

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on February 11, 2008 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Raney Gilliland, Kansas Legislative Research Department  
Cindy Lash, Kansas Legislative Research Department  
Mike Corrigan, Revisor of Statutes  
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Others in attendance: See attached list

Chairperson Emler opened for further discussion and possible action on:

**SB 515 - electric generation, transmission and efficiency and air emissions**

Sen. Francisco inquired whether Midwest and Sunflower were selling their renewable energy credits from the production of the wind power at Montezuma. Mr. Penrod responded that only those credits from 2007 could be sold but he did not know the amount that was sold .

Sen. Pyle inquired whether Robert's Rules of Order applied to further action in the committee on this bill since no written rules had been made. Chair responded that roll call vote can be made by motion and second.

Sen. Francisco noted she had received considerable help from Sunflower, Westar and KCPL in getting a much better understanding of the offset costs.

Sen. Pine requested an explanation of the process of the proposed Algae Biocenter. Mr. Penrod explained it is a greenhouse environment. It would utilize methanol gas and make use of waste water. Q. Was the Kansas BioScience Authority involved? A. Yes, in Phase I. There was further discussion on water use and savings and the cost of processing algae to biodiesel.

Chair closed discussion and asked for action on the **SB 515**.

Moved by Senator Apple, seconded by Senator Lee, to amend SB 515 by deleting the language starting on page 2, line 8 through page 12, line 7 (z515g13). Motion carried. "No" votes recorded from Sen. Francisco and Senator Reitz. (Attachment 1)

Moved by Senator Pyle to make a substitute motion. This amendment removes the carbon tax and replaces it with a tax credit. New language would be inserted in section (h) (1) page 11, lines 4 thru 37. Basically, starting in 2009, the tax credit is created for the owners of coal plants. Credit is for \$50 per pound of carbon dioxide reduced from the previous year. After discussion, Senator Pyle withdrew his motion. (Attachment 2)

Moved by Senator Taddiken, seconded by Senator Lee, amend SB 515 by deleting Section 1 through Section 8 - page 1 line 15 through page 4, line 6. Motion carried.

Moved by Senator Petersen, seconded by Senator Taddekin, amend SB 515 on page 26, Sec. 34 by striking the language starting at the end of line 5 through line 9 and inserting new language and by striking the language on page 27, line 2 -3 "member -owned generation and transmission cooperative and a member" and inserting 'cooperative as defined in subsection (a), that does not provide retail electric service and an owner' as shown in the balloon z515g15. Motion carried. (Attachment 3)

Moved by Senator Apple, seconded by Senator Reitz, amend SB 515 on page 4, line 17 and 18 make these persons non-voting members; line 20 change to one member; line 11 appoint two persons with scientific background. Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Utilities Committee at 9:30 A.M. on February 11, 2008 in Room 526-S of the Capitol.

Moved by Senator Taddiken, seconded by Senator Petersen, amend the proposed language of SB 515 into HB 2066 and delete all the current language in HB 2066, the new bill would be Senate Substitute for HB 2066. Motion carried. "No" votes recorded from Sen. Francisco and Sen. Reitz.

Moved by Senator Apple, seconded by Senator Lee, Senate Substitute for HB 2066 as amended be passed out favorably. Motion carried. No" votes recorded from Sen. Francisco and Sen. Reitz.

Chairperson Emler read the Statement of Legislative Intent as follows:

**STATEMENT OF LEGISLATIVE INTENT**

On September 24, 2007, in response to a request from the Secretary of Health and Environment, the Attorney General issued a legal opinion (Ks. Atty. Gen. Op. No. 2007-31) which concluded that K.S.A. 65-3012 is applicable to the air quality permitting process and that this statute authorizes the Secretary to deny a permit application based on anticipated emissions of a particular pollutant for which there are no federal or state emission standards. However, these views of K.S.A. 65-3012 do not accurately reflect the intent of the Legislature.

As a matter of fact, the Legislature has never intended K.S.A. 65-3012 to have any application in the air quality permitting process. Moreover, the Legislature has never intended to authorize the Secretary of Health and Environment to deny, modify or otherwise take adverse action on any air quality permit application based on anticipated emissions of any air contaminant or pollutant for which there are no established federal or state emission standards.

Accordingly, the amendments to K.S.A. 65-3012 contained in SB 515 do not change the existing law, but are intended only to correct a misinterpretation and application of that law by the Kansas Attorney General and the Secretary of Health and Environment.

This bill, in part, is intended:

\*To reject the profoundly mistaken views of legislative intent and statutory construction in Kansas Attorney General Opinion No. 2007-31;

\*To reiterate the limitations on the authority of the Secretary of Health and Environment under the Kansas Air Quality Act which the Legislature has never intended to remove or relax;

\*To ensure that the Secretary of Health and Environment cannot, without prior authorization from the Legislature, set emission standards for any air emissions that are more stringent than any emission standards established by the EPA in regulations under the Clean Air Act;

\*To ensure that the Secretary of Health and Environment cannot, without prior authorization from the Legislature, set emission standards for any air contaminant or pollutant for which the EPA has not established emission standards in regulations under the Clean Air Act;

\*To protect any applicant for an air quality permit from adverse administrative or judicial action in any pending proceeding based on any mistaken interpretation or application of K.S.A. 65-3012.

This bill does not establish lower standards for the issuance of air quality permits. On the contrary, this bill establishes - for the first time - a framework for mandating the mitigation of carbon dioxide emissions while simultaneously prohibiting the construction of new fossil-fueled merchant plants in this State.

Moved by Chairperson Emler, seconded by Senator Apple, the Statement of Legislative Intent be made a part of the minutes of this meeting. Motion carried.

Adjournment

Respectfully submitted,  
Ann McMorris, Secretary  
Attachments -3

# SENATE UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 11, 2008

Name	Representing
Tom Thompson	Sierra Club
Lindsey Douglas	Hein Law Firm
Scott Heidner	ACEC Kansas
Eric Stafford	AGC of KS
<del>Paul Jones</del>	Onion Ethanol
Joan D. Pinegar	Sunflower
Mick Urban	Kansas Gas Service
Tom Kutz	KASB
Nelson Krueger	PAR Electric
Steve Kearney	Kearney + Assoc
ALAN COBB	AFP
Whitney Jamron	Empire District Electric Co
Mark Shreiber	Westar
<del>Paul Blawie</del>	DCP Westtree
Katelyn Lutgen	KBIA

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Name	Representing
- Paul Snider	KCPCL
Carol McDowell	Tallgrass Ranchers
Mike Beam	Ks Livestock Assn.
Phil Wages	KEPCO
Dodie Wellshear	USA Kansas
Peg Liebert	Business owner
TIM LIEBERT	Professional Engineer
DAVE HOLTMAUS	KFC
LARRY BERG	MIDWEST ENERGY
WALTER PERCOC	Sunflower
Steve Miller	"
Blaine Justus	"
Lee Baughman	Tri-Stat
Wendy Miller	KAPA - KRMCRA
Margie Hardest	CEP
Al Bell	WIBW

**SENATE BILL No. 515**

By Committee on Utilities

1-30

Proposed  
Balloon Amendment

Senate Utilities Committee  
February 11, 2008  
Attachment 1-1

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

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

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

24 (d) "New public school building" means any building or structure the  
25 construction of which commences on or after July 1, 2009, and which is  
26 located upon the land of any school district under the supervision of the  
27 state board of education.

28 (e) "New state building" means any building or structure which is  
29 constructed by the state or any agency of the state and the construction  
30 of which commences on or after July 1, 2009.

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

40 New Sec. 3. The secretary of administration shall adopt rules and  
41 regulations for state agencies for the purchase of products and equipment,  
42 including, but not limited to, appliances, lighting fixtures and bulbs, and  
43 computers, which meet energy efficiency guidelines which are not less

1 sistance as may be requested by the commission and authorized by the  
 2 legislative post audit committee. The staff of the office of the revisor of  
 3 statutes, the legislative research department and the division of legislative  
 4 administrative services shall provide such assistance as may be requested  
 5 by the commission and authorized by the legislative coordinating council.

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

8 ~~New Sec. 10. (a) Sections 10 through 12, and amendments thereto,~~  
 9 ~~shall be known and may be cited as the carbon dioxide emissions offset~~  
 10 ~~act and shall not be construed to be part of the Kansas air quality act.~~

11 ~~(b) As used in the carbon dioxide emissions offset act,~~

12 ~~(1) "Affected facility" means a fossil fuel fired steam electricity gen-~~  
 13 ~~erating unit of more than 250 million British thermal units per hour heat~~  
 14 ~~input other than:~~

15 ~~(A) A facility owned or operated by the federal government;~~

16 ~~(B) a facility located on tribal lands; or~~

17 ~~(C) any other facility exempt under section 111 of the federal clean~~  
 18 ~~air act.~~

19 ~~(2) "Community wind resources" means any new wind energy project~~  
 20 ~~that:~~

21 ~~(A) Has an ownership structure as follows:~~

22 ~~(i) For a project that consists of one or two turbines, is owned by one~~  
 23 ~~or more qualified owners with at least 33% of the power purchase agree-~~  
 24 ~~ment payments flowing to a qualified owner or owners or local commu-~~  
 25 ~~nity; and~~

26 ~~(ii) for a project that consists of more than two turbines, is owned by~~  
 27 ~~qualified owners with no single qualified owner owning more than 15%~~  
 28 ~~of a project and with at least 33% of the power purchase agreement~~  
 29 ~~payments flowing to the qualified owner or owners or local community.~~  
 30 ~~or~~

31 ~~(B) has a resolution of support adopted:~~

32 ~~(i) By the county board of each county in which the project is to be~~  
 33 ~~located; or~~

34 ~~(ii) by the tribal council for the project located within the boundaries~~  
 35 ~~of an Indian reservation.~~

36 ~~(3) "Construct" or "construction" means physical on-site construction~~  
 37 ~~of an affected facility.~~

38 ~~(4) "Owner or operator" means any person who owns, leases, oper-~~  
 39 ~~ates, controls or supervises an affected facility subject to any standard or~~  
 40 ~~requirement of the Kansas air quality act, K.S.A. 65-3001 et seq., and~~  
 41 ~~amendments thereto, or any rules and regulations promulgated~~  
 42 ~~thereunder.~~

43 ~~(5) "Potential to emit" means the maximum capacity of an affected~~

1 facility to emit carbon dioxide under its physical and operational design.  
2 Any physical or operational limitation on the capacity of the source to  
3 emit carbon dioxide, including any reduction equipment and restrictions  
4 on hours of operation or on the type or amount of material combusted,  
5 stored or processed, shall be treated as part of its design.

- 6 (6) "Qualified owner or owners" means:
- 7 (A) An individual who is a Kansas resident;
- 8 (B) any of the following entities, all members of which are individuals  
9 who was Kansas residents: A limited liability company which is organized  
10 under the Kansas revised limited liability company act (K.S.A. 17 7662 et  
11 seq., and amendments thereto), a corporation organized not for profit  
12 under the laws of this state or a cooperative organized under the coop-  
13 erative marketing act (K.S.A. 17 1601 et seq., and amendments thereto),  
14 the electric cooperative act (K.S.A. 17 4601 et seq., and amendments  
15 thereto) or the renewable energy electric generation cooperative act  
16 (K.S.A. 17 4651 et seq., and amendments thereto);

17 (C) a Kansas political subdivision or local government including, but  
18 not limited to, a municipal electric utility, or a municipal power agency  
19 on behalf of and at the request of a member distribution utility, a county,  
20 a city, a school district, a public or private higher education institution or  
21 any other local or regional governmental organization such as a board,  
22 commission or association; or

23 (D) a tribal council.

24 (7) "Reconstruct" or "reconstruction" means any rebuilding of an  
25 emission source within an existing affected facility which generates elec-  
26 tricity from fossil fuel that would result in an increase in carbon dioxide  
27 emissions from such facility.

28 (8) "Supercritical pulverized coal technology" means a steam gener-  
29 ating facility operating at or above 3,600 pounds per square inch and less  
30 than 1,200 degrees fahrenheit.

31 (9) "Ultra supercritical pulverized coal technology" means a steam  
32 generating facility operating at or above 4,500 pounds per square inch  
33 and at or above 1,200 degrees fahrenheit.

34 **New Sec. 11.** (a) Any affected facility to be constructed or recon-  
35 structed on or after January 1, 2008, shall comply with the emission lim-  
36 itations provided for herein if the potential to emit from the proposed  
37 affected facility equals or exceeds 250,000 tons per year of carbon dioxide.

38 (b) Except as otherwise provided herein:

39 (1) On and after the date on which the initial performance test of an  
40 affected facility is completed or required to be completed, whichever  
41 occurs first, neither the owner nor the operator of such affected facility  
42 shall on an annual basis cause to be discharged into the atmosphere from  
43 such affected facility any gases containing carbon dioxide in excess of the

1 following emission limits:

2 (A) For an affected facility using solid fuel, carbon dioxide in excess  
3 of 1,520 pounds per net megawatt hour;

4 (B) for an affected facility using liquid fuel, carbon dioxide in excess  
5 of 1,080 pounds per net megawatt hour; and

6 (C) for an affected facility using gaseous fuel, carbon dioxide in excess  
7 of 810 pounds per net megawatt hour; and

8 (2) ten years after the initial performance test of an affected facility  
9 using solid fuel is completed or required to be completed, whichever  
10 occurs first, neither the owner nor the operator of such affected facility  
11 shall cause to be discharged into the atmosphere any gases containing  
12 carbon dioxide in excess of 1,330 pounds per net megawatt hour.

13 ~~New Sec. 12. (a) For affected facilities not meeting the carbon di-~~  
14 ~~oxide emission limitations set forth in section 11, and amendments~~  
15 ~~thereto, the owner or operator shall be deemed to be in compliance if~~  
16 ~~the emissions in excess of such limitations are mitigated or offset by any~~  
17 ~~of the following means or methods in the amount of the credit as provided~~  
18 ~~below:~~

19 (1) For wind powered electricity generating facilities constructed af-  
20 ter January 1, 2000, excluding community wind resources, an offset credit  
21 equal to one and one half times an amount computed as follows, if the  
22 affected facility is located in Kansas, and one times such amount if located  
23 outside of Kansas: The affected facility's expected carbon dioxide emis-  
24 sion rate expressed in pounds per megawatt, multiplied by the name plate  
25 rating of the wind powered electricity generating facility expressed in  
26 megawatt hours, multiplied by the expected average capacity factor of the  
27 wind powered electricity generating facility at the proposed site or sites,  
28 multiplied by 8,760 hours per year. The owner or operator of the affected  
29 facility shall be entitled to the offset credit whether it owns or leases the  
30 wind powered electricity generating facility, or purchases power from  
31 such wind powered electricity generating facility;

32 (2) for development of carbon reduction, storage or utilization pro-  
33 jects, an offset credit shall be received for the reduced, avoided, displaced,  
34 captured, stored or sequestered carbon dioxide as follows:

35 (A) For capture of carbon dioxide emitted from an affected facility  
36 using chilled ammonia, amine capture and coal gasification, an offset  
37 credit equal to two times the actual carbon dioxide tonnage captured; or

38 (B) for storage of carbon dioxide emitted from an affected facility  
39 using deep aquifer injection, depleted oil or natural gas field injection,  
40 enhanced oil or gas recovery, carbon capture sequestration or pipeline  
41 projects for the transportation of carbon dioxide to be used for enhanced  
42 oil or gas recovery or carbon storage, an offset credit equal to three times  
43 the actual carbon dioxide tonnage sequestered, stored or displaced; or

1 (C) for development of carbon utilization technology that displaces  
2 or offsets the release of carbon dioxide using algae to produce bio diesel  
3 or starch substitutes for grain based ethanol, an offset credit equal to  
4 three times the actual carbon dioxide tonnage displaced or offset in  
5 Kansas;

6 (3) for any nuclear or hydro power electricity generating facility con-  
7 structed after January 1, 2008, any large scale energy storage project, any  
8 central station solar energy project or any efficiency project of an existing  
9 fossil fueled electricity generating facility, an offset credit equal to three  
10 times the actual carbon dioxide tonnage avoided if the facility or project  
11 is located in Kansas. If the facility or project is located outside of Kansas,  
12 the offset credit shall be equal to the actual carbon dioxide tonnage  
13 avoided;

14 (4) for energy efficiency and renewable distributed generation  
15 sources located in Kansas, using demand side peak shaving or photo vol-  
16 taic, bio mass or community wind resources, excluding wind powered  
17 electricity generating facilities described in subsection (a)(1), and for elec-  
18 tricity purchased from a customer generator pursuant to the net metering  
19 and easy connection act, an offset credit equal to three times the actual  
20 carbon dioxide tonnage avoided;

21 (5) for ultra supercritical pulverized coal technology projects, an off-  
22 set credit equal to three times the actual carbon dioxide tonnage avoided  
23 in comparison to the carbon dioxide emissions per megawatt hour from  
24 a supercritical pulverized coal technology project;

25 (6) for non release agricultural related projects, using minimum till  
26 or no till practices, conversion of cultivated land to pasture, forest se-  
27 questration projects, and erosion, windbreaks or community beautifica-  
28 tion projects, an offset credit equal to three times the actual carbon di-  
29 oxide tonnage sequestered as a result of such projects in Kansas, and two  
30 times the actual carbon dioxide tonnage sequestered as a result of such  
31 projects within the service territory of the owner or operator;

32 (b) For transmission system improvements located inside or outside  
33 Kansas, including direct current converters or ties, which enable or en-  
34 hance the development in whole or in part of renewable resources elec-  
35 tricity generating facilities located in Kansas, an offset credit shall be  
36 allowed as follows:

37 (1) The carbon dioxide offset credit from any project shall be based  
38 on the incremental available transfer capacity, expressed in mega volt-  
39 amperes, which may be available for renewable energy transfers as a re-  
40 sult of such project. Such determination of available transfer capacity  
41 must be demonstrated by an engineering study performed by, or in ac-  
42 cordance with procedures developed by, the southwest power pool or  
43 other reliability, planning or regional transmission organization, if any, in

1 the affected transmission grid or grids.

2 (2) Such carbon dioxide offset shall be determined by taking the ad-  
3 ditional transmission capacity, expressed in mega-volt amperes, multi-  
4 plied by a 0.0 power factor, multiplied by the rate of the affected facility's  
5 expected carbon dioxide release rate expressed in pounds per megawatt  
6 hour, multiplied by a 40% capacity factor, multiplied by 8,760 hours per  
7 year, to be recalculated on an annual basis. The owner or operator of the  
8 affected facility shall be entitled to an offset credit whether it owns or  
9 leases the transmission facility.

10 (e) For research and development projects to develop new technol-  
11 ogy to capture, displace or sequester carbon, which were incurred in good  
12 faith but did not result in the development of successful technology to  
13 capture, displace or sequester carbon, an offset credit equal to one ton  
14 of carbon dioxide reduction for each dollar expended shall be allowed for  
15 10 years.

16 (d) For expenditures by any Kansas electric public utility for energy  
17 efficiency programs whose purpose is to educate the public on energy  
18 conservation, or expected to lead to the reduction of energy use by the  
19 public, an offset credit equal to one half of a ton of carbon dioxide for  
20 each dollar expended shall be allowed.

21 (e) An owner or operator of an affected facility shall receive an offset  
22 credit for the retirement of other electricity generating units located in  
23 Kansas which are permanently removed from service on or after July 1,  
24 2008, and which combusted the same fuel as the affected facility. The  
25 owner or operator shall state, in a written format prescribed by the per-  
26 mitting authority, those units that have been permanently retired on a  
27 specific date and the fossil fuel capability of such unit. Such offset credit  
28 is only applicable if fuel utilized by the affected facility is the same fuel  
29 as that utilized by the retired electricity generating unit.

30 (f) If an owner or operator is rendered unable, wholly or in part, by  
31 force majeure, to carry out its obligations under this act, the owner's or  
32 operator's performance herein, to the extent affected by such force ma-  
33 jeure, shall be suspended during the continuance of any inability, pro-  
34 vided the owner or operator is in good faith attempting with reasonable  
35 dispatch to remedy the cause. As used in this subsection, "force majeure"  
36 means acts of God, strikes, lockouts or other industrial disturbances, acts  
37 of the public enemy, wars, blockages, insurrections, riots, epidemics, nat-  
38 ural disasters, civil disturbances, failure of or accidents to machinery or  
39 lines or any other cause, whether similar or dissimilar to the foregoing,  
40 that is beyond the owner's or operator's reasonable control.

41 (g) Any person that can substantiate the reduction of the emission of  
42 carbon dioxide through a carbon mitigation project located in Kansas,  
43 shall be entitled to an offset credit in the amount of carbon dioxide re-

1-7

1 duction and, may sell, trade or exchange the credit to an owner or op-  
2 erator of an affected facility which may then be utilized to satisfy the  
3 carbon dioxide emission limitations herein.

4 (h) (1) For carbon dioxide releases not otherwise reduced or miti-  
5 gated, the owner or operator shall mitigate emissions in excess of the  
6 allowable emissions set forth herein by paying to the state corporation  
7 commission the sum of \$3 for each ton of carbon dioxide emissions from  
8 the affected facility which are in excess of the allowable limitations set  
9 forth herein. Consistent with the methods required under K.A.R. 28-10-  
10 202, the owner or operator of an affected facility shall determine such  
11 emissions which are greater than the allowable limitation and shall report  
12 the same to the secretary on the date specified in K.A.R. 28-10-202(d)(1).  
13 The owner or operator of an affected facility shall remit to the state cor-  
14 poration commission such payment consistent with a determination under  
15 this subsection by the same date. The state corporation commission shall  
16 remit to the state treasurer, in accordance with the provisions of K.S.A.  
17 75-4215, and amendments thereto, all moneys received by the commis-  
18 sion pursuant to such section. Upon receipt of the remittance, the state  
19 treasurer shall deposit the entire amount in the state treasury and credit  
20 it to the energy efficiency grant programs fund which is hereby created  
21 in the state treasury.

22 (2) Moneys in the energy efficiency grant programs fund shall be  
23 expended in accordance with appropriation acts for grants for energy  
24 efficiency programs or as otherwise determined by the legislature.

25 (3) On or before the 10th of each month, the director of accounts  
26 and reports shall transfer from the state general fund to the energy effi-  
27 ciency grant fund interest earnings based on:

28 (A) The average daily balance of moneys in the energy efficiency  
29 grant programs fund for the preceding month; and

30 (B) the net earnings rate for the pooled money investment portfolio  
31 for the preceding month.

32 (4) All expenditures from the energy efficiency grant programs fund  
33 shall be made in accordance with appropriation acts upon warrants of the  
34 director of accounts and reports issued pursuant to vouchers approved  
35 by the chairperson of the state corporation commission, or a person or  
36 persons designated by the chairperson of the commission, for the pur-  
37 poses set forth in this section.

38 (i) Before July 1, 2000, the secretary of the Kansas department of  
39 health and environment shall adopt such rules and regulations to imple-  
40 ment this section and sections 10 and 11, and amendments thereto, in-  
41 cluding, but not limited to, monitoring, reporting and recordkeeping  
42 requirements, consistent herewith as deemed necessary to ensure con-  
43 formance with the provisions of this section and section 11, and amend-

~~ments thereto. The secretary shall consult with the state corporation commission in the promulgation of such rules and regulations. The secretary shall not defer nor delay the issuance of any construction permit pursuant to the Kansas air quality act, and amendments thereto, pending the establishment of such rules and regulations. The limitations under this act shall not be set forth in any construction or operating permit to be issued under the Kansas air quality act.~~

New Sec. 13. Sections 13 through 28, and amendments thereto, shall be known and may be cited as the net metering and easy connection act.

New Sec. 14. As used in the net metering and easy connection act:

(a) "Avoided fuel cost" means the current average cost of fuel for the entity generating electricity, 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 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

And by renumbering the remaining sections accordingly

8-1

## SENATE BILL No. 515

By Committee on Utilities

1-30

Proposed  
Balloon Amendment

Senate Utilities Committee  
February 11, 2008  
Attachment 2-1

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41 regulations for state agencies for the purchase of products and equipment,  
42 including, but not limited to, appliances, lighting fixtures and bulbs, and  
43 computers, which meet energy efficiency guidelines which are not less

duction and, may sell, trade or exchange the credit to an owner or operator of an affected facility which may then be utilized to satisfy the carbon dioxide emission limitations herein.

(h) (1) For carbon dioxide releases not otherwise reduced or mitigated, the owner or operator shall mitigate emissions in excess of the allowable emissions set forth herein by paying to the state corporation commission the sum of \$3 for each ton of carbon dioxide emissions from the affected facility which are in excess of the allowable limitations set forth herein. Consistent with the methods required under K.A.R. 28-19-202, the owner or operator of an affected facility shall determine such emissions which are greater than the allowable limitation and shall report the same to the secretary on the date specified in K.A.R. 28-19-202(d)(1). The owner or operator of an affected facility shall remit to the state corporation commission such payment consistent with a determination under this subsection by the same date. The state corporation commission shall remit to the state treasurer, in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys received by the commission pursuant to such section. Upon receipt of the remittance, the state treasurer shall deposit the entire amount in the state treasury and credit it to the energy efficiency grant programs fund which is hereby created in the state treasury.

(2) Moneys in the energy efficiency grant programs fund shall be expended in accordance with appropriation acts for grants for energy efficiency programs or as otherwise determined by the legislature.

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

(A) The average daily balance of moneys in the energy efficiency grant programs fund for the preceding month; and

(B) the net earnings rate for the pooled money investment portfolio for the preceding month.

(4) All expenditures from the energy efficiency grant programs fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the state corporation commission, or a person or persons designated by the chairperson of the commission, for the purposes set forth in this section.

(i) Before July 1, 2009, the secretary of the Kansas department of health and environment shall adopt such rules and regulations to implement this section and sections 10 and 11, and amendments thereto, including, but not limited to, monitoring, reporting and recordkeeping requirements, consistent herewith as deemed necessary to ensure conformance with the provisions of this section and section 11, and amend-

2-2

(h) (1) For all taxable years commencing after December 31, 2008, a credit against the tax imposed by the Kansas income tax act and upon the Kansas taxable income of every corporation doing business within the state or deriving income from sources within the state for each affected facility using solid fuel operating on or after December 31, 2008, shall be allowed for the owner of an affected facility using solid fuel who uses any technology or method, including, but not limited to, the technologies and methods resulting in offsets prescribed in section 11, and amendments thereto, to decrease any gases containing carbon dioxide from the amount emitted in the previous calendar year measured on and after the date on which the initial performance test of an affected facility using solid fuel is completed or required to be completed, whichever occurs first. The credit shall be in an amount equal to \$50 per pound for each pound of carbon dioxide per net megawatt per hour less than the amount of carbon dioxide emitted per net megawatt per hour in the previous year beginning with calendar year 2007 emissions for calendar year 2008, as a result of technologies or methods including, but not limited to, technologies and methods resulting in offsets prescribed in subsection 11, and amendments thereto, except that such credits shall not be awarded unless such affected facility emits less than 2,000 pounds of carbon dioxide per net megawatt per hour.

(2) All proceeds from tax credits awarded pursuant to this section shall be refunded to customers by the qualified owner of an affected facility using solid fuel.

(3) The secretary of revenue is hereby authorized to adopt rules and regulations to implement and administer the provisions of this subsection.

(4) The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by this section, and amendments thereto, reduced by the sum of any other credits pursuant to law.

1 schedule of rates and charges at the cooperative headquarters and shall  
2 make copies of such schedule of rates and charges available to the general  
3 public during regular business hours.

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

7 New Sec. 35. If any provision of this act or its application to any  
8 person or circumstance is held invalid, the invalidity shall not affect any  
9 other provision or application of the act which can be given effect without  
10 the invalid provision or application. To this end the provisions of this act  
11 are severable.

12 Sec. 36. K.S.A. 65-3008b, 65-3012 and 66-104d and K.S.A. 2007  
13 Supp. 65-3005, 65-3008a and 66-1,184 are hereby repealed.

14 Sec. 37. This act shall take effect and be in force from and after its  
15 publication in the Kansas register.

2-3

## SENATE BILL No. 515

By Committee on Utilities

1-30

Proposed  
Balloon Amendment

Senate Utilities Committee  
February 11, 2008  
Attachment 3-1

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

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

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

24 (d) "New public school building" means any building or structure the  
25 construction of which commences on or after July 1, 2009, and which is  
26 located upon the land of any school district under the supervision of the  
27 state board of education.

28 (e) "New state building" means any building or structure which is  
29 constructed by the state or any agency of the state and the construction  
30 of which commences on or after July 1, 2009.

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

40 New Sec. 3. The secretary of administration shall adopt rules and  
41 regulations for state agencies for the purchase of products and equipment,  
42 including, but not limited to, appliances, lighting fixtures and bulbs, and  
43 computers, which meet energy efficiency guidelines which are not less

3-2

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

4 Sec. 34. K.S.A. 66-104d is hereby amended to read as follows: 66-  
 5 104d. (a) As used in this section, "cooperative" means any cooperative,  
 6 as defined by K.S.A. 17-4603, and amendments thereto, which has fewer  
 7 than 15,000 customers and which provides power principally at retail  
 8 ~~member-owned corporation or limited liability company providing elec-~~  
 9 ~~tric service either at retail or wholesale in the state of Kansas.~~

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

14 (c) To be exempt under subsection (b), a cooperative shall poll its  
 15 members as follows:

16 (1) An election under this subsection may be called by the board of  
 17 trustees or shall be called not less than 180 days after receipt of a valid  
 18 petition signed by not less than 10% of the members of the cooperative.

19 (2) The proposition for deregulation shall be presented to a meeting  
 20 of the members, the notice of which shall set forth the proposition for  
 21 deregulation and the time and place of the meeting. Notice to the mem-  
 22 bers shall be written and delivered not less than 21 nor more than 45  
 23 days before the date of the meeting.

24 (3) If the cooperative mails information to its members regarding the  
 25 proposition for deregulation other than notice of the election and the  
 26 ballot, the cooperative shall also include in such mailing any information  
 27 in opposition to the proposition that is submitted by petition signed by  
 28 not less than 1% of the cooperative's members. All expenses incidental  
 29 to mailing the additional information, including any additional postage  
 30 required to mail such additional information, must be paid by the sig-  
 31 natories to the petition.

32 (4) If the proposition for deregulation is approved by the affirmative  
 33 vote of not less than a majority of the members voting on the proposition,  
 34 the cooperative shall notify the state corporation commission in writing  
 35 of the results within 10 days after the date of the election.

36 (5) Voting on the proposition for deregulation shall be by mail ballot.

37 (d) A cooperative exempt under this section may elect to terminate  
 38 its exemption in the same manner as prescribed in subsection (c).

39 (e) An election under subsection (c) or (d) may be held not more  
 40 often than once every two years.

41 (f) Nothing in this section shall be construed to affect the single cer-  
 42 tified service territory of a cooperative or the authority of the state cor-  
 43 poration commission, as otherwise provided by law, over a cooperative

corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, or which becomes subject to the electric cooperative act in the manner therein provided; or any limited liability company or corporation providing electric service at wholesale in the state of Kansas that is owned by four or more electric cooperatives that provide retail service in the state of Kansas, or any customer-owned corporation formed prior to 2004.

1 with regard to service territory, charges, *fees or tariffs* for transmission  
 2 services, sales of power for resale *other than sales between a member-*  
 3 ~~*owned generation and transmission cooperative and a member*~~ of such  
 4 cooperative, wire stringing and transmission line siting, pursuant to K.S.A.  
 5 66-131, 66-183, 66-1,170 et seq. or 66-1,177 et seq., and amendments  
 6 thereto.

7 (g) (1) Notwithstanding a cooperative's election to be exempt under  
 8 this section, the commission shall investigate all rates, joint rates, tolls,  
 9 charges and exactions, classifications and schedules of rates of such co-  
 10 operative if there is filed with the commission, not more than one year  
 11 after a change in such cooperative's rates, joint rates, tolls, charges and  
 12 exactions, classifications or schedules of rates, a petition, *in the case of a*  
 13 *retail distribution cooperative*, signed by not less than 5% of all the co-  
 14 operative's customers or 3% of the cooperative's customers from any one  
 15 rate class, *or, in the case of a generation and transmission cooperative,*  
 16 *not less than 20% of its members or 5% of the aggregate retail customers*  
 17 *of its members.* If, after investigation, the commission finds that such  
 18 rates, joint rates, tolls, charges or exactions, classifications or schedules of  
 19 rates are unjust, unreasonable, unjustly discriminatory or unduly prefer-  
 20 ential, the commission shall have the power to fix and order substituted  
 21 therefor such rates, joint rates, tolls, charges and exactions, classifications  
 22 or schedules of rates as are just and reasonable.

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

27 (3) Any customer of a cooperative wishing to petition the commission  
 28 pursuant to subsection (g)(1) may request from the cooperative the  
 29 names, addresses and rate classifications of all the cooperative's customers  
 30 or of the cooperative's customers from any one or more rate classes. The  
 31 cooperative, within 21 days after receipt of the request, shall furnish to  
 32 the customer the requested names, addresses and rate classifications and  
 33 may require the customer to pay the reasonable costs thereof.

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

39 (2) Violations of subsection (h)(1) shall be subject to civil penalties  
 40 and enforcement in the same manner as provided by K.S.A. 75-4320 and  
 41 75-4320a, and amendments thereto, for violations of K.S.A. 75-4317 et  
 42 seq. and amendments thereto.

43 (i) (1) Any cooperative exempt under this section shall maintain a

cooperative as defined in subsection (a), that does not provide  
 retail electric service and an owner

1 schedule of rates and charges at the cooperative headquarters and shall  
2 make copies of such schedule of rates and charges available to the general  
3 public during regular business hours.

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

7 New Sec. 35. If any provision of this act or its application to any  
8 person or circumstance is held invalid, the invalidity shall not affect any  
9 other provision or application of the act which can be given effect without  
10 the invalid provision or application. To this end the provisions of this act  
11 are severable.

12 Sec. 36. K.S.A. 65-3008b, 65-3012 and 66-104d and K.S.A. 2007  
13 Supp. 65-3005, 65-3008a and 66-1,184 are hereby repealed.

14 Sec. 37. This act shall take effect and be in force from and after its  
15 publication in the Kansas register.

3-4