SESSION OF 2008

SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR SENATE BILL NO. 327

As Amended by House Committee of the Whole

Brief*

House Substitute for SB 327 would establish energy efficiency standards for state buildings, vehicles and equipment; enact the Net Metering and Easy Connection Act; and provide tax incentives for energy efficiency improvements in residential rental property. The bill also would establish a renewable resources standard for electric utilities; require certain electric generation facilities to utilize carbon dioxide capture technologies; amend existing law regarding regulation of air quality and certain utilities; and enact a provision requiring reduction of mercury emissions from certain electricity generating units.

Energy Efficiency for State Buildings, Equipment and Vehicles

The bill would require:

- New, and to the extent possible renovated, state buildings to be designed to exceed by 10 percent specified national energy efficiency standards. The Secretary of Administration would be required to adopt rules and regulations recommending that new, and to the extent possible renovated, school and municipal buildings meet the same standards.

- New products and equipment such as appliances, light fixtures, and computers purchased by state agencies to be

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*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org at least as energy efficient as similar products that qualify for the EnergyStar rating. The requirement would apply if projected savings for the useful life of the products and equipment is at least equal to the additional cost of functionally equivalent products and equipment of lower efficiency.

- The average fuel economy for state-owned vehicles purchased in 2010 and subsequent years to be at least 10 percent higher than the average for vehicles purchased in 2007. The requirement would apply if the projected savings for the useful life of a vehicle is at least equal to the additional cost of a functionally equivalent vehicle of lower efficiency.

- New or extended state leases for real property and state-owned real property to meet energy efficiency standards. The Legislature would receive an annual report identifying state-owned and leased real property where an excessive amount of energy is used.

- The bill would task the Kansas Energy Office with increasing the participation of school districts, local governments, and state agencies in the Facilities Conservation Improvements Program administered by the Kansas Corporation Commission (KCC).

Carbon Dioxide Capture

The bill would require certain electric generation facilities to engage in carbon dioxide capture using the best available control technologies. Facilities subject to the requirement would be defined as fossil-fuel-fired, steam electricity generating units of more than 250 million BTUs per hour heat input on which construction began after January 1, 2008, excluding facilities owned by the federal government or facilities on tribal lands.

Renewable Resources Standard

The bill would require that by 2012, at least 5 percent of the average annual operating capacity of electric public utilities and electric cooperative utilities be from renewable resources.

By 2020, the renewable resource requirement would increase to a minimum of 10 percent of the average annual operating capacity. Renewable resources for this requirement would include wind, solar, photovoltaic, biomass, hydropower, geothermal, and landfill gases.

The Net Metering and Easy Connection Act

The bill would establish a net metering procedure for small solar electricity generating units that are interconnected with a retail electricity supplier.

Electric generation equipment covered by the act includes interconnected solar-powered units with maximum capacity of 100 kilowatts located on premises controlled by the customer, and used to offset all or part of the customer's electricity needs.

The bill would define net metering as the use of metering equipment to measure the difference between the electrical energy supplied <u>to</u> a customer-generator by a retail electric supplier and the electrical energy supplied <u>by</u> a customer-generator to the retail electric supplier.

Retail electricity suppliers would be required to make net metering available to customers up to a maximum generation capacity established by the KCC or the governing body of a municipal or cooperative electric utility.

Customers would be billed for any electricity provided by the retail supplier in excess of the amount generated by the customer. Customers would receive credit applied to the succeeding billing period, at least equal to 150 percent of the avoided fuel cost, for electricity generated in excess of that provided to the customer by the retail supplier.

Credits would expire without compensation either 12 months after their issuance or when the customer-generator disconnects service or terminates the net metering relationship with the supplier.

The existing parallel generation statute would be amended to provide customers with the option of using the existing act or the Net Metering and Easy Connection Act. The customer's decision would be recorded in writing and filed with the retail electricity supplier.

Regulatory Amendments

The bill would amend the Kansas Air Quality Act to prohibit the Secretary of Health and Environment from promulgating rules and regulations, issuing orders, or taking actions under the Kansas Act, or other state law, that are more stringent than required by the federal Clean Air Act or rules and regulations authorized by that Act. The Secretary could adopt rules and regulations under the Kansas Act that are more stringent than required by the federal act only if authorized by law. The restriction in the bill would not apply to actions necessary to prevent designation by the EPA of a non-attainment area or to an implementation plan for a non-attainment area under the Clean Air Act. The provision authorizes the Secretary to enter into agreements with permittees that are more stringent, restrictive, or expansive than federal requirements.

The Secretary would be prohibited from denying or delaying issuance of a permit under the Act if the requirements of the Act have been met by the applicant. The Secretary also would be prohibited from utilizing emergency powers under KSA 65-3012, or other discretionary authority, in the air quality permitting process.

If requested by the applicant, the Secretary would be required to reconsider an application for a permit filed after January 1, 2006 and prior to the effective date of the Act that remains pending in any administrative or judicial review proceeding. The application for reconsideration would have to be filed with the Secretary within 60 days of the effective date of the Act, and the Secretary would have 15 days during which to act on the request.

An applicant aggrieved by the Secretary's action would be able to file a petition for review with the Kansas Court of Appeals within 30 days of the Secretary's determination. The Court's review would be conducted in accordance with the Act for Judicial Review and Civil Enforcement of Agency Actions without the need to exhaust other administrative remedies.

Existing law would be amended to permit members of large electric cooperatives to elect to be exempt from regulation by the Kansas Corporation Commission utilizing the procedure currently available only to cooperatives with fewer than 15,000 customers.

Tax Incentives for Energy Efficient Improvements of Non-Owner Occupied Housing Units

The bill would create tax incentives for energy efficiency improvements of non-owner occupied housing units. The tax incentives would be available for tax years 2008, 2009, and 2010.

Tax credits would be created for the following improvements:

- $100 per dwelling unit for each six inches of ceiling insulation installed;
- $300 for a newly installed heating, ventilation or air conditioning system that replaces an existing system in a

single family dwelling if the new system meets the energy efficiency standards established by the bill; and

- $300 per dwelling unit served by a replacement heating, ventilation or air conditioning system for multi-family residences, if the new system meets the energy efficiency standards established by the bill, and if there are separate temperature controls in each unit.

If the amount of the tax credit exceeds the taxpayer's income tax liability for the year in which the expenditures were made, the excess amount of credit could be carried forward. The entire tax credit for expenditures made in a single year would have to be taken within five years of the expenditure.

The bill also would create an accelerated depreciation schedule for heating, ventilation, and air conditioning equipment described in the bill. Depreciation of the equipment would be taken over five years: 60 percent the first year; and ten percent each of the following four years.

The Department of Revenue would be required to report to the Legislature at the start of the 2010 Session regarding the number of taxpayers who claimed income tax credits created by the bill and the amount of those credits claimed.

Mercury Emissions Reductions

The bill would require the Secretary of Health and Environment to adopt rules and regulations requiring certain coal-fired electricity generating units to reduce their mercury emissions by at least 80 percent. Generating units that would be affected by the provision are those that use coal to produce over 10 percent of their heat input and that are required to obtain a new construction permit pursuant to Kansas Department of Health and Environment rules and regulations.

Background

SB 327, as amended by the House Committee on Energy and Utilities during the 2007 Session, would have provided a monetary incentive for retail motor fuel dealers selling and dispensing renewable fuels and for retail dealers of biodiesel. The bill was not acted upon by the House during the 2007 Session and was rereferred to the House Committee early in the 2008 Session.

The House Committee of the Whole amended the bill to:

- Delete provisions that would create the Kansas Energy Science and Technology Commission and the provision that would add reporting requirements for the Kansas Electric Transmission Authority;
- Reduce the renewable resources standard to 5 percent by 2012 and 10 percent by 2020 (the minimum targets in the House Committee bill were 10 percent by 2010 and 25 percent by 2025);
- Make the requirement for use of carbon capture technology apply only to those facilities built after January 1, 2008, and establish the standard as "best available control technology";
- Require adoption of rules and regulations to reduce mercury emissions; and
- Require statutory authorization for rules and regulations that exceed federal Clean Air Act requirements.

The House Committee substituted for the 2007 version of the bill some, but not all, of the provisions of HB 2711. Differences between the introduced version of HB 2711 and the substitute bill include:

- Deleting provisions that would have established energy and water conservation standards for new public school buildings;
- Deleting provisions that would have established water conservation standards for new state and public school buildings;
- Reducing the energy conservation goal for new and renovated State buildings from 25 percent above to 10 percent above specified national standards, removing provisions establishing a water conservation goal for new state buildings, and removing the provision requiring remediation if conservation goals for new state buildings are not met;
- Conditioning the requirement that the State purchase energy efficient motor vehicles (in 2010 and subsequent years) and equipment on a finding that projected operating cost savings over the life of the vehicle or product would be at least equal to any additional purchase cost of equivalent products of lower efficiency;
- Deleting the prohibition of construction or expansion of fossil-fueled merchant power plants in Kansas;
- Replacing the Electric Generation, Transmission and Efficiency Study Commission with the Kansas Energy Science and Technology Commission;
- Creating new reporting requirements for the Kansas Electric Transmission Authority;
- Deleting provisions that would have enacted the Carbon Dioxide Emissions Offset Act;
- Requiring certain fossil-fueled electricity generating units to engage in carbon dioxide capture using best technological practices;
- Providing for customer-generators utilizing net metering provisions of the bill to receive credit for 150 percent of avoided costs for excess solar-generated energy provided to the incumbent utility;
- Requiring non-regulated electricity suppliers to submit annual net metering information to the KCC as would be required for regulated suppliers;

- Deleting provisions that would have prohibited the Secretary of Health and Environment from utilizing emergency powers in the air quality permitting process;
- Creating a renewable portfolio standard of at least 10 percent of nameplate capacity by 2010 and 25 percent by 2025 and requiring the KCC to allow utilities that reach the RPS goals an additional return of 1 percent on the utility's reasonable and prudent costs and investments to comply with the standard;
- Clarifying that if the federal Environmental Protection Agency does not object to issuance of an air quality operating permit, the Secretary would issue the permit;
- Clarifying language that would permit members of large electric cooperatives to elect to be exempt from regulation by the KCC utilizing the procedure currently available only to cooperatives with fewer than 15,000 customers;
- Removing language that would have authorized the Secretary of Health and Environment to implement all provisions of the federal Clean Air Act;
- Clarifying that when adopting rules and regulations under the Kansas Air Quality Act that exceed federal regulations, the Secretary must comply with the Kansas Rule and Regulation Filing Act;
- Specifying that the Secretary's ability to take actions necessary to avoid designation of an area as a non-attainment area under the federal Clean Act would not be limited by the bill;
- Creating income tax credits for persons who install ceiling insulation, energy efficient heating, ventilation or air conditioning systems that meet statutory requirements; and
- Making technical amendments.

The introduced version of HB 2711 is identical to the introduced version of SB 515. Some, but not all of the provisions of the Senate bill were incorporated into Senate Substitute for HB 2066 which was recommended favorably to the Senate on the day prior to the House Committee action on this bill. Provisions of 2007 HB 2037 creating tax incentives for energy conservation improvements for rental property, as passed by the House, are included in House Sub. for SB 327. HB 2037 was in the Senate Assessment and Taxation Committee when the House Committee took action on this bill.

The House Committee on Energy and Utilities held four days of hearings on HB 2711. During those hearings the Committee received testimony in support of and in opposition to the bill and testimony providing background information and suggested amendments.

The House Committee received testimony in support of the bill from representatives of Sunflower Electric Power Corporation, Midwest Energy, the Kansas Cooperative Council, Tri-State Generation and Transmission Association, Inc., the Finney County Economic Development Corporation, the Kansas Grain and Feed Association, the Kansas Agribusiness Retailers Association, the Association of Ethanol Processors, Associated General Contractors of Kansas, Orion Ethanol, Building Construction Trades Council of Central and Western Kansas, the Kansas Chamber, the Kansas Legislative Policy Group, the Coffey County Commissioners, the Kansas Association of Counties, the Kansas AFL-CIO, the Alliance for Sound Energy Policy, and several individuals.

Testimony in opposition to the bill was presented to the House Committee by representatives of the Kansas Department of Health and Environment, Americans for Tax Reform, Bowersock Mills and Power Company, Kansas Solar Electric Cooperatives, the America Legislative Exchange Council, Americans for Prosperity— Kansas, American Institute of Architects—Kansas Chapter, the Kansas Farmers Union, Synapse Energy Economics, the Sierra Club—Kansas Chapter, the Kansas Natural Resource Council, the American Lung Association, the Citizens' Utility Ratepayer Board, the Land Institute, the Union of Concerned Scientists, DCP Midstream, the Kansas Taxpayers Network and a number of individuals.

Testimony providing background and other information, including suggested amendments, was provided by Senator

Chris Steineger, Chesapeake Energy Company, Western Resource Advocates, the National Renewable Energy Laboratory, the American Council of Engineering Companies, the Olathe School District, the Kansas Corporation Commission, the Kansas Rural Center, Waste Management, and two individuals.

The fiscal note prepared by the Division of the Budget on the House-passed version of SB 327 is not pertinent to the substitute bill. The fiscal note on the introduced version of HB 2711 states that enactment of the bill would increase the Department of Administration's expenditures from the State General Fund during FY 2009 by $149,500 related to the state building energy efficiency provisions of the bill. The Kansas Board of Regents did not provide a precise estimate of increased expenditures associated with the bill. The fiscal note includes an estimate of $115,200 in additional expenditures associated with the Facilities Conservation Improvements Program (FCIP) of the KCC. The KCC estimates expenditure of $50,000 for development of rules and regulations establishing interconnection standards. Finally, the fiscal note states that the reduction in revenue to the Public Service Regulation Fund that would result if large co-operatives elect to no longer be rate regulated would be offset by increasing assessments on the remaining regulated utilities. Other elements of the fiscal note on the introduced version of HB 2711 are not pertinent to this substitute bill.

According to the fiscal note prepared by the Division of the Budget for the introduced version of HB 2037 (providing energy efficiency tax incentives to landlords) enactment of the bill would reduce State General Fund revenues. The Budget Division was not able to predict the number of taxpayers who might utilize the credits and accelerated depreciation that would be authorized by the bill, but included in the fiscal note an estimated impact of $2.5 million reduced revenue to the State General Fund if 4,000 people utilized both the tax credit and the accelerated depreciation provisions. The cost to the Department of Revenue of implementing HB 2037 is estimated to be $251,920 for programming and testing of new programs.

The House Committee of the Whole amendments would appear to alter the fiscal impact of the bill as compared to the House Committee version by an indeterminate amount.