

HOUSE BILL No. 2240

By Committee on Utilities

2-1

10 AN ACT concerning certain public utilities; relating to energy efficiency
11 and conservation programs for certain customers; providing for recov-
12 ery of certain amounts therefor.
13

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

15 Section 1. As used in this act:

16 (a) "Commission" means the Kansas corporation commission.

17 (b) "Customer facility" means all buildings, structures, equipment,
18 and installations at a single site.

19 (c) "Energy audit" means an unbiased study, rating or indication of
20 a building, facility or system's relative energy efficiency based on consis-
21 tent inspection procedures, operating assumptions, climate data and cal-
22 culation methods, used for the purpose of identifying energy conservation
23 opportunities and costs.

24 (d) "Energy conservation" means demand-side management of en-
25 ergy supplies resulting in a net reduction in energy use. Load manage-
26 ment that reduces overall energy use is energy conservation.

27 (e) "Energy conservation improvement" means a project that results
28 in energy conservation.

29 (f) "Investments and expenses of a public utility" includes invest-
30 ments and expenses incurred by a public utility in connection with an
31 energy conservation improvement, including, but not limited to:

32 (1) The differential in interest cost between the market rate and the
33 rate charged on a no-interest or below-market interest loan made by a
34 public utility to a customer for the purchase or installation of an energy
35 conservation improvement; and

36 (2) the difference between the utility's cost of purchase or installation
37 of energy conservation improvements and any price charged by a public
38 utility to a customer for such improvements.

39 (g) "Large electric customer facility" means a customer facility that
40 imposes a peak electrical demand on an electric utility's system of not
41 less than 20,000 kilowatts, measured in the same way as the utility that
42 serves the customer facility measures electrical demand for billing pur-
43 poses, and for which electric services are provided at retail on a single

1 bill by a utility operating in the state.

2 (h) “Load management” means an activity, service or technology to
3 change the timing or the efficiency of a customer’s use of energy that
4 allows a utility or a customer to respond to wholesale market fluctuations
5 or to reduce the overall demand for energy or capacity.

6 Sec. 2. (a) (1) Each public utility shall spend and invest for energy
7 conservation improvements under this section and section 3, and amend-
8 ments thereto, the following amounts:

9 (A) For a natural gas public utility, 0.5% of its gross operating reve-
10 nues from natural gas service provided in the state;

11 (B) for an electric public utility which does not operate a nuclear-
12 powered electric generating plant within the state, 1.5% of its gross op-
13 erating revenues from electric service provided in the state; and

14 (C) for an electric public utility which operates a nuclear-powered
15 electric generating plant within the state, 2% of its gross operating rev-
16 enues from electric service provided in the state.

17 (2) For purposes of this subsection (a), “gross operating revenues”
18 does not include revenues from large electric customer facilities ex-
19 empted by the commission pursuant to subsection (b).

20 (b) (1) The owner of a large electric customer facility may petition
21 the commission to exempt both electric and gas utilities serving the large
22 energy customer facility from the investment and expenditure require-
23 ments of subsection (a) with respect to retail revenues attributable to the
24 facility. At a minimum, the petition must be supported by evidence re-
25 lating to competitive or economic pressures on the petitioner and a show-
26 ing by the petitioner of reasonable efforts to identify, evaluate and im-
27 plement cost-effective conservation improvements at the facility. If a
28 petition is filed on or before October 1 of any year, the order of the
29 commission to exempt revenues attributable to the facility can be effective
30 no earlier than January 1 of the following year. The commission shall not
31 grant an exemption if the commission determines that granting the ex-
32 emption is contrary to the public interest. The commission, after inves-
33 tigation, may rescind any exemption granted pursuant to this subsection
34 upon a determination that cost-effective energy conservation improve-
35 ments have been implemented at the large electric customer facility.

36 (2) For the purposes of this subsection (b), “cost-effective” means
37 that the projected total cost of the energy conservation improvement at
38 the large electric customer facility is less than the projected present value
39 of the energy and demand savings resulting from the energy conservation
40 improvement. For the purposes of investigations by the commission un-
41 der this subsection, the owner of any large electric customer facility shall,
42 upon request, provide the commission with updated information com-
43 parable to that originally supplied in or with the facility owner’s original

1 petition pursuant to this subsection.

2 (c) The commission may require investments or spending greater
3 than the amounts required under this section for a public utility whose
4 most recent advance forecast projects a peak demand deficit of 100 me-
5 gawatts or greater within five years under midrange forecast assumptions.

6 (d) A public utility or owner of a large electric customer facility may
7 appeal a decision of the commission pursuant to subsection (b) or (c) to
8 the commission in accordance with section 3, and amendments thereto.
9 In reviewing a decision of the commission pursuant to subsection (b) or
10 (c), the commission shall rescind the decision if it finds that the required
11 investments or spending will:

12 (1) Not result in cost-effective energy conservation improvements; or

13 (2) otherwise not be in the public interest.

14 (e) Each public utility shall determine what portion of the amount it
15 is required to spend for conservation improvements pursuant to this sec-
16 tion will be used for conservation improvements under section 3, and
17 amendments thereto, and what portion it will contribute to the energy
18 and conservation fund established by section 5, and amendments thereto.
19 A public utility may propose to the commission that all or a portion of
20 funds contributed to the energy and conservation fund be used for re-
21 search and development projects that can best be implemented on a state-
22 wide basis. Contributions must be remitted to the commission not later
23 than February 1 of each year.

24 (f) Nothing in this section shall be construed to prohibit a public
25 utility from spending or investing for energy conservation improvement
26 more than required in this section.

27 Sec. 3. (a) The commission may require an electric or natural gas
28 public utility to make investments and expenditures in energy conserva-
29 tion improvements, explicitly setting forth the interest rates, prices and
30 terms under which the improvements must be offered to the customers.
31 The required programs must cover a two-year period. Public utilities shall
32 file conservation improvement plans by June 1, on a schedule determined
33 by order of the commissioner. Plans received by a public utility by June
34 1 must be approved or approved as modified by the commission by De-
35 cember 1 of the same year. The commission shall give special consider-
36 ation and encouragement to programs that bring about significant net
37 savings through the use of energy-efficient lighting. The commission shall
38 evaluate a utility's conservation improvement program on the basis of
39 cost-effectiveness and the reliability of technologies employed. The com-
40 mission's order must provide, to the extent practicable, for a free choice,
41 by consumers participating in the program, of the device, method, ma-
42 terial or project constituting the energy conservation improvement and
43 for a free choice of the seller, installer or contractor of the energy con-

1 servation improvement, provided that the device, method, material or
2 project seller, installer or contractor is duly licensed, certified, approved
3 or qualified, including under the residential conservation services pro-
4 gram, where applicable.

5 (b) The commission may require a utility to make an energy conser-
6 vation improvement investment or expenditure whenever the commission
7 finds that the improvement will result in energy savings at a total cost to
8 the utility less than the cost to the utility to produce or purchase an
9 equivalent amount of new supply of energy. The commission shall nev-
10 ertheless ensure that every public utility operate one or more programs
11 under periodic review by the commission.

12 (c) Each public utility subject to section 2, and amendments thereto,
13 may spend and invest annually up to 10% of the total amount the utility
14 is required to spend on and invest in energy conservation improvements
15 under this section on research and development projects that meet the
16 definition of energy conservation improvement and that are funded di-
17 rectly by the public utility.

18 (d) A public utility may not spend money on or invest in energy con-
19 servation improvements that directly benefit a large electric customer
20 facility for which the commission has issued an exemption pursuant to
21 section 2, and amendments thereto. The commission shall consider and
22 may require a utility to undertake a program suggested by an outside
23 source, including a political subdivision or a nonprofit or community
24 organization.

25 (e) The commission, by order, may establish a list of programs that
26 may be offered as energy conservation improvements by a public utility,
27 municipal utility, electric cooperative utility or other entity providing con-
28 servation services pursuant to this section. The list of programs may in-
29 clude rebates for high-efficiency appliances, rebates or subsidies for high-
30 efficiency lamps, solar hot-water systems, small business energy audits,
31 and building recommissioning. The commission may, by order, change
32 this list to add or subtract programs as the commission determines is
33 necessary to promote efficient and effective conservation programs.

34 (f) The commission shall ensure that a portion of the money spent
35 on residential conservation improvement programs is devoted to pro-
36 grams that directly address the needs of renters and low-income persons,
37 in proportion to the amount the utility has historically spent on such
38 programs based on the most recent three-year average relative to the
39 utility's total conservation spending under this section, unless an insuffi-
40 cient number of appropriate programs are available.

41 (g) A utility, a political subdivision or a nonprofit or community or-
42 ganization that has suggested a program, the attorney general acting on
43 behalf of consumers and small business interests or a utility customer that

1 has suggested a program and is not represented by the attorney general
2 may petition the commission to modify or revoke a department decision
3 under this section, and the commission may do so if it determines that
4 the program is not cost-effective, does not adequately address the resi-
5 dential conservation improvement needs of low-income persons, has a
6 long-range negative effect on one or more classes of customers, or is
7 otherwise not in the public interest. The commission shall reject a petition
8 that, on its face, fails to make a reasonable argument that a program is
9 not in the public interest.

10 (h) The commission may order a public utility to include, with the
11 filing of the utility's proposed conservation improvement plan under sub-
12 section (a), the results of an independent audit of the utility's conservation
13 improvement programs and expenditures performed by the department
14 or an auditor with experience in the provision of energy conservation and
15 energy efficiency services approved by the commissioner and chosen by
16 the utility. The audit must specify the energy savings or increased effi-
17 ciency in the use of energy within the service territory of the utility that
18 is the result of the spending and investments. The audit must evaluate
19 the cost-effectiveness of the utility's conservation programs.

20 (i) Up to three percent of a utility's conservation spending obligation
21 under this section may be used for program pre-evaluation, testing and
22 monitoring and program audit and evaluation.

23 Sec. 4. The commission shall allow a utility to recover expenses re-
24 sulting from a conservation improvement program required by the com-
25 mission unless the recovery would be inconsistent with a financial incen-
26 tive proposal approved by the commission.

27 Sec. 5. (a) There is hereby created in the state treasury the energy
28 and conservation fund. The commission shall remit to the state treasurer,
29 in accordance with the provisions of K.S.A. 75-4215, and amendments
30 thereto, all moneys received by the commission from contributions pur-
31 suant to subsection (e) of section 2, and amendments thereto. Upon re-
32 ceipt of the remittance, the state treasurer shall deposit the entire amount
33 in the state treasury and credit it to the energy and conservation fund.

34 (b) Moneys in the energy and conservation fund shall be appropriated
35 to the commission to use solely for programs designed to meet the energy
36 conservation needs of low-income persons and to make energy conser-
37 vation improvements in areas not adequately served under section 3, and
38 amendments thereto, including research and development projects in-
39 cluded in the definition of energy conservation improvement in section
40 1, and amendments thereto. In establishing the programs, the commis-
41 sion shall consult political subdivisions and nonprofit and community or-
42 ganizations, especially organizations engaged in providing energy and
43 weatherization assistance to low-income persons. At least one program

1 must address the need for energy conservation improvements in areas in
2 which a high percentage of residents use fuel oil or propane to fuel their
3 source of home heating. The commission may contract with a political
4 subdivision, a nonprofit or community organization, a public utility, a
5 municipality or a cooperative electric association to implement its pro-
6 grams. The commission may provide grants to any person to conduct
7 research and development projects in accordance with this section.

8 (c) On or before the 10th of each month, the director of accounts
9 and reports shall transfer from the state general fund to the energy and
10 conservation fund interest earnings based on:

11 (1) The average daily balance of moneys in the energy and conser-
12 vation fund for the preceding month; and

13 (2) the net earnings rate for the pooled money investment portfolio
14 for the preceding month.

15 (d) All expenditures from the energy and conservation fund shall be
16 made in accordance with appropriation acts upon warrants of the director
17 of accounts and reports issued pursuant to vouchers approved by the
18 chairperson of the commission, or the chairperson's designee, for the
19 purposes set forth in this section.

20 Sec. 6. An energy conservation improvement made to or installed in
21 a building in accordance with this section, except systems owned by the
22 utility and designed to turn off, limit or vary the delivery of energy, are
23 the exclusive property of the owner of the building except to the extent
24 that the improvement is subjected to a security interest in favor of the
25 utility in case of a loan to the building owner. The utility has no liability
26 for loss, damage or injury caused directly or indirectly by an energy con-
27 servation improvement except for negligence by the utility in purchase,
28 installation or modification of the product.

29 Sec. 7. If investments by public utilities in energy conservation im-
30 provements are in any manner prohibited or restricted by federal law and
31 there is a provision under which the prohibition or restriction may be
32 waived, then the commission, the governor or any other necessary state
33 agency or officer shall take all necessary and appropriate steps to secure
34 a waiver with respect to those public utility investments in energy con-
35 servation improvements included in this act.

36 Sec. 8. This act shall take effect and be in force from and after its
37 publication in the statute book.