Session of 2009

SENATE BILL No. 265

By Committee on Ways and Means

2-12

AN ACT concerning energy; relating to conservation and electric generation, transmission and efficiency and air emissions; amending K.S.A. 19-101a and 65-3012 and K.S.A. 2008 Supp. 65-3005, 65-3008a and 66-1,184 and repealing the existing sections; also repealing K.S.A. 19-101m.

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

WHEREAS, The federal government is currently contemplating the regulation of certain emissions from stationary, mobile and area sources not currently regulated by the United States environmental protection agency, the form and requirements of which cannot be predicted at this time, but which could include cap and trade regulations, national energy taxes or a specific tax on one or more of such emissions that would preempt state-specific programs intended to reduce the emission of greenhouse gases and other emissions; and

WHEREAS, Any uncoordinated state regulatory initiative intended to regulate such emissions may be inconsistent with subsequent congressional determinations and with related federal legislation; and

WHEREAS, An individual Kansas response to the development of new regulatory programs intended to regulate emissions not currently regulated by the federal government is premature: Now, therefore,

New Section 1. As used in sections 1 through 5, and amendments thereto:

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

(b) "Energy star" means the joint program of the United States environmental protection agency and the United States department of energy which labels certain products that meet energy efficiency standards adopted for such products.

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

(d) "New state building" means any building or structure which is constructed by the state or any agency of the state and the construction of which commences on or after July 1, 2010.

New Sec. 2. The secretary of administration shall adopt rules and regulations for state agencies for the purchase of products and equipment,

including, but not limited to, appliances, lighting fixtures and bulbs, and computers, which meet energy efficiency guidelines which are not less than the guidelines adopted for such products to qualify as an energy star product if the projected cost savings for the useful life of such products and equipment is equal to or greater than the additional cost compared to functionally equivalent products and equipment of lower efficiency.

New Sec. 3. (a) The department of administration shall collect data on energy consumption and costs for all state-owned and leased real property and the secretary of administration shall submit a written report to the legislature on or before the first day of the 2010 regular session of the legislature and on or before the first day of each ensuing regular session of the legislature identifying state-owned or leased real property locations in which an excessive amount of energy is being used in accordance with rules and regulations adopted by the secretary of administration concerning energy efficiency performance standards for state-owned or leased real property.

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

New Sec. 4. (a) Within the limitations of appropriations therefor, the Kansas energy office of the state corporation commission shall develop and increase the participation of school districts and local governments in the facilities conservation improvements program (FCIP) pursuant to K.S.A. 75-37,125, and amendments thereto.

(b) The state corporation commission shall strongly encourage state agencies which operate and maintain state-owned buildings that are not participating in the FCIP to participate in the FCIP pursuant to K.S.A. 75-37,125, and amendments thereto, on or before December 1, 2011.

New Sec. 5. The secretary of administration shall adopt rules and regulations prescribing energy efficiency performance standards requiring that all new construction and, to the extent possible, renovated state-owned buildings, be designed and constructed to achieve energy consumption levels that are at least 10% below the levels established under the ASHRAE standard or the IECC, as appropriate, if such levels of energy consumption are life-cycle cost-effective for such buildings and also recommend that new and, to the extent possible, renovated school and municipal buildings meet the same requirements.

New Sec. 6. (a) (1) By the year 2013, for each public utility, the nameplate capacity of the renewable electric generation facilities included

in the public utility's generation portfolio, whether owned by the public utility or contracted for energy purchase by the public utility, shall be no less than 10% of the public utility's peak load, expressed in megawatts, in the state of Kansas, for a three-year average for the 2009, 2010 and 2011 calendar years.

(2) By the year 2017, for each public utility, the nameplate capacity of the renewable electric generation facilities included in the public utility's generation portfolio, whether owned by the public utility or contracted for energy purchase by the public utility, shall be no less than 15% of the public utility's peak load, expressed in megawatts, in the state of Kansas, for a three-year average for the 2013, 2014 and 2015 calendar years.

(3) By the year 2021, for each public utility, the nameplate capacity of the renewable electric generation facilities included in the public utility's generation portfolio, whether owned by the public utility or contracted for energy purchase by the public utility, shall be no less than 20% of the public utility's peak load, expressed in megawatts, in the state of Kansas, for a three-year average for the 2017, 2018 and 2019 calendar years.

(b) The state corporation commission shall establish rules and regulations to govern reporting requirements and prevention of duplication of the application of the requirements of this section.

(c) As used in this section:

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

(2) "renewable electric generation facilities" means facilities generating electricity utilizing renewable energy resources or technologies, as defined in K.S.A. 79-201, and amendments thereto, and the capacity of all net metering systems operating under the net metering and easy connection act.

New Sec. 7. Sections 7 through 23, and amendments thereto, shall be known and may be cited as the net metering and easy connection act.

New Sec. 8. As used in the net metering and easy connection act:

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

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

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

(1) Is powered by solar thermal sources or photovoltaic cells and

panels;

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

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

(4) is interconnected and operates in parallel phase and synchronization with a retail electric supplier and has been approved by such retail electric supplier;

(5) is intended primarily to offset part or all of the customer-generator's own electrical energy requirements;

(6) meets all applicable safety, performance, interconnection and reliability standards established by the national electrical code, the national electrical safety code, the institute of electrical and electronics engineers, underwriters laboratories, the federal energy regulatory commission and any local governing authorities; and

(7) contains a mechanism accessible by electric utility personnel that automatically disables the unit and interrupts the flow of electricity back onto the supplier's electricity lines in the event that service to the customer-generator is interrupted.

(d) "Net metering" means using metering equipment sufficient to measure the difference between the electrical energy supplied to a customer-generator by a retail electric supplier and the electrical energy supplied by the customer-generator to the retail electric supplier over the applicable billing period.

(e) "Retail electric supplier" means any municipal electric utility, electric cooperative utility or electric public utility which provides retail electric service in this state.

New Sec. 9. A retail electric supplier shall:

(a) Make net metering available to customer-generators on a first-come, first-served basis, subject to the following: (1) A supplier shall not be required to make net metering available in a calendar year if total rated generating capacity of all applications for interconnection already approved by the supplier in the calendar year equals or exceeds 1% of the supplier's single-hour peak load for the previous calendar year; and (2) a supplier shall not be required to make net metering available to a customer-generator if the total rated generating capacity of net metering systems equals: (A) 5% of the supplier's Kansas single-hour peak load during the previous year; or (B) such higher percentage as specified by the commission, for a public utility, or the governing body, for any other utility, once the total rated generating capacity of net metering systems has reach 5% of the supplier's single-hour peak load during the previous year;

(b) offer to the customer-generator a tariff or contract that is identical

in electrical energy rates, rate structure and monthly charges to the contract or tariff that the customer would be assigned if the customer were not an eligible customer-generator but shall not charge the customer-generator any additional standby, capacity, interconnection or other fee or charge that would not otherwise be charged if the customer were not an eligible customer-generator; and

(c) disclose annually the availability of the net metering program to each of its customers with the method and manner of disclosure being at the discretion of the supplier.

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

New Sec. 11. The utility will supply, own and maintain all necessary meters and associated equipment utilized for billing. In addition, and for the purposes of monitoring customer generation and load, the utility may install at its expense, load research metering. The customer shall supply, at no expense to the utility, a suitable location for meters and associated equipment used for billing and for load research.

New Sec. 12. Consistent with the provisions of the net metering and easy connection act, the net electrical energy measurement shall be calculated in the following manner:

(a) For a customer-generator, a retail electric supplier shall measure the net electrical energy produced or consumed during the billing period in accordance with normal metering practices for customers in the same rate class, by employing a single, bidirectional meter that measures the amount of electrical energy produced and consumed, by employing multiple meters that separately measure the customer-generator's consumption and production of electricity or by employing an alternative technology.

(b) If the electricity supplied by the supplier exceeds the electricity generated by the customer-generator during a billing period, the cus-

tomer-generator shall be billed for the net electricity supplied by the supplier in accordance with normal practices for customers in the same rate class.

(c) If the electricity generated by the customer-generator exceeds the electricity supplied by the supplier during a billing period, the customer-generator shall be billed for the appropriate customer charges for that billing period in accordance with section 9, and amendments thereto, and shall be credited an amount at least equal to 150% of the avoided energy cost for the excess kilowatt-hours generated during the billing period, with this credit applied to the following billing period.

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

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

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

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

(c) For customer-generator systems of greater than 10 kilowatts, the commission for public utilities and the governing body for other utilities,

by rule or equivalent formal action by each respective governing body, shall:

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

(2) establish the qualifications for exemption from a requirement to install additional controls, perform or pay for additional tests or distribution equipment or purchase additional liability insurance.

New Sec. 14. (a) Applications by a customer-generator for interconnection of the qualified generation unit to the distribution system shall be accompanied by the plan for the customer-generator's electrical generating system, including, but not limited to, a wiring diagram and specifications for the generating unit, and shall be reviewed and responded to by the retail electric supplier within 30 days after receipt for systems of 10 kilowatts or less and within 90 days after receipt for all other systems. Prior to the interconnection of the qualified generation unit to the supplier's system, the customer-generator will furnish the retail electric supplier a certification from a qualified professional electrician or engineer that the installation meets the requirements of subsection (a) of section 13, and amendments thereto. If the application for interconnection is approved by the retail electric supplier and the customer-generator does not complete the interconnection within one year after receipt of notice of the approval, the approval shall expire and the customer-generator shall be responsible for filing a new application.

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

New Sec. 15. Each retail electric supplier regulated by the commission shall submit an annual net metering report to the commission and each other retail electric supplier shall submit the same report to its respective governing body. For data collection purposes only, non-regulated electric suppliers shall submit the same report to the commission. The report shall include the following information for the previous calendar year: The total number of customer-generator facilities, the total estimated generating capacity of its net-metered customer-generators and the total estimated net kilowatt-hours received from customer-generators. The supplier shall make such report available to any consumer of the supplier upon request.

New Sec. 16. Within nine months after the effective date of the net metering and easy connection act, the commission shall adopt rules and regulations necessary for the administration of such act for electric public utilities, which shall include rules and regulations ensuring that simple contracts will be used for interconnection and net metering. For systems of 10 kilowatts or less, the application process shall use an all-in-one

document that includes a simple interconnection request, simple procedures and a brief set of terms and conditions.

New Sec. 17. Within nine months after the effective date of the net metering and easy connection act, the governing body of an electric cooperative utility or electric municipal utility shall adopt policies establishing a simple contract to be used for interconnection and net metering. For systems of 10 kilowatts or less, the application process shall use an all-in-one document that includes a simple interconnection request, simple procedures and a brief set of terms and conditions.

New Sec. 18. For any cause of action relating to any damages to property or person caused by the generation unit of a customer-generator or the interconnection thereof, the retail electric supplier shall have no liability absent clear and convincing evidence of fault on the part of the supplier.

New Sec. 19. The estimated generating capacity of all net metering systems operating under the provisions of the net metering and easy connection act shall count towards accomplishment by the respective retail electric supplier, or the wholesale generator supplying electric energy to the retail electric supplier, of any renewable energy portfolio target or mandate adopted by the Kansas legislature.

New Sec. 20. Any costs incurred under the net metering and easy connection act by a retail electric supplier shall be recoverable in the utility's rate structure.

New Sec. 21. No consumer shall connect or operate an electric generation unit in parallel phase and synchronization with any retail electric supplier without written approval by such supplier that all of the requirements under subsection (a) of section 14, and amendments thereto, have been met. For a consumer who violates this provision, a supplier may immediately and without notice disconnect the electric facilities of such consumer and terminate such consumer's electric service.

New Sec. 22. The manufacturer of any electric generation unit used by a customer-generator may be held liable for any damages to property or person caused by a defect in the electric generation unit of a customer-generator.

New Sec. 23. The seller, installer or manufacturer of any electric generation unit who knowingly misrepresents the safety aspects of an electric generation unit may be held liable for any damages to property or person caused by the electric generation unit of a customer-generator.

Sec. 24. K.S.A. 19-101a is hereby amended to read as follows: 19-101a. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

(1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not affect the courts located therein.

(3) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(4) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(5) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271—74th congress, or amendments thereof.

(6) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(7) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(8) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(9) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(10) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

(12) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.

(13) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto.

(14) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

(15) Counties may not exempt from or effect changes in K.S.A. 19-15,139, 19-15,140 and 19-15,141, and amendments thereto.

(16) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provisions of K.S.A. 12-1260 through 12-1270 and 12-1276, and amendments thereto.

(17) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-211, and amendments thereto.

(18) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

(19) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.

(20) Counties may not exempt from or effect changes in K.S.A. 79-41a04, and amendments thereto.

(21) Counties may not exempt from or effect changes in K.S.A. 79-1611, and amendments thereto.

(22) Counties may not exempt from or effect changes in K.S.A. 79-1494, and amendments thereto.

(23) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-202, and amendments thereto.

(24) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-204, and amendments thereto.

(25) Counties may not levy or impose an excise, severance or any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water.

(26) Counties may not exempt from or effect changes in K.S.A. 79-2017 or 79-2101, and amendments thereto.

(27) Counties may not exempt from or effect changes in K.S.A. 2-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, *65-3001 through 65-3028,* 65-1,178 through 65-1,199, and amendments thereto.

(28) Counties may not exempt from or effect changes in K.S.A. 2007 Supp. 80-121, and amendments thereto.

(29) Counties may not exempt from or effect changes in K.S.A. 19-

228, and amendments thereto.

(30) Counties may not exempt from or effect changes in the wireless enhanced 911 act, in the VoIP enhanced 911 act or in the provisions of K.S.A. 12-5301 through 12-5308, and amendments thereto.

(31) Counties may not exempt from or effect changes in K.S.A. 2007 Supp. 26-601, and amendments thereto.

(32) (A) Counties may not exempt from or effect changes in the Kansas liquor control act except as provided by paragraph (B).

(B) Counties may adopt resolutions which are not in conflict with the Kansas liquor control act.

(33) (A) Counties may not exempt from or effect changes in the Kansas cereal malt beverage act except as provided by paragraph (B).

(B) Counties may adopt resolutions which are not in conflict with the Kansas cereal malt beverage act.

(34) Counties may not exempt from or effect changes in the Kansas lottery act.

(35) Counties may not exempt from or effect changes in the Kansas expanded lottery act.

(36) Counties may neither exempt from nor effect changes to the eminent domain procedure act.

(37) Any county granted authority pursuant to the provisions of K.S.A. 19-5001 through 19-5005, and amendments thereto, shall be subject to the limitations and prohibitions imposed under K.S.A. 19-5001 through 19-5005, and amendments thereto.

(38) Except as otherwise specifically authorized by K.S.A. 19-5001 through 19-5005, and amendments thereto, counties may not exercise any authority granted pursuant to K.S.A. 19-5001 through 19-5005, and amendments thereto, including the imposition or levy of any retailers' sales tax.

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

(c) Any resolution adopted by a county which conflicts with the restrictions in subsection (a) is null and void.

Sec. 25. K.S.A. 2008 Supp. 66-1,184 is hereby amended to read as follows: 66-1,184. (a) Except as provided in subsection (b), every public utility which provides retail electric services in this state shall enter into a contract for parallel generation service with any person who is a customer of such utility, upon request of such customer, whereby such customer may attach or connect to the utility's delivery and metering system an apparatus or device for the purpose of feeding excess electrical power which is generated by such customer's energy producing system into the utility's system. No such apparatus or device shall either cause damage to the public utility's system or equipment or present an undue hazard to utility personnel. Every such contract shall include, but need not be limited to, provisions relating to fair and equitable compensation on such customer's monthly bill for energy supplied to the utility by such customer.

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

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

(B) "school" means Cloud county community college and Dodge City community college~~.~~; *and*

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

(2) Every utility which provides retail electric services in this state shall enter into a contract for parallel generation service with any person who is a customer of such utility, if such customer is a residential customer of the utility and owns a renewable generator with a capacity of 25 kilowatts or less, or is a commercial customer of the utility and owns a renewable generator with a capacity of 200 kilowatts or less or is a school and owns a renewable generator with a capacity of 1.5 megawatts or less. Such generator shall be appropriately sized for such customer's anticipated electric load. A commercial customer who uses the operation of a renewable generator in connection with irrigation pumps shall not request more than 10 irrigation pumps connected to renewable generators be attached or connected to the utility's system. At the customer's delivery point on the customer's side of the retail meter such customer may attach or connect to the utility's delivery and metering system an apparatus or device for the purpose of feeding excess electrical power which is generated by such customer's energy producing system into the utility's sys-

tem. No such apparatus or device shall either cause damage to the utility's system or equipment or present an undue hazard to utility personnel. Every such contract shall include, but need not be limited to, provisions relating to fair and equitable compensation for energy supplied to the utility by such customer. Such compensation shall be not less than 100% of the ~~utility's monthly system average cost of energy per kilowatt hour~~ *avoided energy cost* except that in the case of renewable generators with a capacity of 200 kilowatts or less, such compensation shall be not less than 150% of the ~~utility's monthly system average cost of energy per kilowatt hour~~ *avoided energy cost*. A utility may credit such compensation to the customer's account or pay such compensation to the customer at least annually or when the total compensation due equals $25 or more.

(3) A customer-generator, as defined by section 8, and amendments thereto, shall have the option of entering into a contract pursuant to this subsection (b) or utilizing the net metering and easy connection act. The customer-generator shall exercise the option in writing, filed with the utility and shall not be entitled to change the option once it is filed.

(c) The following terms and conditions shall apply to contracts entered into under subsection (a) or (b):

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

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

(3) the customer shall furnish, install, operate, and maintain in good order and repair and without cost to the utility, such relays, locks and seals, breakers, automatic synchronizer, and other control and protective apparatus as shall be designated by the utility as being required as suitable for the operation of the generator in parallel with the utility's system. In any case where the customer and the utility cannot agree to terms and conditions of any such contract, the state corporation commission shall establish the terms and conditions for such contract. In addition, the utility may install, own, and maintain a disconnecting device located near the electric meter or meters. Interconnection facilities between the customer's and the utility's equipment shall be accessible at all reasonable times to utility personnel. Upon notification by the customer of the cus-

tomer's intent to construct and install parallel generation, the utility shall provide the customer a written estimate of all costs that will be incurred by the utility and billed to the customer to accommodate the interconnection. The customer may be required to reimburse the utility for any equipment or facilities required as a result of the installation by the customer of generation in parallel with the utility's service. The customer shall notify the utility prior to the initial energizing and start-up testing of the customer-owned generator, and the utility shall have the right to have a representative present at such test;

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

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

(d) Service under any contract entered into under subsection (a) or (b) shall be subject to either the utility's rules and regulations on file with the state corporation commission, which shall include a standard interconnection process and requirements for such utility's system, or the current federal energy regulatory commission interconnection procedures and regulations.

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

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

(g) For the purpose of meeting the ~~governor's stated goal of producing 10% of the state's electricity by wind power by 2010 and 20% by 2020,~~ *requirements of section 6, and amendments thereto,* the parallel generation of electricity provided for in this section shall be included as part of the state's *renewable* energy generation ~~by wind power~~.

(h) The provisions of the net metering and easy connection act shall not preclude the state corporation commission from approving net me-

tering tariffs upon request of an electric utility for other methods of renewable generation not prescribed in subsection (c)(1) of section 8, and amendments thereto.

Sec. 26. K.S.A. 2008 Supp. 65-3005 is hereby amended to read as follows: 65-3005. *(a)*The secretary shall have the power to:

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

~~(b)~~ *(2)* Hold hearings relating to any aspect of or matter in the administration of this act concerning air quality control, and in connection therewith, compel the attendance of witnesses and the production of evidence.

~~(c)~~ *(3)* Issue such orders, permits and approvals as may be necessary to effectuate the purposes of this act and enforce the same by all appropriate administrative and judicial proceedings.

~~(d)~~ *(4)* Require access to records relating to emissions which cause or contribute to air pollution.

~~(e)~~ *(5)* Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution originating in Kansas that affects air quality in Kansas or in other states or both.

~~(f)~~ *(6)* Adopt rules and regulations governing such public notification and comment procedures as authorized by this act.

~~(g)~~ *(7)* Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this act.

~~(h) (1)~~ *(8) (A)* Encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis; ~~(2)~~ *(B)* provide technical and consultative assistance therefor; and ~~(3)~~ *(C)* enter into agreements with local units of government to administer all or part of the provisions of the Kansas air quality act in the units' respective jurisdictions.

~~(i)~~ *(9)* Encourage and conduct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control.

~~(j)~~ *(10)* Encourage air contaminant emission sources to voluntarily implement strategies, including the development and use of innovative technologies, market-based principles and other private initiatives to reduce or prevent pollution.

~~(k)~~ *(11)* Determine by means of field studies and sampling the degree of air contamination and air pollution in the state and the several parts thereof.

~~(l)~~ *(12)* Establish ambient air quality standards for the state as a whole or for any part thereof.

~~(m)~~ *(13)* Collect and disseminate information and conduct educational and training programs relating to air contamination and air

pollution.

~~(n)~~ *(14)* Advise, consult and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.

~~(o)~~ *(15)* Accept, receive and administer grants or other funds or gifts from public and private entities, including the federal government, for the purpose of carrying out any of the functions of this act. Such funds received by the secretary pursuant to this section shall be deposited in the state treasury to the account of the department of health and environment.

~~(p)~~ *(16)* Enter into contracts and agreements with other state agencies or subdivisions, local governments, other states, interstate agencies, the federal government or its agencies or private entities as is necessary to accomplish the purposes of the Kansas air quality act.

~~(q)~~ *(17)* Conduct or participate in intrastate or interstate emissions trading programs or other programs that demonstrate equivalent air quality benefits for the prevention, abatement and control of air pollution in Kansas or in other states or both.

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

~~(s)~~ *(19)* Participate in the activities of any visibility transport commission established under 42 U.S.C. 7492. The secretary shall report to the governor and the legislature on the activities of any such visibility transport commission annually.

(b) It is a policy of the state to regulate the air quality of the state and implement laws and regulations that are applied equally and uniformly throughout the state and consistent with those of the federal government.

(1) The secretary shall have the authority to promulgate rules and regulations to establish standards to ensure that the state is in compliance with the provisions of the federal clean air act, as amended (42 U.S.C. section 7401 et seq.,). The standards so established shall not be any more stringent, restrictive or expansive than those required under the federal clean air act, as amended, nor shall the rules and regulations be enforced in any area of the state prior to the time required by the federal clean air act. The restrictions of this section shall not apply to the parts of the state implementation plan developed by the secretary to bring a nonattainment area into compliance when needed to have a United States environmental protection agency approved state implementation plan.

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

(c) Any action by the secretary on any application filed after January 1, 2006, and before the effective date of this act, which seeks the issuance, modification, amendment, revision or renewal of any approval or permit, and which is still the subject of any administrative or judicial review proceedings, shall be reconsidered by the secretary upon the applicant's or permittee's timely written request, which shall be filed no later than 60 days after the effective date of this act. Within 15 days after the applicant or permittee files a written request pursuant hereto, the secretary shall reconsider the secretary's decision, agency action or order and shall determine in accordance with the provisions of this act, as amended, whether the issuance, modification, amendment, revision or renewal of any approval or permit requested by the permittee or applicant should be issued, modified, amended, revised or renewed. If the applicant or permittee is aggrieved by the secretary's determination hereunder, the applicant or permittee shall be immediately entitled to judicial review of such agency action by filing a petition for judicial review in the court of appeals within 30 days from the date of the secretary's determination. If the secretary fails to act within the 15 days, the applicant or permittee immediately shall be entitled to seek a writ of mandamus compelling the secretary to act by filing for such writ in the court of appeals. Such proceedings shall be conducted in accordance with K.S.A. 77-601 et seq., and amendments thereto, however the applicant or permittee shall not be required to exhaust any other or additional administrative remedies available within the agency notwithstanding any other provision of law.

Sec. 27. K.S.A. 2008 Supp. 65-3008a is hereby amended to read as follows: 65-3008a. (a) No permit shall be issued, modified, renewed or reopened without first providing the public an opportunity to comment and request a public hearing on the proposed permit action. The request for a public hearing on the issuance of a permit shall set forth the basis for the request and a public hearing shall be held if, in the judgment of the secretary, there is sufficient reason.

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

agency actions in the court of appeals. Any such person other than the applicant for or holder of the permit shall not be required to have exhausted administrative remedies in order to be entitled to review. The court of appeals shall have original jurisdiction to review any such final agency action. The record before the court of appeals shall be confined to the agency record for judicial review and consist of the documentation submitted to or developed by the secretary in making the final permit decision, including the permit application and any addenda or amendments thereto, the permit summary, the draft permit, all written comments properly submitted to the secretary, all testimony presented at any public hearing held on the permit application, all responses by the applicant or permit holder to any written comments or testimony, the secretary's response to the public comments and testimony and the final permit.

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

Sec. 28. K.S.A. 65-3012 is hereby amended to read as follows: 65-3012. (a) ~~Notwithstanding any other provision of this act, the secretary may take such action as may be necessary to protect the health of persons or the environment: (1)~~ Upon receipt of ~~information~~ *evidence* that ~~the emission of~~ *emissions from an* air pollution *source or combination of air pollution sources* presents ~~a~~*: (1) An imminent and* substantial endangerment to ~~the~~ *public* health ~~of persons~~ *or welfare* or to the environment; or (2) for an imminent or actual violation of this act, ~~any rules and regulations adopted under this act, any orders issued under this act or any permit conditions required by this act~~ *or any permit conditions required by this act, the secretary may issue a temporary order not to exceed 72 hours in duration, directing the owner or operator, or both, to take such steps as necessary to prevent the act or eliminate the practice*.

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

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

~~(2) Commencing~~ *(b) Upon expiration of the temporary order, the secretary may commence* an action *in the district court* to enjoin acts or practices ~~specified in subsection (a)~~ or ~~requesting~~ *request* the attorney general or appropriate county or district attorney to commence an action to enjoin those acts or practices.

(c) Upon a showing by the secretary that a person has engaged in those acts or practices *in violation of subsection (a)*, a permanent or tem-

porary injunction, restraining order or other order may be granted by any court of competent jurisdiction. An action for injunction under this subsection shall have precedence over other cases in respect to order of trial.

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

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

~~(d) Any order of the secretary pursuant to subsection (b)(1) is subject to hearing and review in accordance with the Kansas administrative procedure act.~~

(d) The owner or operator, or both, aggrieved by an order of the secretary issued pursuant to this section shall be immediately entitled to judicial review of such agency action by filing a petition for judicial review in district court. The aggrieved party shall not be required to exhaust administrative remedies. A petition for review under this subsection shall have precedence over other cases in respect to order of trial.

New Sec. 29. The provisions of sections 1 through 29, and amendments thereto, are declared to be severable and if any provision, word, phrase or clause of the act or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this act.

Sec. 30. K.S.A. 19-101a, 19-101m and 65-3012 and K.S.A. 2008 Supp. 65-3005, 65-3008a and 66-1,184 are hereby repealed.

Sec. 31. This act shall take effect and be in force from and after its publication in the Kansas register.