



**Neutral Testimony on Hearing on Senate Bill 170 Presented to
The Senate Utilities Committee
By Tom Gross, Bureau of Air
Kansas Department of Health and Environment
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Good afternoon Chairman and members of the Committee. I am Tom Gross with the Bureau of Air at the Kansas Department of Health and Environment. I appreciate the opportunity to provide comments on Senate Bill 170. We wish to share the possible impacts the bill would have on our development of a state plan regarding CO2 emission reductions from existing electric generating units.

Senate Bill 170 amends K.S.A. 2014 Supp. 65-3031, which was established in response to the U.S. EPA's proposed carbon dioxide standards for electric generating units under Section 111(d) of the Clean Air Act. The proposed standards would require states to prepare and submit state plans to EPA. States would have one year to prepare the plans with the potential for a one-year extension if certain criteria are met. The Kansas plan would affect 28 fossil fuel-fired power plants. If a state does not submit a plan, the EPA will issue a federal implementation plan for that state.

Section 1. (b) of the bill places several restrictions on KDHE that could result in the deadlines not being met. The first of these is that judicial review of the final rule must be complete before KDHE and the KCC may work on the state plan. If a stay is not granted, this presents a great risk that EPA will impose a federal plan on Kansas. The second restriction is that the plan must be reviewed by legislative committees and their approval of the plan be sent to the legislature. There is no timeframe for this review and approval, nor instruction how to proceed if the legislative committee doesn't approve the plan. A third restriction in the bill is the requirement that the state plan be certified by the KCC and the Federal Energy Regulatory Commission. Once again, there is no timeframe for completion of these reviews, nor instruction on how to proceed if they are not forthcoming. KDHE has worked cooperatively with the KCC in many areas where our responsibilities overlap and will do so in developing a Section 111(d) state plan.

Section 1. (c) of the bill places cost cap limitations on a future state plan. We believe this is premature without knowing the final content of the federal rule. The section also would restrict retirements of generating units under a state 111(d) plan. Retirement decisions are made as a result of other regulatory or financial drivers. Utilities across the country have retired or will retire units as a result of EPA's Mercury & Air Toxics (MATS) rule, the one-hour sulfur dioxide rule, and the Cross State Air Pollution Rule. A unit closing as a result of a business decision not to retrofit for these reasons could be included in a state Section 111(d) plan, thus gaining the benefit of a unit closure for the plan.

In conclusion, we believe that Senate Bill 170 would place significant barriers to completion of a state plan in the time frame provided in the proposed EPA rule. I appreciate the opportunity to provide comments and will stand for questions at the appropriate time.