

CHAPTER 169
HOUSE BILL No. 2263

AN ACT concerning utilities; enacting the Kansas electric transmission act; providing for recovery of certain costs of construction and upgrading of electric transmission facilities; prescribing procedures for curtailment of natural gas service to certain premises; amending K.S.A. 66-105a and repealing the existing section.

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

New Section 1. (a) Sections 1 through 13, and amendments thereto, may be cited as the Kansas electric transmission authority act.

(b) The purpose for which the Kansas electric transmission authority is created is to further ensure reliable operation of the integrated electrical transmission system, diversify and expand the Kansas economy and facilitate the consumption of Kansas energy through improvements in the state's electric transmission infrastructure.

New Sec. 2. As used in the Kansas electric transmission authority act:

(a) "Authority" means the Kansas electric transmission authority created by this act.

(b) "Board" means the board of directors of the authority.

(c) "Transmission facilities" means electric transmission facilities or related supporting infrastructure, including any interests therein, or both.

New Sec. 3. (a) There is hereby created a body politic and corporate to be known as the Kansas electric transmission authority. The authority is hereby constituted a public instrumentality and the exercise by the authority of the powers conferred by this act in the construction, operation and maintenance of electric transmission projects shall be deemed and held to be the performance of an essential governmental function.

(b) (1) The authority shall be governed by a board of directors consisting of seven members.

(2) Three members shall be appointed by the governor, subject to confirmation by the senate as provided by K.S.A. 75-4315b and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the board shall exercise any power, duty or function as a member of the board until confirmed by the senate. The terms of members first appointed to the board shall be as follows: One shall be appointed for terms expiring the second March 15 following appointment, one for a term expiring the third March 15 following appointment and one for terms expiring the fourth March 15 following appointment. Thereafter, members shall be appointed for terms of four years and until their successors are appointed and confirmed. All persons appointed by the governor and serving as members shall be qualified voters of the state of Kansas with special knowledge, as evidenced by college degrees or courses, or with at least five years' experience in managerial positions, in the field of electric transmission or generation development. Not more than two of the members appointed by the governor shall be members of the same political party. A person appointed by the governor to fill a vacancy on the board shall be appointed to serve for the unexpired term. A member appointed to the board by the governor shall be eligible for reappointment. A member of the board appointed by the governor may be removed by the governor for misfeasance, malfeasance or willful neglect of duty, but only after reasonable notice and a public hearing conducted in accordance with the provisions of the Kansas administrative procedure act.

(3) The following shall be *ex officio* of the board: The chairperson and ranking minority member of the senate standing committee on utilities or its successor and the chairperson and ranking minority member of the house standing committee on utilities or its successor. Members *ex officio* shall be entitled to vote and participate as full members of the board.

(c) Each member of the board, before entering upon the member's duties, shall take and subscribe an oath or affirmation as required by law.

(d) Members of the board attending meetings of the board, or attending a subcommittee meeting thereof authorized by the board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223, and amendments thereto.

New Sec. 4. (a) The board shall elect annually from among its mem-

bers a chairperson, vice-chairperson and secretary. Four members of the board shall constitute a quorum and the affirmative vote of four members shall be necessary for any action taken by the board. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(b) Notwithstanding any provision of K.S.A. 75-4317 et seq., and amendments thereto, in the case of the authority, discussion, consideration and action on any of the following may occur in executive session when in the opinion of the board disclosure of the items would be harmful to the competitive position of third parties or to the security of transmission facilities:

(1) Proprietary information gathered by or in the possession of the authority from third parties pursuant to a promise of confidentiality;

(2) information regarding the location of transmission facilities and security measures that protect such facilities; or

(3) information which is related to transmission capacity or availability and is not otherwise available to all electric energy market participants.

(c) Notwithstanding any provision of this section to the contrary, the authority may claim the benefit of any other exemption to the Kansas open meetings act listed in K.S.A. 75-4317 et seq., and amendments thereto.

New Sec. 5. (a) All resolutions and orders of the board shall be recorded and authenticated by the signature of the secretary or a person designated by the secretary. The book of resolutions, orders, minutes of open meetings, annual reports and annual financial statements of the authority shall be public records as defined by K.S.A. 45-215 et seq., and amendments thereto. All public records shall be subject to regular audit as provided in K.S.A. 46-1106, and amendments thereto.

(b) Notwithstanding any provision of K.S.A. 45-215 et seq., and amendments thereto to the contrary, the following records of the authority shall not be subject to the provisions of the Kansas open records act when in the opinion of the board disclosure of the information in the records would be harmful to the competitive position of third parties or to the security of transmission facilities:

(1) Proprietary information gathered by or in the possession of the authority from third parties pursuant to a promise of confidentiality;

(2) information regarding the location of transmission facilities and security measures that protect such facilities; or

(3) information which is related to transmission capacity or availability and is not otherwise available to all electric energy market participants.

(c) Notwithstanding any provision of this section to the contrary, the authority may claim the benefit of any other exemption to the Kansas open records act listed in K.S.A. 45-215 et seq. and amendments thereto.

New Sec. 6. (a) Any member of the board and any employee, other agent or advisor of the authority, who has a direct or indirect interest in any contract or transaction with the authority, shall disclose such interest to the authority in writing. Such interest shall be set forth in the minutes of the authority. No board member, employee or other agent or advisor having such interest shall participate on behalf of the authority in the authorization of any such contract or transaction.

(b) All members of the board shall file a written statement pursuant to K.S.A. 46-247 et seq., and amendments thereto, regarding any substantial interests within the meaning of K.S.A. 46-229, and amendments thereto, that each board member may hold. Any employee, other agent or advisor of the authority who has a substantial interest in any contract or transaction with the authority within the meaning of K.S.A. 46-229, and amendments thereto, shall file a written statement of substantial interest pursuant to K.S.A. 46-247 et seq., and amendments thereto.

New Sec. 7. (a) Except as otherwise provided by this act, the authority shall have all the powers necessary to carry out the purposes and provisions of this act, including, without limitation:

(1) Having the duties, privileges, immunities, rights, liabilities and disabilities of a body corporate and a political instrumentality of the state;

(2) having perpetual existence and succession;

(3) adopting, having and using a seal and altering the same at its pleasure;

(4) suing and being sued in its own name;

(5) adopting bylaws for the regulation of its affairs and the conduct of its business;

(6) adopting such rules and regulations as the authority deems necessary for the conduct of the business of the authority;

(7) employing consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as the authority deems necessary and fixing the compensation thereof;

(8) making and executing all contracts and agreements necessary or incidental to the performance of the authority's duties and the execution of the authority's powers under this act;

(9) planning, financing, constructing, developing, acquiring, owning, disposing of, contracting for maintenance of and contracting with electric public utilities, electric cooperative utilities or electric municipal utilities for operation of transmission facilities of the authority and any real or personal property, structures, equipment or facilities necessary or useful for the accomplishment of the purposes for which the authority was created, including the obtaining of permits and the acquisition of rights of way;

(10) receiving and accepting from any federal agency grants, or any other form of assistance, for or in aid of the planning, financing, construction, development, acquisition or ownership of any property, structures, equipment, facilities and works of public improvement necessary or useful for the accomplishment of the purposes for which the authority was created and receiving and accepting aid or contributions from any source of either money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made;

(11) borrowing funds to carry out the purposes of the authority and mortgaging and pledging any lease or leases granted, assigned or subleased by the authority;

(12) purchasing, leasing, trading, exchanging or otherwise acquiring, maintaining, holding, improving, mortgaging, selling, leasing and disposing of personal property, whether tangible or intangible, and any interest therein; and purchasing, leasing, trading, exchanging or otherwise acquiring real property or any interest therein, and maintaining, holding, improving, mortgaging, leasing and otherwise transferring such real property, so long as such transactions do not conflict with the mission of the authority as specified in this act;

(13) as provided by section 9, and amendments thereto, incurring or assuming indebtedness and entering into contracts with the Kansas development finance authority, which is authorized to borrow money, issue bonds and provide financing for: (A) The construction, upgrading or repair of transmission facilities of the Kansas electric transmission authority or the acquisition of right-of-way for such facilities, or both, and any such bonds shall be payable from and be secured by the pledge of revenues derived from the operation of such electric transmission facilities; or (B) making loans to finance the construction, upgrading or repair of transmission facilities not owned by the Kansas electric transmission authority or the acquisition of right-of-way for such facilities, or both, upon such terms and conditions as required by the authority, including a requirement that any entity receiving a loan under this act shall maintain records and accounts relating to receipt and disbursements of loan proceeds, transportation costs and information on energy sales and deliveries and make the records available to the authority for inspection, and any such bonds shall be payable from and be secured by the pledge of revenues derived from the operation of such electric transmission facilities;

(14) depositing any moneys of the authority in any banking institution within or without the state or in any depository authorized to receive such deposits, one or more persons to act as custodians of the moneys of the authority, to give surety bonds in such amounts in form and for such purposes as the board requires;

(15) recovering its costs through tariffs of the southwest power pool regional transmission organization, or its successor, and, if all costs are not recovered through such tariffs, through assessments against all electric public utilities, electric municipal utilities and electric cooperative utilities receiving benefits of the construction or upgrade and having retail customers in this state. Each such utility's assessment shall be based on the benefits the utility receives from the construction or upgrade, as determined by the state corporation commission upon application by the authority. In determining allocation of benefits and costs to utilities, the

commission may take into account funding and cost recovery mechanisms developed by regional transmission organizations and shall take into account financial payments by transmission users and approved by the federal energy regulatory commission or regional transmission organization. Each electric public utility shall recover any such assessed costs from the utility's customers in a manner approved by the commission and each electric municipal or cooperative utility shall recover such assessed costs from the utility's customers in a manner approved by the utility's governing body;

(16) participating in partnerships or joint ventures with individuals, corporations, governmental bodies or agencies, partnerships, associations or other entities to facilitate any activities or programs consistent with the public purpose and intent of this act, including partnerships or joint ventures for the purpose of financing all or any portion of a project pursuant to subsection (a)(2) of section 9, and amendments thereto;

(17) participating in and coordinating with the planning activities of the southwest power pool regional transmission organization, or its successor, and adjoining regional transmission organizations, or their successors; and

(18) participating in and coordinating with the planning activities of the southwest power pool regional reliability organization, or its successor, and adjoining regional reliability organizations, or their successors.

(b) (1) Except as otherwise provided in this act, the authority shall not exercise any of the rights or powers granted to it in this act, if private entities are performing the acts, are constructing or have constructed the facilities or are providing the services contemplated by the authority and such private entities are willing to finance and own new infrastructure to meet an identified need and market.

(2) Prior to exercising any rights or powers granted to it in this section, the authority shall publish once in the Kansas register, and once in a newspaper and trade magazine in the area where the facilities or services are contemplated, a notice describing the acts, facilities or services contemplated by the authority and stating that private entities willing and able to perform the acts, finance and own and construct the facilities or provide the services described in the notice shall have a period of 90 days after the date of publication of the notice within which to notify the authority of intention and ability to perform the acts, finance and construct the facilities or provide the services described in the notice. In the absence of notification by a private entity, the authority may proceed to perform the acts, construct the facilities or provide the services originally contemplated. If a private entity has given notice of intention to perform the acts, finance and construct the facilities or provide the services contemplated by the authority, the authority may proceed to perform the acts, construct the facilities or provide the services originally contemplated if the private entity fails to commence performance within 180 days after the date of notification of the authority of its intention. Actions deemed to constitute commencement of performance of the acts, construction of the facilities or provision of the services within the required time shall include, but not be limited to, holding of public meetings on siting of facilities, acquisition of land or commencement of proceedings for condemnation of land, application to acquire any federal, state, local or private permits, certificates or other authorizations or approvals necessary to perform the acts, construct the facilities or provide the services.

(3) Notwithstanding commencement of performance of the acts, construction of the facilities or provision of the services by a private entity, if the authority is not satisfied with subsequent progress in performance of the acts, construction of the facilities or provision of the services, the authority may again give notice as provided in subsection (b)(2) with respect to completion of performance of the acts, construction of the facilities or provision of the services. In the absence of notification by a private entity willing and able to complete performance of the acts, construction of the facilities or provision of the services, the authority may proceed to complete performance. If a private entity has given notice of intention to complete performance, the authority may proceed to perform the acts, construct the facilities or provide the services if the private entity fails to complete performance within 180 days after the date of notice by the entity.

(c) The authority shall not operate or maintain transmission facilities.

(d) The authority shall exercise the rights and powers granted to it in

this act only with respect to transmission facilities which the southwest power pool regional transmission organization, or its successor, has determined are compatible with plans adopted by such organization and which have been approved by such organization.

(e) On or before the first day of the regular legislative session each year, the authority shall submit to the governor and to the legislature a written report of the authority's activities for the preceding fiscal year. Such report shall include the report of any audit conducted pursuant to section 10, and amendments thereto, of the preceding fiscal year.

(f) The authority shall continue until terminated by law. No such law terminating the authority shall take effect while the authority has bonds, debts or obligations outstanding unless adequate provision has been made for the payment or retirement of such bonds, debts or obligations. Upon dissolution of the authority, all property, funds and assets thereof shall be disposed of as provided by law.

New Sec. 8. (a) The authority shall not be subject to supervision or regulation by the state corporation commission, except that the authority shall be construed to be a public utility subject to the jurisdiction of the state corporation commission with regard to wire stringing and transmission line siting pursuant to K.S.A. 66-183 and 66-1,177 et seq., and amendments thereto.

(b) The authority may exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of such power by corporations constructing, upgrading or repairing electric transmission facilities.

(c) Except as otherwise provided by this act, the authority shall be entitled to all statutory benefits available to corporations constructing, upgrading or repairing electric transmission lines.

(d) The authority and its authorized agents and employees may enter upon any lands, waters and premises in the state for the purpose of making surveys, soundings, drillings and examinations as the authority may deem necessary or convenient for the purposes of this act. Such entry shall not be deemed a trespass or an entry under any condemnation proceedings which may be then pending. The authority shall make reimbursement for any actual damage resulting to such lands, waters and premises as a result of entry or activities authorized by this section.

New Sec. 9. (a) The Kansas electric transmission authority may enter into agreements with the Kansas development finance authority to issue revenue bonds or provide other financing pursuant to the Kansas development finance authority act, K.S.A. 74-8901 et seq., and amendments thereto, and to provide for payment of the bonds for the purpose of:

(1) Financing the construction, upgrading or repair of transmission facilities owned by the Kansas electric transmission authority pursuant to this act or the acquisition of right-of-way for such facilities, or both; or

(2) financing the construction, upgrading or repair of transmission facilities not owned by the Kansas electric transmission authority or the acquisition of right-of-way for such facilities, or both.

(b) Transmission facilities constructed, upgraded or repaired using proceeds of bonds issued pursuant to this section shall not be required to be located wholly within this state if:

(1) The majority of the costs of the construction, upgrade or repair is for construction, upgrade or repair of transmission facilities located or to be located in this state; and

(2) the state corporation commission certifies that the portions of the lines and appurtenances located outside this state will improve the reliability and security of the state's electric transmission system or will contribute to the long-term economic well being of this state.

(c) The Kansas development finance authority may pledge the agreement or agreements authorized in this section for the payment or redemption of the bonds. The activities of the Kansas electric transmission authority in administering and performing the powers, duties and functions prescribed by the provisions of this act from the proceeds of bonds issued for such purpose by the Kansas development finance authority are hereby approved for the purposes of subsection (b) of K.S.A. 74-8905, and amendments thereto, and the authorization of the issuance of such bonds by the Kansas development finance authority in accordance with that statute. No bonds shall be issued pursuant to this section unless the Kansas development finance authority has received a resolution of the board of the Kansas electric transmission authority requesting the issu-

ance of such bonds. The provisions of subsection (a) of K.S.A. 74-8905, and amendments thereto, shall not prohibit the issuance of bonds for such purposes when so authorized and any such issuance of bonds is exempt from the provisions of subsection (a) of K.S.A. 74-8905, and amendments thereto. Bonds issued pursuant to this section shall not be subject to the notice requirements of K.S.A. 74-8905, and amendments thereto.

New Sec. 10. (a) The accounts and transactions of the authority shall be subject to such financial-compliance and other audits as directed by the legislative post audit committee, in the manner provided for audits of state agencies pursuant to the legislative post audit act. The auditor to conduct the audit work shall be determined in the manner provided by K.S.A. 46-1122, and amendments thereto. If the legislative post audit committee determines that a firm, as defined by K.S.A. 46-1112, and amendments thereto, is to perform all or part of such audit work, such firm shall be selected and shall perform such audit work in the manner provided by K.S.A. 46-1123, and amendments thereto, and K.S.A. 46-1125 through 46-1127, and amendments thereto.

(b) The post auditor shall compute the cost of providing an audit pursuant to this section. If the audit is conducted by the division of post audit, such cost shall be subject to review and approval by the post audit committee. If the audit is conducted by a firm, as defined by K.S.A. 46-1112, and amendments thereto, such cost shall be subject to review and approval by the contract audit committee established by K.S.A. 46-1120, and amendments thereto. Upon approval of the cost by the appropriate committee, the authority shall reimburse the division of post audit for such amount.

New Sec. 11. (a) The authority shall be exempt from all tax under the Kansas state income tax act.

(b) Purchases by the authority shall not be subject to sales or use tax under subsection (b) of K.S.A. 79-3606 et seq., K.S.A. 79-3601 et seq. or K.S.A. 79-3701 et seq., and amendments thereto.

(c) Transmission facilities owned by the authority shall be exempt from general ad valorem taxes to the same extent that such facilities would be exempt from such taxes if owned by a private entity.

New Sec. 12. (a) All agencies of the state and political subdivisions of the state shall make such surveys, reports and investigations and shall furnish records and information and other assistance and advice as may be required by the authority. The authority shall reimburse such agencies and political subdivisions for the actual costs thereof.

(b) All political subdivisions and public agencies of the state, notwithstanding any contrary provision of law, are hereby authorized and empowered to lease, lend, grant or convey to the authority, at its request, upon such terms and conditions as such political subdivisions or agencies deem reasonable and fair, and without the necessity for any advertisement, order of court or other action or formality, other than the regular and formal action of the authorities concerned, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the authority.

New Sec. 13. (a) Any appropriation or transfer of state general fund moneys for the operation of the Kansas electric transmission authority and other expenses incurred pursuant to this act shall be considered a loan and shall be repaid with interest to the state general fund in one payment not later than 120 months from the effective date of the appropriation or transfer of such general fund moneys. Such loan shall not be considered an indebtedness or debt of the state within the meaning of section 6 of article 11 of the constitution of the state of Kansas. Such loan shall bear interest at a rate equal to the rate prescribed by K.S.A. 75-4210, and amendments thereto, for inactive accounts of the state effective on the first day of the month during which the appropriation or transfer takes effect.

(b) At the time of repayment of a loan pursuant to subsection (a), the chairman of the board shall certify to the director of accounts and reports the amount to be repaid and any interest due thereon. Upon receipt of such certification, the director of accounts and reports shall promptly credit or transfer the amount certified from accounts of the authority to the state general fund.

New Sec. 14. (a) As used in this section:

(1) “Appurtenances” means all substations, towers, poles and other structures and equipment necessary for the bulk transfer of electricity.

(2) “Commission” means the state corporation commission.

(3) “Construction or upgrade of an electric transmission facility” means construction or upgrade of an electric line, and appurtenances, with an operating voltage of 115 kilovolts or more.

(b) Upon application, the commission may authorize recovery of costs associated with the construction or upgrade of an electric transmission facility if the commission finds that:

(1) (A) A regional transmission organization has identified such construction or upgrade as appropriate for reliable operation of the integrated electric transmission system or for economic benefits to transmission owners and customers; and (B) a state agency has determined that such construction or upgrade will provide measurable economic benefits to electric consumers in all or part of this state that will exceed anticipated project costs; and

(2) such costs are not being otherwise recovered.

(c) The commission shall review an application for recovery of costs pursuant to this section in an expedited manner if the application includes evidence that expedited construction or upgrade of the electric transmission facility will result in significant, measurable economic benefits to Kansas electric consumers. Recommendation or approval of construction or upgrade of an electric transmission facility by a regional transmission organization shall constitute a rebuttable presumption of the appropriateness of such construction or upgrade for system reliability or economic dispatch of power.

(d) In determining whether to approve recovery of costs pursuant to this section the commission may consider factors such as the speed with which Kansas electric consumers will benefit from the transmission facility and the long-term benefits of the transmission facility to Kansas electric consumers, or both, and whether such factors outweigh other less costly options. An application for recovery of costs pursuant to this section shall include such information as the commission requires to weigh such factors, including, but not limited to, information regarding estimated line losses, reactive power and voltage implications and long-term economic and system reliability benefits.

(e) Any recovery of costs authorized by the commission pursuant to this section shall be assessed against all electric public utilities, electric municipal utilities and electric cooperative utilities receiving benefits of the construction or upgrade and having retail customers in this state. Each such utility’s assessment shall be based on the benefits the utility receives from the construction or upgrade. In determining allocation of benefits and costs to utilities, the commission may take into account funding and cost recovery mechanisms developed by regional transmission organizations and shall take into account financial payments by transmission users and approved by the federal energy regulatory commission or regional transmission organization. Each electric public utility shall recover any such assessed costs from the utility’s retail customers in a manner approved by the commission and each electric municipal or cooperative utility shall recover such assessed costs from the utility’s retail customers in a manner approved by the utility’s governing body.

(f) All moneys collected by a utility from assessments authorized by the commission pursuant to this section shall be paid quarterly by the utility to the transmission operator or owner designated by the commission.

(g) Notwithstanding any other provision of law to the contrary, electric municipal utilities and electric cooperative utilities shall be subject to the jurisdiction of the commission for the limited purpose of implementing the provisions of this section.

Sec. 15. K.S.A. 66-105a is hereby amended to read as follows: 66-105a. (a) On and after July 1, 1997, the term “public utility” as used in K.S.A. 66-104, and amendments thereto, and the term “common carriers” as used in K.S.A. 66-105, and amendments thereto, shall not include any gas gathering system, as defined in K.S.A. 55-150, and amendments thereto.

(b) *Notwithstanding the provisions of subsection (a), for those persons providing gas gathering services in such a manner that allows end use customers to obtain natural gas by direct connection to a gathering system, the commission shall have authority, upon complaint or petition or*

upon its own motion, to determine the reasonableness of, and regulate and supervise, any health or safety related curtailment or proposed health or safety related curtailment of natural gas that results in the loss of service to the end use customer.

(c) Any person providing gas gathering services in such a manner that allows the offering of natural gas from a gas gathering system to an end use customer shall give notice thereof to the commission and to each affected end use customer and public utility of its intent to curtail service that will result in the loss of natural gas service to the end use customer. Except in the case of an emergency, notice shall be provided at least 30 days prior to such curtailment. In the case of an emergency, service to residential dwellings or commercial offices may be curtailed immediately upon a good faith belief that an emergency exists. Notice shall be given immediately to the end user and public utility. The person curtailing service, within 24 hours of the determination of the emergency, shall report the curtailment to the state corporation commission and provide the basis for and evidence supporting the good faith belief that curtailment was necessary under the emergency provisions of this subsection. In the event that the curtailment was not based upon a good faith belief and was unnecessary, as subsequently determined by the state corporation commission, the person curtailing service shall be held responsible for the cost of the service curtailment, including any reconnection cost and temporary heating costs.

(d) Nothing contained in subsections (b) and (c) shall be construed to diminish any authority vested in the commission prior to the effective date of this act.

Sec. 16. K.S.A. 66-105a is hereby repealed.

Sec. 17. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 18, 2005.

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