the customer-gener-
14 ator's own electrical energy requirements;
- 15 (6) meets all applicable safety, performance, interconnection and re-
16 liability standards established by the national electrical code, the national
17 electrical safety code, the institute of electrical and electronics engineers,
18 underwriters laboratories, the federal energy regulatory commission and
19 any local governing authorities; and
- 20 (7) contains a mechanism that automatically disables the unit and
21 interrupts the flow of electricity back onto the supplier's electricity lines
22 in the event that service to the customer-generator is interrupted.
- 23 (d) "Net metering" means using metering equipment sufficient to
24 measure the difference between the electrical energy supplied to a cus-
25 tomer-generator by a retail electric supplier and the electrical energy
26 supplied by the customer-generator to the retail electric supplier over the
27 applicable billing period.
- 28 (e) "Retail electric supplier" means any municipal electric utility,
29 electric cooperative utility or electric public utility which provides retail
30 electric service in this state.
- 31 New Sec. 12. A retail electric supplier shall:
- 32 (a) Make net metering available to customer-generators on a first-
33 come, first-served basis, subject to the following: (1) A supplier shall not
34 be required to make net metering available in a calendar year if total
35 rated generating capacity of all applications for interconnection already
36 approved by the supplier in the calendar year equals or exceeds 1% of
37 the supplier's single-hour peak load for the previous calendar year; and
38 (2) a supplier shall not be required to make net metering available to a
39 customer-generator if the total rated generating capacity of net metering
40 systems equals; (A) 5% of the supplier's single-hour peak load during the
41 previous year; or (B) such higher percentage as specified by the commis-
42 sion, for a public utility, or the governing body, for any other utility, once
43 the total rated generating capacity of net metering systems has reach 5%

1 of the supplier's single-hour peak load during the previous year;
2 (b) offer to the customer-generator a tariff or contract that is identical
3 in electrical energy rates, rate structure and monthly charges to the con-
4 tract or tariff that the customer would be assigned if the customer were
5 not an eligible customer-generator but shall not charge the customer-
6 generator any additional standby, capacity, interconnection or other fee
7 or charge that would not otherwise be charged if the customer were not
8 an eligible customer-generator; and
9 (c) disclose annually the availability of the net metering program to
10 each of its customers with the method and manner of disclosure being at
11 the discretion of the supplier.

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

27 New Sec. 14. Consistent with the provisions of the net metering and
28 easy connection act, the net electrical energy measurement shall be cal-
29 culated in the following manner:

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

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

42 (c) If the electricity generated by the customer-generator exceeds the
43 electricity supplied by the supplier during a billing period, the customer-

1 generator shall be billed for the appropriate customer charges for that
2 billing period in accordance with section 12, and amendments thereto,
3 and shall be credited an amount at least equal to the avoided fuel cost of
4 the excess kilowatt-hours generated during the billing period, with this
5 credit applied to the following billing period.

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

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

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

31 (b) For systems of 10 kilowatts or less, a customer-generator whose
32 system meets the standards specified by subsection (a) shall not be re-
33 quired to install additional controls, perform or pay for additional tests or
34 distribution equipment or purchase additional liability insurance beyond
35 what is required under subsection (a) and section 13, and amendments
36 thereto.

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

41 (1) Set forth safety, performance and reliability standards and
42 requirements; and

43 (2) establish the qualifications for exemption from a requirement to

1 install additional controls, perform or pay for additional tests or distri-
2 bution equipment or purchase additional liability insurance.

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

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

22 New Sec. 17. Each retail electric supplier regulated by the commis-
23 sion shall submit an annual net metering report to the commission and
24 each other retail electric supplier shall submit the same report to its re-
25 spective governing body. The report shall include the following infor-
26 mation for the previous calendar year: The total number of customer-
27 generator facilities, the total estimated generating capacity of its
28 net-metered customer-generators and the total estimated net kilowatt-
29 hours received from customer-generators. The supplier shall make such
30 report available to any consumer of the supplier upon request.

31 New Sec. 18. Within nine months after the effective date of the net
32 metering and easy connection act, the commission shall adopt rules and
33 regulations necessary for the administration of such act for electric public
34 utilities, which shall include rules and regulations ensuring that simple
35 contracts will be used for interconnection and net metering. For systems
36 of 10 kilowatts or less, the application process shall use an all-in-one
37 document that includes a simple interconnection request, simple proce-
38 dures and a brief set of terms and conditions.

39 New Sec. 19. Within nine months after the effective date of the net
40 metering and easy connection act, the governing body of an electric co-
41 operative utility or electric municipal utility shall adopt policies establish-
42 ing a simple contract to be used for interconnection and net metering.
43 For systems of 10 kilowatts or less, the application process shall use an

1 all-in-one document that includes a simple interconnection request, simple
2 procedures and a brief set of terms and conditions.

3 New Sec. 20. For any cause of action relating to any damages to
4 property or person caused by the generation unit of a customer-generator
5 or the interconnection thereof, the retail electric supplier shall have no
6 liability absent clear and convincing evidence of fault on the part of the
7 supplier.

8 New Sec. 21. The estimated generating capacity of all net metering
9 systems operating under the provisions of the net metering and easy connection
10 act shall count towards the respective retail electric supplier's
11 accomplishment of any renewable energy portfolio target or mandate
12 adopted by the Kansas legislature.

13 New Sec. 22. 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. 23. No consumer shall connect or operate an electric generation
17 unit in parallel phase and synchronization with any retail electric
18 supplier without written approval by such supplier that all of the requirements
19 under subsection (a) of section 16, 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. 24. 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. 25. 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. 26. 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 customer
35 of such utility, upon request of such customer, whereby such customer
36 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.

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

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

43 (c) The following terms and conditions shall apply to contracts en-

1 tered into under subsection (a) or (b):

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

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

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

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

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

42 (d) Service under any contract entered into under subsection (a) or
43 (b) shall be subject to either the utility's rules and regulations on file with

1 the state corporation commission, which shall include a standard inter-
2 connection process and requirements for such utility's system, or the cur-
3 rent federal energy regulatory commission interconnection procedures
4 and regulations.

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

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

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

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

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

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

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

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

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

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

40 (g) Encourage voluntary cooperation by persons or affected groups
41 to achieve the purposes of this act.

42 (h) (1) Encourage local units of government to handle air pollution
43 problems within their respective jurisdictions and on a cooperative basis;

- 1 (2) provide technical and consultative assistance therefor; and (3) enter
2 into agreements with local units of government to administer all or part
3 of the provisions of the Kansas air quality act in the units' respective
4 jurisdictions.
- 5 (i) Encourage and conduct studies, investigations and research relat-
6 ing to air contamination and air pollution and their causes, effects, pre-
7 vention, abatement and control.
- 8 (j) Encourage air contaminant emission sources to voluntarily imple-
9 ment strategies, including the development and use of innovative tech-
10 nologies, market-based principles and other private initiatives to reduce
11 or prevent pollution.
- 12 (k) Determine by means of field studies and sampling the degree of
13 air contamination and air pollution in the state and the several parts
14 thereof.
- 15 (l) Establish ambient air quality standards for the state as a whole or
16 for any part thereof.
- 17 (m) Collect and disseminate information and conduct educational
18 and training programs relating to air contamination and air pollution.
- 19 (n) Advise, consult and cooperate with other agencies of the state,
20 local governments, industries, other states, interstate or interlocal agen-
21 cies, and the federal government, and with interested persons or groups.
- 22 (o) Accept, receive and administer grants or other funds or gifts from
23 public and private entities, including the federal government, for the pur-
24 pose of carrying out any of the functions of this act. Such funds received
25 by the secretary pursuant to this section shall be deposited in the state
26 treasury to the account of the department of health and environment.
- 27 (p) Enter into contracts and agreements with other state agencies or
28 subdivisions, local governments, other states, interstate agencies, the fed-
29 eral government or its agencies or private entities as is necessary to ac-
30 complish the purposes of the Kansas air quality act.
- 31 (q) Conduct or participate in intrastate or interstate emissions trading
32 programs or other programs that demonstrate equivalent air quality ben-
33 efits for the prevention, abatement and control of air pollution in Kansas
34 or in other states or both.
- 35 (r) Prepare and adopt a regional haze plan as may be necessary to
36 prevent, abate and control air pollution originating in Kansas that affects
37 air quality in Kansas or in other states or both. Any regional haze plan
38 prepared by the secretary shall be no more stringent than is required by
39 42 U.S.C. 7491.
- 40 (s) Participate in the activities of any visibility transport commission
41 established under 42 U.S.C. 7492. The secretary shall report to the gov-
42 ernor and the legislature on the activities of any such visibility transport
43 commission annually.

- 1 (t) *Implement the federal clean air act (42 U.S.C. 7401 et seq., here-*
2 *inafter referred to as the “federal act”).*
- 3 (1) *It is the policy of this state to prevent the deterioration of air*
4 *quality by means including, but not limited to, the following:*
- 5 (A) *The secretary shall not in the exercise of powers and duties, except*
6 *as provided below, promulgate any rule and regulation, or issue any order*
7 *or take any other action under any provision of the Kansas air quality*
8 *act or other provision of law, that is more stringent, restrictive or expan-*
9 *sive than required by the federal act or any rule and regulation adopted*
10 *by the United States environmental protection agency under the federal*
11 *act, as amended. If the secretary determines that a more stringent, re-*
12 *strictive or expansive rule and regulation is necessary, the secretary may*
13 *implement the rule and regulation only after approval by an act of the*
14 *legislature; provided however, nothing herein shall preclude the secretary*
15 *and applicant or permittee from concurring with a more stringent, re-*
16 *strictive or expansive condition in a permit to construct or operate a sta-*
17 *tionary source.*
- 18 (B) *The restrictions of the secretary’s powers herein shall not apply*
19 *to an implementation plan developed by the secretary to bring a non-*
20 *attainment area into compliance or to maintain compliance as that plan*
21 *is implemented within the non-attainment area.*
- 22 (C) *For any application for a permit required by federal or state law,*
23 *the secretary shall not deny or delay the issuance of such permit when*
24 *the requirements of this act have been met.*
- 25 (2) *In as much as K.S.A. 65-3012, and amendments thereto, does not*
26 *now apply, nor has it ever been applicable, to the air quality permitting*
27 *process, the secretary may not use the emergency powers granted by*
28 *K.S.A. 65-3012, and amendments thereto, in the air quality permitting*
29 *process, nor any powers or discretion under any other statute no strictly*
30 *applicable to the air quality permitting process.*
- 31 (3) *Any action by the secretary on any application filed after January*
32 *1, 2006, and before the effective date of this act, which seeks the issuance,*
33 *modification, amendment, revision or renewal of any approval or permit,*
34 *and which is still the subject of any administrative or judicial review*
35 *proceedings, shall be reconsidered by the secretary upon the applicant’s*
36 *or permittee’s timely written request, which must be filed no later than*
37 *60 days after the effective date of this act. Within 15 days after the ap-*
38 *plicant or permittee files a written request pursuant hereto, the secretary*
39 *shall reconsider the secretary’s decision, agency action or order and shall*
40 *determine in accordance with the provisions of this act, as amended,*
41 *whether the issuance, modification, amendment, revision or renewal of*
42 *any approval or permit requested by the permittee or applicant should*
43 *be issued, modified, amended, revised or renewed. If the applicant or*

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

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

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

42 (c) When determined appropriate by the secretary, the procedures
43 set out in subsection (a) may be required prior to the issuance, modifi-

1 cation, renewal or reopening of an approval.

2 Sec. 29. K.S.A. 65-3008b is hereby amended to read as follows: 65-
3 3008b. (a) The secretary may suspend or revoke an approval or a permit
4 if the permittee has violated any provision of the approval or the permit,
5 any provision of this act or any rule and regulation adopted under this act
6 and applicable to the permitted source.

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

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

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

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

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

41 ~~(g) No permit shall be issued, modified, amended, revised or re-~~
42 ~~newed unless the United States environmental protection agency has cer-~~
43 ~~tified that such permit complies with the requirements of the federal~~

1 ~~clean air act, except that a permit may be issued if the United States~~
2 ~~environmental protection agency has not notified the secretary of the~~
3 ~~United States environmental protection agency's decision within 45 days~~
4 ~~after receipt of the proposed permit by such agency. For any operating~~
5 ~~permit issued in accordance with title V of the federal clean air act, a~~
6 ~~copy of a permit proposed to be issued and a copy of the application (and~~
7 ~~any application for a permit modification or renewal) or such portion~~
8 ~~thereof, including any compliance plan, shall be transmitted to the ad-~~
9 ~~ministrator of the United States environmental protection agency. Should~~
10 ~~the administrator of the United States environmental protection agency~~
11 ~~determine the proposed permit is not in compliance with the requirements~~
12 ~~of the federal clean air act, including the requirement of an applicable~~
13 ~~implementation plan, and within 45 days after receipt objects in writing~~
14 ~~to the issuance of the permit as not in compliance with such requirements,~~
15 ~~then in such event the secretary shall respond in writing to the adminis-~~
16 ~~trator. If the administrator of the United States environmental protection~~
17 ~~agency does not object in writing within 45 days after receipt of the pro-~~
18 ~~posed permit, the secretary may issue, amend, revise or renew the permit.~~

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

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

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

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

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

36 Sec. 30. K.S.A. 65-3012 is hereby amended to read as follows: 65-
37 3012. (a) Notwithstanding any other provision of this act, the secretary
38 may take such action *against any existing source* as may be necessary to
39 protect the health of persons or the environment: (1) Upon receipt of
40 information that the emission of air pollution presents ~~a~~ *an imminent and*
41 *substantial endangerment* to the health of persons or to the environment;
42 or (2) for an imminent or actual violation of this act, any rules and reg-
43 ulations adopted under this act, any orders issued under this act or any

1 permit conditions required by this act.

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

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

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

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

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

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

33 Sec. 31. K.S.A. 66-104d is hereby amended to read as follows: 66-
34 104d. (a) As used in this section, "cooperative" means any ~~cooperative,~~
35 ~~as defined by K.S.A. 17-4603, and amendments thereto, which has fewer~~
36 ~~than 15,000 customers and which provides power principally at retail~~
37 *member-owned corporation or limited liability company providing elec-*
38 *tric service either at retail or wholesale in the state of Kansas.*

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

43 (c) To be exempt under subsection (b), a cooperative shall poll its

1 members as follows:

- 2 (1) An election under this subsection may be called by the board of
3 trustees or shall be called not less than 180 days after receipt of a valid
4 petition signed by not less than 10% of the members of the cooperative.
- 5 (2) The proposition for deregulation shall be presented to a meeting
6 of the members, the notice of which shall set forth the proposition for
7 deregulation and the time and place of the meeting. Notice to the mem-
8 bers shall be written and delivered not less than 21 nor more than 45
9 days before the date of the meeting.
- 10 (3) If the cooperative mails information to its members regarding the
11 proposition for deregulation other than notice of the election and the
12 ballot, the cooperative shall also include in such mailing any information
13 in opposition to the proposition that is submitted by petition signed by
14 not less than 1% of the cooperative's members. All expenses incidental
15 to mailing the additional information, including any additional postage
16 required to mail such additional information, must be paid by the sig-
17 natories to the petition.
- 18 (4) If the proposition for deregulation is approved by the affirmative
19 vote of not less than a majority of the members voting on the proposition,
20 the cooperative shall notify the state corporation commission in writing
21 of the results within 10 days after the date of the election.
- 22 (5) Voting on the proposition for deregulation shall be by mail ballot.
- 23 (d) A cooperative exempt under this section may elect to terminate
24 its exemption in the same manner as prescribed in subsection (c).
- 25 (e) An election under subsection (c) or (d) may be held not more
26 often than once every two years.
- 27 (f) Nothing in this section shall be construed to affect the single cer-
28 tified service territory of a cooperative or the authority of the state cor-
29 poration commission, as otherwise provided by law, over a cooperative
30 with regard to service territory, charges, *fees or tariffs* for transmission
31 services, sales of power for resale *other than sales between a member-*
32 *owned generation and transmission cooperative and a member of such*
33 *cooperative*, wire stringing and transmission line siting, pursuant to K.S.A.
34 66-131, 66-183, 66-1,170 et seq. or 66-1,177 et seq., and amendments
35 thereto.
- 36 (g) (1) Notwithstanding a cooperative's election to be exempt under
37 this section, the commission shall investigate all rates, joint rates, tolls,
38 charges and exactions, classifications and schedules of rates of such co-
39 operative if there is filed with the commission, not more than one year
40 after a change in such cooperative's rates, joint rates, tolls, charges and
41 exactions, classifications or schedules of rates, a petition, *in the case of a*
42 *retail distribution cooperative*, signed by not less than 5% of all the co-
43 operative's customers or 3% of the cooperative's customers from any one

1 rate class, or, in the case of a generation and transmission cooperative,
2 not less than 20% of its members or 5% of the aggregate retail customers
3 of its members. If, after investigation, the commission finds that such
4 rates, joint rates, tolls, charges or exactions, classifications or schedules of
5 rates are unjust, unreasonable, unjustly discriminatory or unduly prefer-
6 ential, the commission shall have the power to fix and order substituted
7 therefor such rates, joint rates, tolls, charges and exactions, classifications
8 or schedules of rates as are just and reasonable.

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

13 (3) Any customer of a cooperative wishing to petition the commission
14 pursuant to subsection (g)(1) may request from the cooperative the
15 names, addresses and rate classifications of all the cooperative's customers
16 or of the cooperative's customers from any one or more rate classes. The
17 cooperative, within 21 days after receipt of the request, shall furnish to
18 the customer the requested names, addresses and rate classifications and
19 may require the customer to pay the reasonable costs thereof.

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

25 (2) Violations of subsection (h)(1) shall be subject to civil penalties
26 and enforcement in the same manner as provided by K.S.A. 75-4320 and
27 75-4320a, and amendments thereto, for violations of K.S.A. 75-4317 et
28 seq. and amendments thereto.

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

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

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

41 Sec. 33. K.S.A. 65-3008b, 65-3012 and 66-104d and K.S.A. 2007
42 Supp. 65-3005, 65-3008a and 66-1,184 are hereby repealed.

43

1 Sec. 34. This act shall take effect and be in force from and after its
2 publication in the Kansas register.